ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY

July 11, 2024

Mariuxi Pintado
Via email: records@americanoversight.org

RE: Sunshine Request - All email communications...and all text messages or messages on messaging platforms...between (a) the officials listed below, and (b) any of the external individuals listed below. a. Attorney General Andrew Bailey, or anyone communicating on his behalf, such as an assistant or scheduler b. Chief of Staff to the Attorney General Jay Atkins c. Solicitor General Josh Divine d. Senior Counsel Todd Scott e. Director of Investigations Shelly Land f. Deputy Attorney General Kelly King... i. Elon Musk, or anyone communicating on his behalf, such as an assistant or scheduler ii. John Sullivan, including, but not limited to, anyone communicating from john.sullivan@the-sl-lawfirm.com iii. Judd Stone, including, but not limited to, anyone communicating

Dear Ms. Pintado,

In response to your above-referenced request received by our custodian of records on January 22, 2024, we are enclosing a link to box.com which contains the final responsive documents. We now consider this request file complete and closed.

Box.com link:
https://ago.box.com/s/d886agtvmc1xpwnqha9lllwsmx6hye1r

Sincerely,

/s/ Maggie Wayman

Maggie Wayman | Custodian of Records
Missouri Attorney General's Office

Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

Huckabee Prep

I watched a full episode of Huckabee on TBN and watched various clips of him conducting interviews. He appears very relaxed, friendly and gregarious. He's a big fan of asking the question and just letting the guest speak. He's also good at working in the Biden digs. Overall, his presentation is very low key and he lets you say your thing. I did notice with particular interest in an interview with Congressman Derek Van Orden (R-WI) that he asked him to explain "**why this matters** to Americans" at the 10:20 mark of this video;

https://www.youtube.com/watch?v=mpWUbp4kl6c

Here are some other interviews he's done so you can get the feel of what he does.

Huckabee interviews Congresswoman Mary Miller (R-IL)

https://www.youtube.com/watch?v=WA0-Cm5mAN4

Huckabee interviews Dick Morris

https://www.youtube.com/watch?v=C7XaU3Bmbkw

How AB has handled Media Matters issue in interviews

Bailey Interview on Media Matters with Stuart Varney on FOX Business 12/11/23

https://www.foxbusiness.com/video/6342778270112

Bailey Interview on OAN 12/13/23 (MO AG talk starts at 2:45 in, interview at 3:30)

https://www.youtube.com/watch?v=-lOQl8buthw

AMERICAN OVERSIGHT

Media Matters Talking Points

Media Matters is a Leftist propagandist organization the disguises itself as a media “watchdog” while enjoying non-proft 501(C)(3) status.

Asks for “donations” to push a progressive and dangerous point-of-view and clamp down on free speech.

X owner Elon Musk said that he would file a lawsuit against Media Matters over a report it ran that claimed X was placing ads for major corporations alongside Nazi-related content. As a result of the report, major corporations like Apple and IBM pulled advertising from X. Musk said the report was misleading and intended to undermine X’s commitment to free speech.

Musk said that Media Matters had created a “contrived” experience by using an alternate account to curate what posts appeared on the timeline. “Once they curated their feed, they repeatedly refreshed their timelines to find a rare instance of ads serving next to the content they chose to follow,” Musk said.

AMERICAN OVERSIGHT

According to Musk, the Media Matters report misrepresented X's advertising practices. He said X logs indicated that of the 5.5 billion ad impressions on the day Media Matters pulled its research, less than 50 were served alongside the content highlighted by the leftist organization.

For one "brand showcased in the article, two of its ads served adjacent to 2 posts, 3 times, and that ad was only seen in that setting by one user, the author of the Media Matters article.

They flat-out lied about X's advertising practices by manipulating the algorithms governing the user experience on X to bypass safeguards and create images of X's largest advertisers' paid posts adjacent to racist, incendiary content, leaving the false impression that these pairings are anything but what they actually are: manufactured, inorganic and extraordinarily rare.

AMERICAN OVERSIGHT

Media Matters completely misrepresented the real user experience…they lied

They lied to go after the most well known freedom of speech platform, X

Media Matters, operating under the guise of a media watchdog site, spews incredibly wild lies in the interest of pushing an extreme left point-of view. It's damaging to unsuspecting consumers of their material.

501(c)(3) means a nonprofit organization that has been recognized by the IRS as being tax-exempt by virtue of its "charitable" programs.

Designed to intentionally mislead consumers of its content to make them think something that simply isn't true. This is part of what the left does…lies to make you think something that isn't true

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: Rathert, Branden[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6862523A4FCB4692B7523E7B2723AB70-RATHERT, BRANDEN]
Sent: Wed 12/27/2023 3:23:31 PM (UTC-06:00)
Subject: Huckabee prep
Huckabee Prep.docx

Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355
Branden.Rathert@ago.mo.gov

AMERICAN OVERSIGHT


AMERICAN
OVERSIGHT

DRAFT DO NOT RELEASE

- Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.

- Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.

- Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme**. We're encouraged other states, namely Texas, are taking action as well.

- Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:
    1. Social media platforms

AMERICAN OVERSIGHT

- We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS

2. President Trump
    - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms pervert the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
    - Elon Musk controversy: Mr. Musk has clarified several times what his views are. The point is that anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. They made that post in order to get advertisers to pull out of X. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free,**

AMERICAN OVERSIGHT

fair and open debate will cease to exist

- The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.
    1. We will never back down in the **fight** for free speech.

Local media:

- Media Matters lied when they took money from everyday Americans and used it in a way different from how they advertised it
- Media Matters appears to have used coordinated, inauthentic activity to solicit charitable donations from consumers across the country
    1. We have a law called the Missouri Merchandising Practices Act that gives the Attorney General the authority to prosecute deceptive, fraudulent or unfair business practices.
        - We have reason to believe Missourians have been affected by this behavior

AMERICAN OVERSIGHT

- To that end, we have issued a document hold notice to Media Matters to get to the bottom of the magnitude of the fraudulent scheme Media Matters is perpetrating

AMERICAN OVERSIGHT

To: 'Charlene Hayes'[CharleneH@tbn.tv]
Cc: Taylor Walters[TWalters@tbn.tv]; Rathert, Branden[Branden.Rathert@ago.mo.gov]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Thur 12/28/2023 2:13:26 PM (UTC-06:00)
Subject: RE: Producers Attn: MO AG Andrew Bailey - Huckabee Ep 327
Blue Book Headshot Crop (1).jpg
Media Matters v. 2.docx

Hi Charlene,
Thanks so much for your assistance on this. The AG is excited to participate.
See attached photo of the AG – let me know if you need a different format.
Please see his biography here: https://ago.mo.gov/about-us/about-ag-bailey/#:~:text=He%20began%20his%20legal%20career,the%20Missouri%20Department%20of%20Corrections.
His Twitter and Instagram are both @agandrewbailey
His Facebook is Attorney General Andrew Bailey
See our Flickr page here: https://www.flickr.com/photos/146566231@N08/ (The Flickr page needs a bit of updating but we will get that done in the next week. Should be plenty of photos there.)
What type of video clips are you interested in? Broll, past interviews. Etc are all things we have and can send along if it would be helpful.
Accompanying him will be me (Madeline Sieren, his comms director) and Branden Rathert, deputy comms director, who is copied here. Let me know if you need any info on either of us for security reasons.
Attached is his talking points on Media Matters. Below are the two links with info on the actions the AG has taken on that topic so far:
https://ago.mo.gov/attorney-general-bailey-notifies-media-matters-of-pending-investigation/
https://ago.mo.gov/attorney-general-bailey-directs-letter-to-advertisers-amidst-media-matters-investigation/
Are there any other topics you would be interested in covering? He's done a lot of work on a number of issues, such as abortion, the southern border, protecting children from a radical transgender ideology, etc. Jan 3 will also mark one year of his being in office.
Happy to pass along any other materials you need – we are excited to see you all in a week!
Best,
Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

From: Charlene Hayes <CharleneH@tbn.tv>
Sent: Thursday, December 28, 2023 10:52 AM
To: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Cc: Taylor Walters <TWalters@tbn.tv>
Subject: Re: Producers Attn: MO AG Andrew Bailey - Huckabee Ep 327

Hi Madeline,
We look forward to having Attorney General Andrew Bailey with us on Jan 5th! Our team would love to acquire a high-res photo of him and any other materials you'd like us to have (bio, supporting photos/videos, socials, any additional talking points, etc.).
We will begin taping at 7:00pm CT. Upon arrival, our producer will walk through staging, timing, etc. We will have light makeup and refreshments.
I will need the names of anyone accompanying him for the security list. We would like to keep backstage guests to a minimum if possible.
Looking forward to working with you,
Charlene

TBN NETWORKS
AMERICAN OVERSIGHT

Charlene

Coordinating-

Trinity

1

Hendersonville,TN37075

Email: CharleneH@tbn.tv

Tel:(615)

Web:org

From: SharePoint <sharepoint@tbn.tv>
Date: Thursday, December 28, 2023 at 9:33 AM
To: Producers Team (Huckabee Calendar) <producers_hc@tbn.tv>
Cc: Taylor Walters <TWalters@tbn.tv>
Subject: Producers Attn: MO AG Andrew Bailey - Huckabee Ep 327

Huckabee Episode Number: Huckabee Ep 327
Taping Date: 01/05/2024
Guest Name: MO AG Andrew Bailey
Chyron: Missouri Attorney General (R)
Segment: Interview
Arrival Time: 6:15 pm CT
Hit Time: 7:00 pm CT
Bio:

Andrew Bailey was sworn in as the 44thGeneral of the State of Missouri on January 3, 2023.Andrew is a combat veteran, father of four, prosecutor, and constitutional conservative who fights for the people of Missouri every day as the State's chief legal official. Andrew went to college at the University of Missouri on an Army scholarship.Following the September 11thattacks on the United States, Andrew was commissioned as an officer in the Army and took an Oath to defend our Constitution.He volunteered for combat duty to take the fight to the enemies of freedom, volunteered to go to Iraq, and did two tours as an Armored Cavalry Officer.For his service, Andrew was awarded two Army Achievement Medals, an Army Commendation Medal, a Combat Action Badge, and two Bronze Star Medals.
Following the honor of wearing the uniform to serve our nation, Andrew returned to his alma mater to attend law school, and became a prosecutor to fight violent crime and protect Missouri communities.He began his legal career at the Missouri Attorney General's Office as an Assistant Attorney General and later served as an Assistant Prosecuting Attorney for the Warren County Prosecuting Attorney's Office and as General Counsel for the Missouri Department of Corrections.In 2019, Andrew joined the Missouri Governor's Office, serving first as Deputy Counsel and then General Counsel.Andrew has handled countless cases in both state and federal courts throughout his career, defending our constitutional freedoms and the most vulnerable while delivering justice for victims.
It was in the courtroom where Andrew saw too many Missouri children in need of a caring, loving home.Those experiences motivated him and his wife, Jessica, to become foster parents.They are now blessed with four beautiful children ranging from 6 months to 10 years old, and reside in Montgomery County.
As Attorney General, Andrew is focused on protecting the Constitution, enforcing the laws as written, defending the state, supporting the counties, and training a new generation of service-minded attorneys.
Huckabee Appearance: Info/Links:

GUEST POV:

- Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.

- Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.

AMERICAN OVERSIGHT

• Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect**Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.

• Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:

1. Social media platforms

    ▪ We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS

2. President Trump

    ▪ We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates

3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**

    ▪ Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

• The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.

1. We will never back down in the **fight** for free speech.

Submitted By: Taylor Walters

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Lewis, Jason[Jason.Lewis@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: Lyday, Bennett[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EACD91D740F2406EB8A1385B65BBDDED-LYDAY, BENNETT]
Sent: Wed 1/3/2024 9:18:31 AM (UTC-06:00)
Subject: Daily News/Media Roundup - Wednesday, December 3rd, 2024

Good morning all,
Below is the relevant news for today and yesterday relating to the AGO, Missouri, and Nation:

AGO News:

'War for soul of America' has three fronts, says Missouri attorney general – who has helped make the state Ground Zero on this one

The Heartlander I Michael Ryan
https://heartlandernews.com/2024/01/02/war-for-soul-of-america-has-three-fronts-says-missouri-attorney-general-who-has-helped-make-the-state-ground-zero-on-this-one/

-"Just as the 2024 presidential election cycle begins in earnest, Missouri has become Ground Zero in this country's centuries-long fight for freedom of speech. Even as he fights at the U.S. Supreme Court against Biden administration censorship of conservative speech online, the Missouri attorney general is looking into alleged coordinated liberal attacks on social media site X, the former Twitter – which he calls "the last platform dedicated to free speech in America." AG Andrew Bailey says he is probing whether the far-left Media Matters organization manipulated content on X to scare off advertisers – allegedly using algorithms to pair a few instances of offensive content with ads from major brands – and whether that has defrauded Missouri residents in the process… Bailey notified Media Matters in a letter that he's investigating whether the allegations against it are true and, if so, whether it constitutes fraud against Missourians who've contributed to the nonprofit. "We have reason to believe Media Matters used fraud to solicit donations from Missourians in order to trick advertisers into pulling out of X, the last platform dedicated to free speech in America," Bailey wrote in a statement. "Radicals are attempting to kill Twitter because they cannot control it, and we are not going to let Missourians get ripped off in the process. I'm fighting to ensure progressive tyrants masquerading as news outlets cannot manipulate the marketplace in order to wipe out free speech." Bailey expounded on his investigation of Media Matters in an exclusive interview with The Heartlander. "Number one, they lied when they took money from everyday Americans, to include Missourians, and used it to defraud advertisers on X. But then also, they have potentially lied when they manipulated the algorithms on X in order to emphasize controversial speech and bully X and its advertisers. "The coordinated attack on X was when they opened their own accounts and then manipulated the algorithms to emphasize controversial speech – in order to take controversial speech and juxtapose it with images of X's major advertisers. And they then broadcast that out as if it was happening frequently, when in fact there are more than 500 million users on X – and in X's own investigation into the matter there was only one instance in which one of the controversial images appeared adjacent to the major advertiser, and in another instance it only happened twice in 500 million times. "The odds of winning the Powerball recently have been one in 292 million. So in other words, you would be more likely to win the Powerball than to be able to replicate organically the staged manipulation that Media Matters accomplished. "Now, why would a 501(c)(3) want to do that? This should scare all Americans. This is a new front in the fight for free speech. What the left couldn't do through government censorship – because we filed Missouri v. Biden and put a stop to it – they've now moved into a new effort. And it's guerrilla warfare. It's market manipulation to destroy any public forum for free, fair and open debate." Bailey is fighting on that other front as well, helping commandeer the Missouri v. Biden lawsuit… The landmark case will determine whether conservatives have freedom of speech online in the runup to the 2024 election. The AG calls Missouri v. Biden "the most important First Amendment suit in this nation's history, where we've uncovered the relationship of coercion and collusion between the federal government and Big Tech social media to censor American voices in violation of the First Amendment right to free speech." The fact that the U.S. Supreme Court will be deciding the lawsuit even before the lower courts had a chance to "speaks to the enormous magnitude and implications of the case," Bailey says. What Media Matters is alleged to have done to X may be a naked attempt to get around the Missouri v. Biden case, Bailey says. "Yeah, I think so," he tells The Heartlander. "Again, what the [liberal] left was doing was censoring conservative speech on Big Tech social media platforms, and what happened in the interim was, they got caught because of Missouri v. Biden and we were able to call them out on it. But Elon Musk purchased Twitter, turned it into X, opened it up, and revealed the Twitter files that exposed the pernicious elements of the vast censorship regime. "What they can't accomplish anymore through

AMERICAN OVERSIGHT

government censorship, they now seek to accomplish through market manipulation. And the advertisers that are pulling out of X have become pawns in that game." There are three fronts in "the war for the soul of America," Bailey says – the first being the border. "If we don't have a border, we don't have a country. No border, no nation. President Biden has flung the border open and allowed a complete invasion of our country. It's making Missouri communities less safe."[The second front is] the weaponization of government against political opponents. We've got this two-tiered justice system where the party in power is persecuting and prosecuting President Trump in order to remove him from the political scene in the United States of America. At some point that becomes a Banana Republic. It undermines the rule of law and our confidence in the system. "And then the third strategic front is really the fight for free speech. And again, Missouri has been engaged in that fight from the beginning.'"

Attorney General announces 93% reduction in SAFE Kit Backlog

KZRG l Steve Scott

https://newstalkkzrg.com/2024/01/02/attorney-general-announces-93-reduction-in-safe-kit-backlog/

-"There's been a sizable reduction in the SAFE Kit backlog. Missouri Attorney General Andrew Bailey has announced a 93 percent reduction in the backlog of untested sexual assault kits. Bailey's office also reported that more than 80 percent of Missouri law enforcement agencies have no untested sexual assault kits to report. The nearly one-thousand DNA profiles uploaded from the tested kits have resulted in more than 450 hits, three felony convictions, and nine other cases set for trial or with warrants issued. The first statewide inventory of untested sexual assault kits was completed in 2019. When this effort started under Josh Hawley's time as Attorney General, he cited about 7-thousand untested rape kits at that time."

Missouri Attorney General Andrew Bailey released the 2023 SAFE Kit Inventory Report Friday

KZIM l No Author Listed

https://kzimksim.com/2024/01/02/missouri-attorney-general-andrew-bailey-released-the-2023-safe-kit-inventory-report-friday/

-"Missouri Attorney General Andrew Bailey released the 2023 SAFE Kit Inventory Report Friday in an effort to honor the courage of those who have come forward. The Attorney General's Office has attempted to clear the backlog since the beginning of SAFE Kit's inception in 2019. Officials say there has been a 93 percent reduction in the volume of untested, reported kits inventoried since 2019. Over 80 percent of Missouri law enforcement agencies have no untested sexual assault kits to report."

Opinion: Bailey is lying about plaintiffs' religious views in abortion litigation.

St. Louis Post-Dispatch l Rev. Blackmon et al.

https://www.stltoday.com/opinion/column/opinion-bailey-is-lying-about-plaintiffs-religious-views-in-abortion-litigation/article_21c2c552-a99c-11ee-b58e-6bef6f37731b.html

AGO Interviews:

AG Andrew Bailey Joins the Marc Cox Morning Show

97.1FM Talk

(This morning) https://twitter.com/i/broadcasts/1jMKgmMomzOJL

(Yesterday) https://twitter.com/i/broadcasts/1BRKjPMEekoJw

Missouri News:

Missouri Gov Bans Chinese Purchase Of Farmland Near Military Sites

Daily Caller l Jake Smith

https://dailycaller.com/2024/01/02/mike-parson-bans-chinese-purchase-of-farmland-near-military-sites-missouri/

-"Republican Missouri Gov. Mike Parson signed an executive order on Tuesday prohibiting any entity tied to the CCP from buying up land within 10 miles of any "critical military facilities," according to a statement from Parson's office. There are several firms with Chinese-based parent companies that own or plan to buy land around U.S. military installations, prompting concern from some lawmakers that Beijing is conducting espionage on American soil…Parson's executive order also applies to any person or group that has been designated as "foreign adversaries" by the U.S. government. Parson noted that it is still important to do business with the U.S.'s foreign allies, pointing to economic partnerships with Israel, the U.K. and Japan, among others, that have brought billions to Missouri's economy and created thousands of jobs. Multiple CCP-linked organizations operate or plan to operate near military bases in the U.S. For example, Cnano Technology USA – a subsidiary of C-Nano Technology, which itself is owned by Chinese-based entity Cnano Jiangsu Technology – plans to develop a 333,000-square-foot manufacturing plant in Kansas located within 35 miles from Fort Leavenworth and 70 miles from the Whiteman Air Force Base. Cnano Jiangsu adheres to CCP ideology and supports "the deep integration of Party-building and corporate governance," according to a company document. The company employs a number of CCP members and is involved in several projects deemed as efforts to steal American technology…"Just ask yourself the question: can Americans buy land in China near its military bases? Of course, the answer is no," Chairman of the House Select Committee on the CCP Mike Gallagher previously told the Daily Caller News Foundation. "We cannot allow the CCP to collect valuable intelligence here at home that they might leverage in the event of a crisis." The Missouri Department of Agriculture did not immediately respond to a request for comment."

Missouri House Republicans choose Axiom Strategies executive to lead campaign effort

AMERICAN OVERSIGHT

Missouri Independent | Rudi Keller
https://missouriindependent.com/briefs/missouri-house-republicans-choose-axiom-strategies-executive-to-lead-campaign-effort/

-"Missouri House Republicans tapped an executive of a top GOP consulting firm to direct their campaign efforts after shifting a long-time strategist out of the job. Hannah Beers Sutton of Axiom Strategies will be executive director of the House Republican Campaign Committee, Majority Leader Jon Patterson said. She will replace Jonathan Ratliff, a partner in Palm Strategic who has been leading the House Republican campaign effort for 14 years. Ratliff will be retained as a "senior consultant," the announcement of his departure stated. Beers Sutton stood out because of her experience, her relationships and her political skills, Patterson said in an interview with The Independent…Beers Sutton steps in at a time of strained relations between House and Senate Republicans. The Missouri Supreme Court is considering a challenge to the Senate district map approved by a judicial commission in 2022 and, under Ratliff's direction, the House Republican Campaign Committee filed a brief supporting the challenge…Arguments in the case are scheduled for Jan. 24…"In the face of a daunting 2024 cycle, defending our supermajority is of the utmost importance," Beers Sutton said. "Now is the time to put our heads down and get to work." A 2016 graduate of Evangel University, Beers Sutton worked on several Missouri campaigns before becoming chief of staff to then-Sen. Ryan Silvey in 2017. She joined Axiom in 2018. She currently serves as vice president of Clout Public Affairs, the lobbying arm of Axiom…"

2024 Missouri legislature opens today

Fox 2 | Reggie Lee
https://fox2now.com/news/missouri/2024-missouri-legislature-opens-today/

-"The new session of the Missouri legislature opens Wednesday. There's a legislative prayer service Wednesday morning in Jefferson City before the session begins. Some of the issues in this election year are whether to approve sports betting. Republicans also want to make it harder to change the constitution through ballot initiatives. That's how marijuana was legalized. There are petitions now to make abortion legal in Missouri. Other issues are expanding charter schools and child care."

Missouri GOP Leaders Say LGBTQ+ Issues Will Take a Back Seat to Child Care, Education Policy in 2024

US News | AP
https://www.usnews.com/news/best-states/missouri/articles/2024-01-03/missouri-gop-leaders-say-lgbtq-issues-will-take-a-back-seat-to-child-care-education-policy-in-2004#:~:text=Jan.%203%2C%202024%2C%20at%205%3A20%20a.m.&text=JEFFERSON%20CITY%2C%20Mo.,people%20is%20not%20a%20priority.

-"Missouri's five-month annual legislative session begins Wednesday, and top Republican leaders say passing more laws directed at LBGTQ+ people is not a priority… Bills filed this session would repeal the expiration dates for both transgender-related laws, make public drag shows a crime, require teachers to notify parents if students express confusion about their gender, and put limits on what books are available to minors in public and school libraries. But Republican Senate President Pro Tem Caleb Rowden said he does not expect work on transgender-related issues this year. And House Majority Floor Leader Jonathan Patterson said proposals dealing with drag shows, LGBTQ+ discussions in schools and library books will take a back seat to top priorities that include expanding access to child care and charter and non-public schools. The rift between the Republican majority and more extreme factions within the party likely will be on full display this year as GOP lawmakers try to win primary elections by moving farther and farther to the right…"

St. Louis saw major drop in homicides and other reported crimes in 2023

STL Post-Dispatch | Dana Rieck
https://www.stltoday.com/news/local/crime-courts/st-louis-saw-major-drop-in-homicides-and-other-reported-crimes-in-2023/article_0b2819f6-a991-11ee-a7e4-178ccdf1d2a8.html

-"St. Louis police reported 158 killings in 2023, marking its fewest in a decade. That number, which doesn't include seven homicides that were ruled justifiable for reasons including self-defense, is down from 200 in 2022 and 201 the year prior, according to department data. The same was true for other types of reported crime: Shootings were down 24% from 772 in 2022 to 552; felony thefts were down 39%; auto thefts were down 19%; and shootings involving juveniles were down 47%.And for all of St. Louis County, homicides dropped 24%, from 94 in 2022 to about 73 in 2023. The trends are encouraging for the St. Louis region, where for years the city's homicide rate was among the highest in the nation. City leaders touted the numbers as a sign that their crime reduction efforts are having an effect…St. Louis' trends weren't unique — homicides were down almost everywhere in the U.S. this year. Nationwide, they were down 13%, and several other cities, including Baltimore, Atlanta and Milwaukee saw decreases similar to St. Louis. Kansas City, where homicides were up 7% from 170 to 182, was one of the few exceptions. Memphis, where homicides were up 31% from 181 to 238, was another…As Tracy dealt with a record low in officer staffing, he also emphasized data-driven police strategies — which include community policing, keeping officers in the same areas from one shift to another, and a focus on sharing information with community organizations, other police departments and prosecutors. Tracy also tapped a local nonprofit for almost $1 million to fund overtime shifts in the downtown area…"

Missouri governor names Francis Slay to state highways commission

STL Post-Dispatch | Jack Suntrup

AMERICAN OVERSIGHT

https://www.stltoday.com/news/local/government-politics/missouri-governor-names-francis-slay-to-state-highways-commission/article_331e2f3e-a9bb-11ee-8c58-0b92ade4a8e6.html

-"Gov. Mike Parson on Tuesday announced former St. Louis Mayor Francis G. Slay as one of two new members of the Missouri Highways and Transportation Commission. Slay, a Democrat, served as St. Louis mayor for four terms between 2001 and 2017. Since February 2022, Slay, 68, has been executive director of the St. Louis Regional Crime Commission, a nonprofit that runs the St. Louis Regional CrimeStoppers program. Parson, a Republican, also named former state Sen. Dan Hegeman, R-St. Joseph, to the transportation commission. Hegeman is a former chair of the Senate Appropriations Committee and Parson ally…"

I-44 Could Be on Parson's Infrastructure Agenda

MissouriNet l Anthony Morabith

https://www.missourinet.com/2024/01/02/i-44-could-be-next-on-parsons-infrastructure-agenda/

-"During his time as the head of the state of Missouri, one of Gov. Mike Parson's main priorities has been infrastructure. His focus has included repairing 250 bridges in poor condition and widening Interstate 70 to alleviate traffic congestion. He told Missourinet that I-44 could be next. "I would tell you that I think you're going to find out there'll be some more major additions in the State of the State when we'll be talking about infrastructure and other major roads across the state," Parson said. He recently told the Joplin Globe that I-44 will be mentioned in his upcoming State of the State address. While the Show-Me State is preparing to expand I-70 from St. Louis to Kansas City, the Missouri Farm Bureau began campaigning for expanding I-44 from St. Louis to Joplin as well. Some lawmakers who live near I-44 want that roadway widened before I-70. Parson's final State of the State address is scheduled to happen January 24 in Jefferson City."

Former Elected Official in Missouri Arrested Over False Voter Document

The Messenger l Zachary Leeman

https://themessenger.com/politics/missouri-official-jessica-caswell-false-voter-document

-"The Kansas City Star first reported on the arrest following an investigation by the outlet that found both professional personal connections between board members of the Village of River Bend and Jack Mitchell, the developer of a marijuana-based entertainment district. Jessica Caswell served on the board until last month. She was indicted on Dec. 15. She's accused of signed documents falsely claiming she met residency requirements to run for the board of trustees seat. There was a special election in November to replace Caswell. Caswell reportedly previously worked under Mitchell. Caswell reportedly posted bail after her arrest."

National News:

US Supreme Court Could Dismantle Federal Government's Powers in 2024

Epoch Times l Jack Phillips

https://www.theepochtimes.com/us/us-supreme-court-could-dismantle-federal-governments-powers-in-2024-post-5556676

-"With the U.S. Supreme Court slated to return to session on Jan. 8, the second part of the high court's term could hand down rulings that either curb or expand the federal government's powers—sometimes known as the administrative state. Analysts have said that three cases that the high court is hearing related to the federal bureaucracy this term, including the Consumer Financial Protection Bureau (CFPB) v. Community Financial Services of America, the Securities Exchange Commission (SEC) v. Jarkesy, and Loper Bright Enterprises v. Raimondo. SEC v. Jarkesy: Hedge fund manager George Jarkesy was penalized by the SEC for violating securities fraud law, which he appealed. The U.S. 5th Circuit Court of Appeals sided with the plaintiff, arguing in a ruling that the SEC violated the Constitution's Seventh Amendment, which provides the right to have a jury trial, and it also found that Congress engaged in overreach by delegating its own power when allowing an agency—in this case, the SEC—to hold administrative proceedings rather than file a lawsuit in a civil court against Mr. Jarkesy… the arguments focused on whether the Constitution's Seventh Amendment bars the federal securities agency from issuing penalties in internal proceedings without giving a defendant the ability to have a trial by jury. During the hearing, Chief Justice John Roberts suggested that federal agencies have obtained more power over the public in recent years. "Should that be a concern for us or a consideration?" he asked Department of Justice (DOJ) attorneys representing the SEC in the case. Justice Brett Kavanaugh suggested to the DOJ lawyer, Brian Fletcher, that the Jarkesy case would impact other federal agencies… CFPB v. Community Financial Services of America: In the CFPB case, the agency had asked the Supreme Court to rescind a ruling by a lower court that determined the agency's funding structure runs afoul of the Constitution. That ruling was also handed down by the U.S. 5th Circuit Court of Appeals earlier this year... The case stems from a challenge by two payday lending groups that sued to overturn a CFPB rule aimed at combating what the agency calls "unfair and abusive" practices in the industry. The 5th Circuit overturned the rule on Oct. 19, holding in the process that the CFPB's funding through the Federal Reserve, rather than budgets passed by Congress, violated the separation of powers principle in the U.S. Constitution… Depending on how the Supreme Court rules this term, the CFPB's "future is on the line before the Court," Better Markets, a consumer advocacy group, wrote in a recent report. Loper Bright Enterprises v. Raimondo: In May 2023, the high court opted to take the case, Loper Bright Enterprises v. Raimondo, which will decide on the question whether the court should overrule the Chevron doctrine, which has long been criticized by conservatives who call it unconstitutional. Critics object to its application without a clear framework to resolve statutory ambiguity, leaving

AMERICAN OVERSIGHT

too much discretion with the courts to engage in results-oriented decisioning. The Chevron v. Natural Resources Defense Council case, issued in 1984, is considered a key facet of administrative law and requires courts to defer the federal agencies' reasonable interpretations of statutes that are unclear. The case, according to University of Georgia School of Law professor Adam D. Orford, is significant because the Chevron doctrine "is potentially implicated any time a federal agency makes a rule to implement a federal statute and chooses to fill in gaps or do any other thing not specifically contemplated by Congress," adding that there are "thousands of rulemakings" by agencies each year…"

Federal Appeals Court Blocks Biden Admin's Emergency Abortion Rule in Texas

Epoch Times l Caden Pearson

https://www.theepochtimes.com/us/federal-appeals-court-blocks-biden-admins-emergency-abortion-rule-in-texas-5557368?ea_src=frontpage&ea_med=lead-special-judiciary-medium-0

-"A federal appeals court on Tuesday upheld a lower court ruling blocking the Biden administration from enforcing federal guidance in Texas related to emergency abortions. Fifth U.S. Circuit Court of Appeals Judge Kurt Engelhardt, an appointee of President Donald Trump, penned the opinion, noting that the court declined "to expand the scope" of a federal statute to include enforcing abortions. The unanimous opinion by the 5th U.S. Circuit Court of Appeals is a win for Texas, whose attorney general argued the rule would force doctors to perform elective abortions against state law. The ruling means a loss for the White House's abortion agenda, and the Department of Health and Human Services (HHS), which argued that its federal guidance trumps state laws… The guidance cited the 1986 federal Emergency Medical Treatment and Labor Act (EMTALA), which requires health providers to provide emergency care to a patient regardless of their ability to pay for it. Under EMTALA, certain health care providers can face stiff civil penalties, as well as loss of Medicare or Medicaid funding, for violations… In July 2022, Texas Attorney General Ken Paxton sued HHS over the guidance, seeking to block the enforcement of EMTALA, alleging that it forces providers to perform elective abortions in excess of HHS's authority and contrary to state law. Mr. Paxton argued that the rule forces hospitals and doctors to commit crimes and risk their medical licenses under Texas state law. The lower court agreed in its August 2022 ruling, prompting HHS to appeal the ruling, which the 5th Circuit Court of Appeals has now unanimously upheld…"

WAR: Biden Regime Files Emergency Application Demanding Supreme Court Allow Border Agents to Chop Down Razor Border Barriers Installed By Texas – Governor Greg Abbott Issues Defiant Response

The Gateway Pundit l Cullen Linebarger

https://www.thegatewaypundit.com/2024/01/war-biden-regime-files-emergency-application-demanding-supreme/

-"The Biden regime's determination to betray the American people and remake America has reached a new level. They now want the U.S. Supreme Court to remove a critical obstacle installed by Texas to stop illegal border crossings, leaving the state defenseless against the illegal alien invasion. As CNN reported, the Biden regime wants border agents to have the authority to cut razor wire that Texas has installed on the banks of the Rio Grande to deter border crossers. Texas Governor Greg Abbott's administration installed the razor wire near the Rio Grande River at Eagle Pass, Texas, to slow the illegal alien invasion that has overrun the state. Crime has skyrocketed, property has been destroyed, and precious state resources are being drained, all thanks to the Regime's open borders policy. When Border Patrol agents caved to the Regime's dictates and cut through some of the razor wire last October, Texas State Attorney General Ken Paxton sued. He correctly argued this action destroys state property and undermines security to assist illegal aliens in crossing the border. A federal judge declined to impose an injunction against the federal government. The conservative Fifth Circuit Court of Appeals, however, stepped in and granted Texas a temporary victory last month, ordering Border Patrol agents to stop the practice while legal proceedings unfold… Abbott responded to the Regime's action with pure defiance and said Texas would continue safeguarding the porous border."

Armed Suspect Arrested After Shooting His Way Into Colorado Supreme Court, Setting Fire: Police

Epoch Times l Ryan Morgan

https://www.theepochtimes.com/us/armed-suspect-arrest-after-shooting-his-way-into-colorado-supreme-court-setting-fire-police-5557089

-"Law enforcement officers in Colorado arrested an armed suspect who allegedly shot his way into the Colorado Supreme Court building early on Tuesday morning and setting a fire once inside the building. The armed suspect had reportedly been involved in a two-vehicle crash near the Ralph L. Carr Colorado Judicial Center in Denver at around 1:15 a.m. on Tuesday morning, according to a statement shared with NTD News by the Denver Police Department (DPD). One of the motorists involved in the collision allegedly emerged from his vehicle and pointed a handgun at the other driver. A short time later, that same armed individual, identified by DPD as 44-year-old Brandon Olsen, approached the Supreme Court building, shooting out a window on the east side of the building to gain entry. Once inside the building, Mr. Olsen allegedly crossed paths with an unarmed security guard from the Colorado State Patrol Capitol Security Unit and held the guard at gunpoint, eventually obtaining his security keys. Mr. Olsen then made his way into various other parts of the building, including the courthouse's seventh floor, where he reportedly fired additional shots inside the building. Mr. Olsen also allegedly set a fire in one of the building's stairwells. Colorado State Patrol (CSP) and DPD officers responding to the vehicle collision set up a security perimeter around the adjacent court building. According to DPD, Mr. Olsen eventually called 911 at around 3 a.m. local time and voluntarily surrendered without further incident. Denver Fire was then able to put out the flames inside the

AMERICAN OVERSIGHT

building's stairwell. Following his arrest, law enforcement officers took the suspect to a local hospital to be cleared by medical personnel… Mr. Olsen is currently being held for possible robbery, burglary, and arson charges. DPD is leading the investigation of the incident and the Denver District Attorney's will make the final determination as the the charges Mr. Olsen may face. No injuries have been reported as a result of the Tuesday morning break-in. CSP described the damage to the building sustained "significant and extensive damage" but DPD said its investigators are still evaluating the full extent of the damage… The CSP and DPD both said they are taking the Tuesday morning break-in at the Ralph L. Carr Colorado Judicial Center seriously, but indicated no clear link to the previous threats levied at the court following their recent ruling. "Preliminary investigations confirmed a high probability the incident being investigated the Ralph L. Carr Colorado Judicial Center is NOT associated to the recent threats against the Colorado Supreme Court Justices," reads a CSP press statement provided to NTD News…"

Here's How Much Federal Diversity Trainings Cost Taxpayers In 2023

Daily Caller l Robert Schmad

https://dailycaller.com/2024/01/03/federal-diversity-trainings-cost-taxpayers-2023/

-"Taxpayers were on the hook for the more than $16.3 million the federal government spent on diversity trainings taking place in 2023, according to a government spending database. Past government diversity trainings have instructed federal workers that asking an Asian colleague for help with a math problem could be racist, that men can become pregnant and that "social pain" can be the same as physical pain. The Air Force, Navy, Immigration and Customs Enforcement (ICE), National Park Service, National Institutes of Health, Department of Defense, Department of Education and Department of Veterans Affairs were among the government bodies shelling out millions for diversity trainings… Many of the diversity consulting firms the federal government is paying to administer training are open about the left-wing ideas they push. Ivy Planning Group, a diversity consultancy the National Institutes of Health and the Department of Education collectively paid about $200,000 to in 2023, is one such firm… The firm warns clients to be cautious of "MicroTriggers" which it says "are subtle, seemingly unimportant communications that can negatively impact an individual's performance and confidence." Ivy even sells a "MicroTriggers" button clients can buy for $30 that, when pushed, says "MicroTrigger!" and can be used as "a light-hearted way to spark conversations and to introduce accountability for subtle behaviors," according to the organization's webpage. In a guide published by Ivy on how clients can reduce unconscious bias, they encourage individuals to not be colorblind in relation to race. Ivy published another guide on "name privilege."… Not every organization the feds paid for diversity trainings was a traditional diversity consultancy. The Department of Labor, for instance, paid Cornell University more than $670,000 for its diversity trainings services. A brochure for one of Cornell's diversity trainings shows that organizations that pay for a training receive a "Check Your Privilege" tool and are taught about microaggressions, among other things. One of Cornell's trainings also assigns participants a paper on white privilege by feminist and anti-racist scholar Peggy McIntosh… The Navy and the Air Force spent $232,300 on contracts for diversity trainings taking place in 2023. One contract worth $91,000 paid the Black Pearl Chamber Orchestra, an orchestra with a "visible commitment to diversity, equity and inclusion," to give the United States Air Force Band diversity seminars… Biden signed an executive order in June 2021 commanding federal agencies to increase their diversity programming, saying that "such training programs should enable federal employees, managers and leaders to have knowledge of systemic and institutional racism and bias.'"

Son of George Soros scored eight Biden White House visits in 2023: 'Dark money machine'

Washington Examiner l Gabe Kaminsky

https://www.washingtonexaminer.com/news/white-house/george-soros-biden-white-house-meetings-2023

-"The younger Soros took at least eight trips to the White House between February and September of last year to hobnob with federal officials, all while Alex Soros and his 93-year-old father held meetings with Democratic lawmakers and gifted them with millions of dollars in campaign donations, according to White House visitor logs reviewed by the Washington Examiner. Meanwhile, George Soros recently passed the torch of his multibillion-dollar dark money philanthropy empire to his "more political" millennial son, a decision sure to have major ramifications on future elections and the left-wing donor sphere… The visits underscore how the Soros family has gained significant influence among the highest levels of government, as advocacy organizations funded by the Soros-backed Open Society Foundations prop up Biden's agenda across the United States. George and Alex Soros cut large checks in 2023 to Biden and various liberal politicians, including House Minority Leader Hakeem Jeffries (D-NY), Sen. Chris Murphy (D-CT), and Gov. Gavin Newsom (D-CA), campaign finance disclosures show. Tax forms filed in November show Open Society Policy Center, a lobbying shop in the Soros network, steered more than $15 million in 2022 to Future Forward USA Action, a nonprofit group staffed by ex-Biden White House officials that is supporting the president's reelection bid in 2024, the Washington Examiner reported. Alex Soros, who asserted in April 2023 that he is "Ridin with Biden" in the 2024 presidential election, often posts pictures on social media with top Democrats, including former Presidents Bill Clinton and Barack Obama, as well as Biden and Vice President Kamala Harris. OSF's newly crowned chairman is listed roughly two dozen times in White House visitor logs dating back to October 2021, while several of his colleagues, including Open Society-U.S. Executive Director Laleh Ispahani and Open Society Institute adviser Yasin Yaqubie, have also frequented the White House often, records show… Moreover, Alex Soros is listed in White House visitor logs in connection to a May 31 visit at the private residence of Vice President Harris, who,

AMERICAN OVERSIGHT

that day, also hosted model Savannah Huitema, businessman Avram Glazer, and other deep-pocketed Democrats. Guests arrived at 4 p.m. and departed the Harris household at midnight, according to visitor logs… Government records also list Alex Soros as visiting last year with former White House adviser Nina Srivastava, former White House chief of staff Ron Klain, and Jon Finer, the deputy national security adviser, among others. Congressional Outreach Director Mariana Adame and Jordan Finkelstein, special assistant to the president, are also listed in White House records as visiting in the past with Alex Soros. News of Alex Soros's 2023 access to the White House comes after he was listed 13 times in 2022 visitor logs, including for a state dinner that year in honor of French President Emmanuel Macron and a White House celebration on the confirmation of liberal Supreme Court Justice Ketanji Brown Jackson… OSF notably gave more than $2 million between 2016 and 2020 to al Haq, an Israeli-designated terrorist group linked to the Popular Front for the Liberation of Palestine, a U.S.-designated terrorist faction, the Washington Examiner reported. The PFLP joined Hamas in the Oct. 7 attacks, which killed more than 1,200 people in the Jewish state."

Congress Faces Long To-Do List As Shutdowns Loom To Start 2024

Daily Caller l Arjun Singh

https://dailycaller.com/2024/01/02/procrastination-congress-complete-january-2024/

-"The Senate adjourned on Dec. 21 after attempting to reach a political compromise on funding for Ukraine in exchange for border security measures, while the House of Representatives adjourned for a winter holiday recess on Dec. 14. When both houses convene for legislative business on Jan. 8 and Jan. 9, respectively, they will be presented with four time-sensitive major funding proposals to address regarding Israel, Ukraine, the southern border and the U.S. government as a whole. Under the terms of a continuing resolution passed by Congress on Nov. 15, funding for the departments of Agriculture, Commerce, Justice, Labor, Transportation and the White House, among others, will expire on Jan. 19, with the absence of a bill to fund them beyond that date precipitating a partial government shutdown. House Speaker Mike Johnson has previously indicated that the House will not consider any more continuing resolutions, which will leave the House just eight working days — excluding weekends and Martin Luther King Jr. Day, a federal holiday — to pass the five appropriations bills, or a small omnibus package, required for these departments to avert a shutdown. Neither the House nor the Senate has completely passed an appropriations bill ready for presentment to President Joe Biden, amid large differences between Democrats and Republicans on their contents. Of the seven bills passed by the House and three bills passed by the Senate, only one bill, related to military construction projects and the Department of Veterans Affairs, has been passed by both Houses, though each house has passed a different version of the bill that will require a conference process to harmonize. Apart from the appropriations process, Congress will resume its consideration of an aid package to Ukraine requested by the Biden administration, which has been blocked by House Republicans unless the Democratic-led Senate grants concessions on border security. The Senate was unable to reach a compromise that satisfies Democrats, some of whom have objected to any enhancement of authority to remove illegal immigrants demanded by Republicans… Funding for Ukraine expired on Sept. 30, the beginning of the Fiscal Year 2023-24, and was not included in the previous two continuing resolutions. The absence of American financial support prompted a visit from Ukrainian President Volodymyr Zelenskyy to the United States in December to plead for congressional support. Congress, furthermore, is considering a bill to provide military aid to Israel during its war against Hamas. While supported in principle by Democrats and Republicans, the former oppose a House-passed bill to provide aid offset by cuts to the Internal Revenue Service."

I hope everyone has a great day!

Best,

Bennett Lyday | Policy & Operations Specialist
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
O: (573) 751-4390
C: (573) 645-9671
Bennett.Lyday@ago.mo.gov

AMERICAN OVERSIGHT


AMERICAN
OVERSIGHT

DRAFT DO NOT RELEASE

- Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.

- Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.

- Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme**. We're encouraged other states, namely Texas, are taking action as well.

- Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:
    1. Social media platforms

AMERICAN OVERSIGHT

- We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS

2. President Trump
    - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms pervert the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
    - Elon Musk controversy: Mr. Musk has clarified several times what his views are. The point is that anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. They made that post in order to get advertisers to pull out of X. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free,**

AMERICAN OVERSIGHT

fair and open debate will cease to exist

- The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.
    1. We will never back down in the **fight** for free speech.

Local media:

- Media Matters lied when they took money from everyday Americans and used it in a way different from how they advertised it
- Media Matters appears to have used coordinated, inauthentic activity to solicit charitable donations from consumers across the country
    1. We have a law called the Missouri Merchandising Practices Act that gives the Attorney General the authority to prosecute deceptive, fraudulent or unfair business practices.
        - We have reason to believe Missourians have been affected by this behavior

AMERICAN OVERSIGHT

- To that end, we have issued a document hold notice to Media Matters to get to the bottom of the magnitude of the fraudulent scheme Media Matters is perpetrating

AMERICAN OVERSIGHT

To: 'Charlene Hayes'[CharleneH@tbn.tv]
Cc: Taylor Walters[TWalters@tbn.tv]; Rathert, Branden[Branden.Rathert@ago.mo.gov]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Thur 12/28/2023 2:13:26 PM (UTC-06:00)
Subject: RE: Producers Attn: MO AG Andrew Bailey - Huckabee Ep 327
Blue Book Headshot Crop (1).jpg
Media Matters v. 2.docx

Hi Charlene,
Thanks so much for your assistance on this. The AG is excited to participate.
See attached photo of the AG – let me know if you need a different format.
Please see his biography here: https://ago.mo.gov/about-us/about-ag-bailey/#:~:text=He%20began%20his%20legal%20career,the%20Missouri%20Department%20of%20Corrections.
His Twitter and Instagram are both @agandrewbailey
His Facebook is Attorney General Andrew Bailey
See our Flickr page here: https://www.flickr.com/photos/146566231@N08/ (The Flickr page needs a bit of updating but we will get that done in the next week. Should be plenty of photos there.)
What type of video clips are you interested in? Broll, past interviews. Etc are all things we have and can send along if it would be helpful.
Accompanying him will be me (Madeline Sieren, his comms director) and Branden Rathert, deputy comms director, who is copied here. Let me know if you need any info on either of us for security reasons.
Attached is his talking points on Media Matters. Below are the two links with info on the actions the AG has taken on that topic so far:
https://ago.mo.gov/attorney-general-bailey-notifies-media-matters-of-pending-investigation/
https://ago.mo.gov/attorney-general-bailey-directs-letter-to-advertisers-amidst-media-matters-investigation/
Are there any other topics you would be interested in covering? He's done a lot of work on a number of issues, such as abortion, the southern border, protecting children from a radical transgender ideology, etc. Jan 3 will also mark one year of his being in office.
Happy to pass along any other materials you need – we are excited to see you all in a week!
Best,
Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

From: Charlene Hayes <CharleneH@tbn.tv>
Sent: Thursday, December 28, 2023 10:52 AM
To: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Cc: Taylor Walters <TWalters@tbn.tv>
Subject: Re: Producers Attn: MO AG Andrew Bailey - Huckabee Ep 327

Hi Madeline,
We look forward to having Attorney General Andrew Bailey with us on Jan 5th! Our team would love to acquire a high-res photo of him and any other materials you'd like us to have (bio, supporting photos/videos, socials, any additional talking points, etc.).
We will begin taping at 7:00pm CT. Upon arrival, our producer will walk through staging, timing, etc. We will have light makeup and refreshments.
I will need the names of anyone accompanying him for the security list. We would like to keep backstage guests to a minimum if possible.
Looking forward to working with you,
Charlene

TBN NETWORKS
AMERICAN OVERSIGHT

Charlene

Coordinating-

Trinity

1

Hendersonville,TN37075

Email: CharleneH@tbn.tv

Tel:(615)

Web:org

From: SharePoint <sharepoint@tbn.tv>
Date: Thursday, December 28, 2023 at 9:33 AM
To: Producers Team (Huckabee Calendar) <producers_hc@tbn.tv>
Cc: Taylor Walters <TWalters@tbn.tv>
Subject: Producers Attn: MO AG Andrew Bailey - Huckabee Ep 327

Huckabee Episode Number: Huckabee Ep 327
Taping Date: 01/05/2024
Guest Name: MO AG Andrew Bailey
Chyron: Missouri Attorney General (R)
Segment: Interview
Arrival Time: 6:15 pm CT
Hit Time: 7:00 pm CT
Bio:

Andrew Bailey was sworn in as the 44thGeneral of the State of Missouri on January 3, 2023.Andrew is a combat veteran, father of four, prosecutor, and constitutional conservative who fights for the people of Missouri every day as the State's chief legal official. Andrew went to college at the University of Missouri on an Army scholarship.Following the September 11thattacks on the United States, Andrew was commissioned as an officer in the Army and took an Oath to defend our Constitution.He volunteered for combat duty to take the fight to the enemies of freedom, volunteered to go to Iraq, and did two tours as an Armored Cavalry Officer.For his service, Andrew was awarded two Army Achievement Medals, an Army Commendation Medal, a Combat Action Badge, and two Bronze Star Medals.

Following the honor of wearing the uniform to serve our nation, Andrew returned to his alma mater to attend law school, and became a prosecutor to fight violent crime and protect Missouri communities.He began his legal career at the Missouri Attorney General's Office as an Assistant Attorney General and later served as an Assistant Prosecuting Attorney for the Warren County Prosecuting Attorney's Office and as General Counsel for the Missouri Department of Corrections.In 2019, Andrew joined the Missouri Governor's Office, serving first as Deputy Counsel and then General Counsel.Andrew has handled countless cases in both state and federal courts throughout his career, defending our constitutional freedoms and the most vulnerable while delivering justice for victims.

It was in the courtroom where Andrew saw too many Missouri children in need of a caring, loving home.Those experiences motivated him and his wife, Jessica, to become foster parents.They are now blessed with four beautiful children ranging from 6 months to 10 years old, and reside in Montgomery County.

As Attorney General, Andrew is focused on protecting the Constitution, enforcing the laws as written, defending the state, supporting the counties, and training a new generation of service-minded attorneys.

Huckabee Appearance: Info/Links:

GUEST POV:

- Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.

- Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.

AMERICAN OVERSIGHT

• Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect**Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.

• Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:

1. Social media platforms

    ▪ We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS

2. President Trump

    ▪ We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates

3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**

    ▪ Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

• The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.

1. We will never back down in the **fight** for free speech.

Submitted By: Taylor Walters

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT



AMERICAN OVERSIGHT

f ffffi|−• ffo ♂o□− |ffi□ffi ┼ffi◀♂• ffi| ‼ ◀| ¶| −| ♂ ffi┴┬┴ ffe ♫♫♫o♫ ♂¶¶|┤o ♫↑ ♂o□ ffi−| ♫↑├→┼ffi◀♂• ffi| ‼ □ffi♫ffi ♂o□ ¶♂ ffi | ♬ffi ffe ♫♫♫o♫ ♂♫ ♫¶|−ffi ♂o□ ffe ♫♫♫o♫ ♂o□! ¶|• −♂o♫ffi ♂┘ ffi♂□! −♂ ♬┘! | ◀|┘! □♫¶|♫ffi ┼ffi♫ ffe ♫♫♫o♫ □♂ ♂├

"┘# ♂o□♂ ♫↑ ♂o□┤♂┘ ◀|┘$♫¶|−ffi┴┬┴ ffe ♫♫♫o♫ □♂ ♂ ffi−| ♫↑ | ┼ffi ffe ♫♫♫o♫ ffi−| ♫↑ | ↑♂o♬♂ ♬o ◀| ♂┘ %□♬ffi□ & ♂ ffi ¶|• −♂o♫ffi ↕♬+ | ♂┘♂o□┤♂┘ fffffffo┤ffi ♫ ffi ¶ffi ◀( ))))))))) ┼♂ □| *┤♫♫ffi ♫ +♂┘♫| o♬ ♂♫ ↕ ♬┘♂♫ ffo♫┤ ♫↑ −┤*┘♫| ♂¶¶ffi ♫ | ┼ffi □♂ ♂ ♫ ♂ • ♂o□ffi ┼♂ ♫ ffi♂♫♬! ┤o□ffi♫ ♂o□♫* ┘ffi♂o□♂¶¶ffi♫♫ ┘ffi ↕ ♬┘ ♫◀| • ♫fffi ♫ | ♫ ffe −| ↕ ♬ ¶|o♫┤• ffi ♫ ♂o□♂¶ ♬ffi♬ ffi¶|• −♂o♫ffi ♫ |♬ − |fffi ♫♬!! • ♂o□♂↑ffe ffo ♫ | □ffi | • |fffi |↕♂ □♫ ♂ o□ffi $−ffi | ¶♂ * |o ffi|o|• ! ♂o□ ♫ ♂ ¶ ♬♬♂┘ o□ffi ♫ ffi− ┼♂ +♂┘♫| o♬♂ • ┤♫ ♂!!ffi | − | ffi| ┼ffi ♫ ♂ ffi ♂o□ ♬♫ ffi♫♬ffo ♫┤

, - . / 0/ &ffi| ♬o 12 ♫♂ ♂□□ffo | ┼ffi┬f♂┘┼ ♂o□ &♂◀ffi! +|□ffi | ffi♂□3

45640/ "♂#→┼♫ ♫ffi| ♬o ♫┼♂┘* ffi!!o|↕o ♂o□• ♂! * ffi¶♬ffo ♂♫ ┼ffi+┘♫ ♂ ffi+| −| ♂ ffi♂ ♂ 7¶¶|┤o ♂* ♬♬! 7¶├

"* # 8| −┤ −|♫ffo |◀ ┼♫ ♫ffi| ♬o ┼ffi◀┘|↕ ♫↑ ffi• ♫┼♂ffffi ┼ffi◀┘|↕ ♫↑ □ffi◀o♬♬o♫3

" # 9: • ♫♫♬o♫ ffi−| ♫↑ | ↑♂o♬♂ ♬o; • ffi♂o♫ ♂ o|o− |◀♬ ffe ♫♫♫o♫ ffi−| ♫↑ | ↑♂o♬♂ ♬o ¶|o ♂¶ ffo * ! ┼ffi ♫♂ ffi* |♂ □−┤ ♫┤♂o ♂−┼ " # |◀♫| * □ffi♫♬o "¶# ┼♂ * | ┼3

"7# +┤ ffo ┘! |−ffi♂ ff♫ ♂ ↑ ffffo┼|┤♫ffi↑♂♫ ffe ♫♫♫o♫ ffi−| ♫↑ | ↑♂o♬♂ ♬o ◀| | ↑♂o♬♂ ♬o♫ |−ffi♂ ♫↑ ♫ ┼ffi %□♬ffo & ♂ ff♫├

"<#┬♂♫ ffi −ffi♬ffo¶ffi↕♬+ ↑ ffffo┼|┤♫ffi↑♂♫ ffe ♫♫♫o♫ □♫¶|♫┤ ffi* ! ffo ♬ffi♫ |−ffi♂ ♫↑ ♫ +♂┘♫| o♬♂├

" # 9=ffi−| ♫↑ ffo ♬! ; • ffi♂o♫ ♂ −♂ o♫ffi♫┼♬ ¶| −| ♂ ♬o ┘♬ ♬ffo ┘♬* ♬♬! ¶|• −♂o□! | |┼ffi *┤♫o♫ffi♫♫ ffo ♬! ◀| • ffo ┤o□ffi ┼ffi ┘♂↕♫ |◀ ┼♫ ♫♂ffi ┼ffi ┘♂↕♫ |◀♂o□! |┼ffi ♫♂ffi |◀ ┼ffi %□♬ffo & ♂ ff♫ | ┼ffi♬♫ ♫ |◀ +|┤• *♬ | ┤o□ffi ♂o□ ♂¶ |◀ ┼ffi+|o□↑ ff♫♫ |◀ ┼ffi%□♬ffo & ♂ ff♫ ↕♬+ |♂┘♂o□┤♂┘ fffffffo┤ffi ♫ ffi ¶ffi♫♫ |◀ |□ffi *♬♬o□ |┘♂ ♫"( )))))))))#♂o□ ┼♂ □|ff♫*┤♫♫ffi♫♫ ♫ +♂┘♫| o♬♂├7−−┘♫|♂* ♬♬! ♫┼♂┘* ffi □ffi ffi• ♫ffo□ *♂♫ffo□ |o ┼ffi ffi−| ♫↑ ffo ♬!✻ fffffffo┤ffi◀ ┼ffi− ♬ ◀♫¶♂┘! ffi♂├

" # 9&¶|−ffi ffe ♫♫♫o♫♫; • ffi♂o♫ ♂┘ □♬ffi ↑ ffffo┼|┤♫ffi↑♂♫ ffe ♫♫♫o♫♫ ┼♂ ♫ ffe ◀|• ♫|┤¶ff♫ ┼♂ ♂ ffi−| ♫↑ ffo ♬! |↕o♫ | □♬ffi ┘! ¶|o | ♫ffi♂ □┤ff♫♫ |◀┘|¶♂ ♬o ♫↑o¶┤ □♫↑ *┤ o| ┘♬ ♬ffo | ◀|ffi ¶|• *┤♫ ♬o ♂¶ ♬ffo♬ffo♫├

"?# 9&¶|−ffi ffe ♫♫♫o♫♫; • ffi♂o♫ ♫□♬ffi ↑ ffffo┼|┤♫ffi↑♂♫ ffe ♫♫♫o♫♫ ◀|• ¶|o♫┤• ffo□ ffi¶ffi ♬♫! ♫ ffi♂• ┼ffi♂ ♫↑ | ¶||┘♫↑ −┤ ¶┼♂♫ffo□ | ♂¶@♬ffo□ *! ♂ ffi−| ♫↑ ffo ♬! ffi♂ □┤ff♫♫ |◀┘|¶♂ ♬o├

"2# 9&¶|−ffi ffe ♫♫♫o♫♫; • ffi♂o♫ ♫□♬ffi ┼−♫ ffi♂• ♂o□ □|↕o♫ ffi♂• ↑ ffffo┼|┤♫ffi↑♂♫ ffe ♫♫♫o♫♫ |┼ffi ┼♂o♫ ♫¶|−ffi ffe ♫♫♫o♫♫ ◀|• ♫|┤¶ff♫ ┼♂ ┼ffi ffi−| ♫↑ ffo ♬! □|ff♫ o□ | |↕o□ | □♬ffi ┘! ¶|o |┘♂o□ • ♂! ♫♫¶┤ □ffi *┤♂ ffi o□ | ┘♬ ♬ffo□ | −┤ ¶┼♂♫ffo□ ↑||□♫ ♂o□ ♫ffi ffi¶ffi♫ *┤♫♫♫o♫♫ ♂ffffi ffe −┘! ffffi ¶|• • ┤ ff♫ ♂o□ − |¶ffi♫♫o□↑ ♂o□ ┤♫ffi |◀♫|┘□ − |□┤¶ ♫├

"¶# " # A□ | * ff◀| ffi B♂□┤♂ !) 2 ┼ffi♫ ♂ ffi* |♂ □ ♫┼♂┘ □ffffffi|− ♂o□□♂□|− ffi┤┘♂ ♬|o♫ | ff@♬ffi♂ ffi−| ♫↑ ffo ♬! | ♂o□┤♂┘! □♫¶|♫ffi | ┼ffi ffe ♫♫♫o♫♫ ffi−| ♫↑ | ↑♂o♬♂ ♬o ♂o□ |* ♂♫ ♂o ♂♫♫┤ ♂o¶ffi ffo↑♂↑ffe ffo −ffi◀| • ffo□ * ! ♂o ♫o□ffi−ffo□ffo ┼♬□$−♂ ! ♂♫♫┤ ♂o¶ffi− |ff♫□ffi |o ♂┘ |◀ ┼ffi ffi−| ♫↑ ffo ♬! ✻ ♫¶|−ffi ffe ♫♫♫o♫♫ ♫¶|−ffi ffe ♫♫♫o♫♫ ♂o□ ♫¶|−ffi ffe ♫♫♫o♫♫ ┼→┼ffi♫♂ ffi* |♂ □ ♫┼♂┘ ffo♫┤ ffi ┼♂ ┼ffi ffi┤┘♂ ♬o♫♂o□|− ffo□ −┤ ♫┤♂o |♫o ♫┤* □ffi♫♬o ff@♬ffi♂┘ |◀ ┼ffi◀┘|↕ ♫↑3

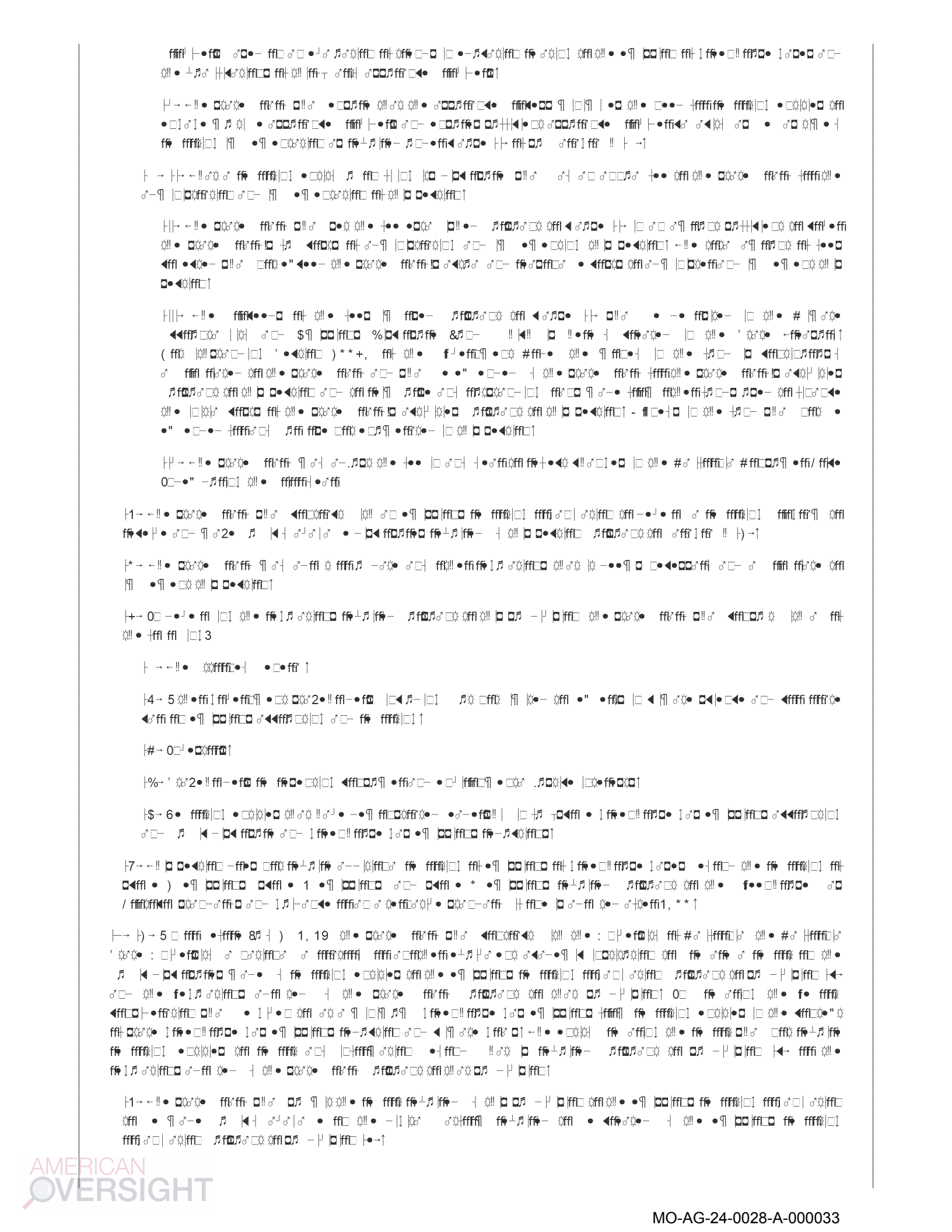
"7# "♬# "G# →┼♂ ♂ ffi−| ♫↑ ffo ♬! ♫♂ ♫↑ ♫) D |o | * ! ♂ □♂ ffi | * ffi □ffi ffi• ♫ffo□ * ! ┼ffi♫♂ ffi* |♂ □ ♂o□□ ♂o□┤♂┘! ┼ffi ffi♂◀ ffi |o | * ! ┼♂ □♂ ffi −┤*┘♫|! □♫¶|♫ffi ♬♫ ♫¶ | ┼ffi ffe ♫♫♫o♫♫ ffi−| ♫↑ | ↑♂o♬♂ ♬o ♂o□ ♂┘ |◀ ┼ffi ffi−| ♫↑ ffo ♬!✻ ♫¶|−ffi ffe ♫♫♫o♫♫ ♂o□ ♫¶|−ffi ffe ♫♫♫o♫♫ ◀| ┼ffi− ♬ ◀♫¶♂┘! ffi♂├

"CG# →┼♂ ♂ ffi−| ♫↑ ffo ♬! ♫♂ ♫↑ ♫) E ♂o□ ♂o□┤♂┘! ┼ffi ffi♂◀ ffi −┤*┘♫|! □♫¶|♫ffi ♬♫ ♫¶|−ffi ffe ♫♫♫o♫♫ o□| ┘♂ ffi ┼♂o□ 1) □♂!♫ ♂◀ ffi ♬♫ ♫¶|−ffi ffe ♫♫♫o♫♫ ♂o□ ♫¶|−ffi ffe ♫♫♫o♫♫ ♂ ffi −┤*┘♫|! □♫¶|♫ffi□ | ┼ffi ffe ♫♫♫o♫♫ ffi−| ♫↑ | ↑♂o♬♂ ♬o ◀| ┼ffi− ♬ ◀♫¶♂┘! ffi♂├

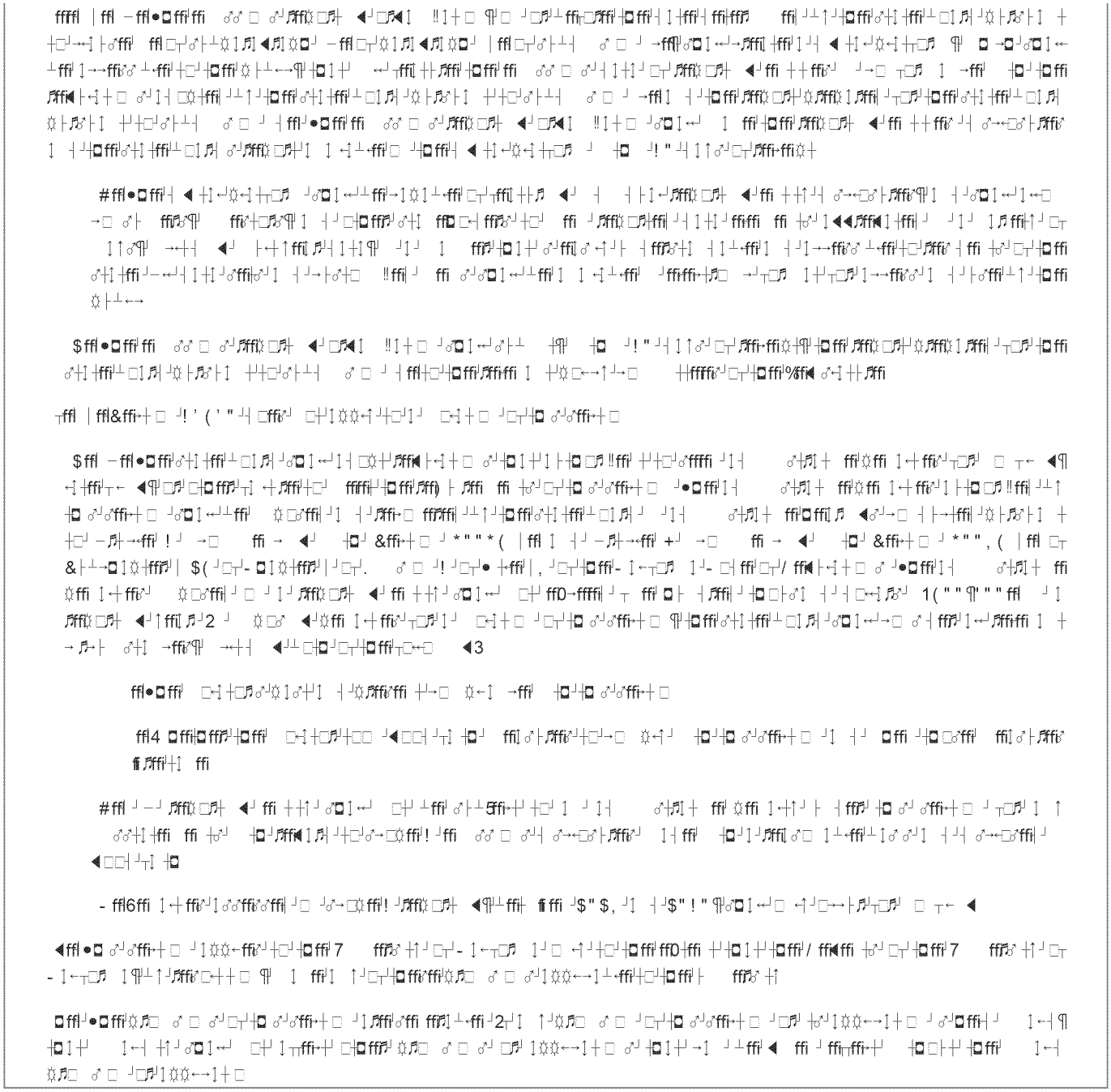
"♬# 7 ffi−| ♫↑ ffo ♬! ♫┼♂┘* ffi ♫♫o♫♫ ♫↑ ♫) D • ffi♂♫┤ ffi♂o□ ffi−| ♬♫ ffe ♫♫♫o♫♫ |◀↑ fffffo┼|┤♫ffi↑♂♫ffo ♫ ¶|o◀| • ♂o¶ffi ↕♬+ ┼ffi┴ ffffo┼|┤♫ffi┴♂♫ F | |¶|┘♫♂o□♂ □♫ ♂o□ ↑┤♬♂o¶ffi ♫¶┤ □♫↑ ┼ffi┴ ffffo┼|┤♫ffi┴♂♫ F | |¶|┘+| −| ♂ ffi7¶¶|┤o ♫↑ ♂o□ =ffi−| ♫↑ & ♂o□♂ □♂o□ +ffi┴ ffffo┼|┤♫ffi┴♂♫ F | |¶|┘+| −| ♂ ffiG♂┤ ffi +┼♂♫ "&¶|−ffi # 7¶¶|┤o ♫↑ ♂o□ =ffi−| ♫↑ & ♂o□♂ □ □ffffffi|−ffi□ * ! ┼ffi H | ┘□ =ff♫|┤ ¶ff♫ □♫♫ ffi♂o□ ┼ffi H | ┘□< ┤♫♫ffo♫+ |┤o¶♬| & ┤♫♂♫♂* ┘ffi fffffi|−• ffo ♬ o¶┤ □♫↑↑ ┤♬□♂o¶ffi◀ | ♫ ¶|−ffi ffi • ♫♫♫o♫♫ ¶♂┤¶┤♂ ♬o♫♫ ┼♂ □ffi♂♬♂ ♂¶¶ffi− ♂* ┘ffi┤♫ffi |◀* | ┼ − ♬ ♂ ! ♂o□ ♫ffi♫|o□♂ ! □♂ ♂ ♫|┤ ¶ff♫ ♫¶┤ □♫↑ ┼ffi┤♫ffi |◀ ♫□┤♫ ! ♂ffffi♂↑ffi□♂ ♂ − |' ! □♂ ♂ ♂o□ | ┼ffi ↑ffo ffi♬| □♂ ♂ ♫ ♬♫ ♫¶|−ffi ffe ♫♫♫o♫♫ ¶♂┤¶┤♂ ♬o♫♫ ♫├

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT



AMERICAN OVERSIGHT



AMERICAN OVERSIGHT

f ff┘fi─l● ◘ ┘f f ◘f f♂'□ f ff◘l i♬ f ♦ ☼ □┼ f f┼ ┘□f ff♂f┼─i◘

◄ ↕ !¶┘┬ ┤ ↑ ├¶→ ←¶

□ ! " #$%&' ( ) • * +, # -" . & f #. ┤

/ 0┴ ' ($ # | 1 1 ." 2 # & 34 ' ($ #5 5 ." 2 # &67☼ ' . $89 : ' □9 ' 9 ! ' +* 34☼ ' . $89 : ' 5□5 ' +* 67; $#$: f 1☼ $ < 34 $#$: 5 f 5☼ $ <67= . , %' >1? * $ ' (34= . , %' 5>5? * $ ' (67• &' (♂1 ' . (* & 34• &' (5♂5 ' . (* &67 f ' f, .!* (♬ 1 | #&((34f ' f, .!* (5♂ 5 | #&((67 f ' f, .!* (1? ' : : ' 34f ' f, .!* (5 5? ' : : ' 6

┘◘ ♂ • ─ ♂┴─ ◘

@A B @C!¶ ←¶ 7D↕ EEG AF┆ H↑ ├¶ A↑ H↕ ├FA┤ ¶I J↑→ JFKA¶L FA!¶ E┆I E┆AL→ ↕ ME¶KFJE !FI A→ ↕AL↕ !FAK C↑ N↑ ↕!¶ CE┌ ↕!¶ ↕AL CE┌ ↕!¶O¶E !¶L GA↕ ACF┆E FJML FJCE┆JP ¶JQR┆K¶ !S¶ 7 □= TUV

39--V8X## +$(Y' 1# +$B# -, . * 1% 1+" Z4Y %' 84{ $#E ' Z #$' (-\ 9-: #j [$#^ $) _T' TVT' Ta' □= TUV6↕AL □= Tbc

39--V8X## +$(Y' 1# +$B# -, . * 1% 1+" Z4Y %' 84{ $#E ' Z #$' (-\ 9-: #j [$#^ $) _T' TVT' Ta' □= Tbc6↕NNE !¶ N┌ ┌EC↕AL N┌↕!¶ C↑→ N↕ A┌¶J I ┌S↕AAP↕E ¶├¶AP¶J ↕←↑├¶ C¶ !¶ FA !S ¶JS↑ EJ ↕AL I ┌EE┌ N↑ J¶ d C↑ N¶ e7 7↕AL Hf H ¶→ FJJ┌ AJ ¶N↑ !FAK ¶gPF¶→ ¶A!UQ

f f□ i◘f ♂f i=┘f ff TTUVh♂? i j k mmo i p q r p q mmo s mmm mi i p t u nmv kj knw mi n

d ¶A↕!¶ / ┌EE x !¶ M¶J ← ↑↕L ↕F┌ ↕!¶ N┌←EEC↕AL N┌↕!¶ ←PJ┌A¶JJ¶J !S↕!¶ S↕├¶ → ↑ ¶ !S↕A y d z e ← ┌EEE A FA ↕AAP↕E ¶├¶AP¶J ↕AL L↑ ←PJ┌A¶JJ FA D↕EEG AF┆ C' ¶K┌AAFAK FA { 7JPCS C↑→ N↕ A┌¶J I ┌EE←¶ ¶gPF¶L !¶ ¶N↑ !¶ d C↑ N¶ e |LF¶C!} ↕AL d C↑ N¶ |FALF¶C!} K ¶¶AS↑ PJ¶ K↕J ¶→ FJJ┌ AJ7I ┌S d C↑ N¶ K ¶¶AS↑ PJ¶ K↕J ¶→ FJJ┌ AJ |!S↕J¶ !S↕!¶ ↕ ¶ K¶A¶ ↕!¶L PN↕AL L↑I A !S¶ C↑→ N↕ A0→J ├↕EP¶ CS↕FA7JPCS ↕J !¶ ↕AJN↑ !¶ !┌ AC¶E !¶L ¶→ FJJ┌ AJ} ¶gPF¶L !¶ ←¶ ¶N↑ !¶L ←¶K┌AAFAK FA BQ A N ¶N↑ ↕!┌ A G !S¶J¶ ¶gPF¶→ ¶A!U7 !S¶ D↕EEG AF┆ F ¶J↑P C¶J / ↑↕L |D / } I ┌EE↕L↑N!¶ ¶KPE !┌ AJ ←0 e ↕AP↕0 x !¶ N↑├E¶ G !S¶ KPE↕AC¶Q◄ FJCE JP ¶→ PJ!←¶ C↑AJF !¶A!¶ I ┌S !S¶ H ¶¶AS↑ PJ¶ H↕J ↑!¶ C↑ EJ !¶ AL↕LJ ↕AL KPE↕AC¶7 ↕AL ¶N↑ !FAK ←PJ┌A¶JJ¶J I ┌EE←¶ ¶gPF¶L !¶ ↑←!¶ FA !SFL N↑ !0↕JJP ↕AC¶ ↑G!S¶F L FJCE JP ¶JQ

RS¶ ¶gPF¶→ ¶A!U ↑Gd / x K↑ ←¶0↑AL C↑→ N↕ ↕←E N↑ !┌ AJ ↑G!S¶ d D→J N↑N↑J¶L CE┌ ↕!¶O¶E !¶L LFJCE JP ¶ PE JQ DS↕F→ ↕A H¶AJE S↕J J!¶ JJ¶L !S↕!¶ S¶ d D I ┌EE!¶ M¶ J !¶NJ !¶ ¶AJP ¶ N┌↕!¶ C↑→ N↕ A┌¶J ←¶↕ A↑ ¶N↑ !FAK ←P L¶AJ FA ¶JN↑ AJ¶ !¶ C↑→ → ¶A!U G→ C↑AC¶ A¶L E I → ↕M¶ JQ□* (1>" (♂* 8-* . 39--V8X#&" , -, ¶ * 4 Y b% ◘ b5?] -_cTb 6|◄ O R} ↕AL • * V ' (♬ *, 8* . 39--V8X#&" , -, ¶ * 4 -(Z ♬ • 9' ┼ ♬] -_cTTUc 6| O } FA N↕ !FCPE S↕├¶ ←↑!S ¶ N ¶JJ¶L C↑AC¶ A ↕←↑P!! S¶ N↑ !¶A!┌E ¶↕CS ↑G!S¶ d D→J N↑N↑J¶L PE J7↕AL J!¶ !¶L !S↕!¶ S¶ d D ↕AL ┌U ↕C┌ AJ S↕├¶ ↕E¶↕L0 PALPE ←P L¶A¶L N┌↕!¶ C↑→ N↕ A┌¶J LP FAK ¶JN¶C┌¶ d ¶A↕!¶ / ↕AMAK D↑→ → ┌!¶¶ ↕AL f ↑PJ¶ FA↕AC┌Ed ¶ ├C¶J D↑→ → ┌!¶¶ S¶↕ FAKJQ

d / x ¶gPF¶J D / !¶ N↑→ PE↕!¶ LFJCE JP ¶ ¶gPF¶→ ¶A!U ←↕J¶L ↑A !S¶ Hf H ↑!¶ C↑ED↑ N↑ ↕!¶ CC↑ PA!FAK ↕AL ¶N↑ !FAK d !¶ AL↕L ↕AL !S¶ Hf H ↑!¶ C↑ED↑ N↑ ↕!¶ ↕E¶ DS↕FA | d C↑ N¶ } CC↑ PA!FAK ↕AL ¶N↑ !FAK d !¶ AL↕L L¶├¶E N¶L ←0 !S¶ • ↑ E ¶J↑P C¶J AJ!┌P¶ ↕AL !S¶ • ↑ E / PJ┌A¶JJ D↑ PACE G d PJ !¶ FA↕←E ◄¶├¶E N→ ¶A!QRS¶ d D→J N↑N↑J¶L PE J L↑A↑!K↑J↑G ↕J !¶ ¶gPF¶↕N↑ !FCPE ¶N↑ !FAK J!¶ AL↕L7↕AL DS↕F→ ↕A H¶AJE S↕J ←¶¶A ¶ !¶→ ¶E S¶J┌!¶ A!¶ G !S¶ d D !¶ → ↕AL↕!¶ PJ¶ ↑G JN¶CFE L G↕→ ¶I ↑ MQ ↑ ¶ ↕→ NE 7FA ¶JN↑ AJ¶ !¶ • * V f (f) & ─ +# 8 8 39--V8X#&" , -, ¶ * 4 -(Z ♬ • 9' ┼ ♬] -_c V b6| CR| } C↑AC¶ AJ LP FAK ↕S¶↕ FAK !S↕!¶ ↕!!¶→ N FAK !¶ F N↑J¶ ¶A├F↑A→ ¶A!¶ E J!¶ AL↕ LJ gPFM E ↕LJ FA!¶ !S¶ ¶↕E ↑G!S¶ ↕ ←┌!¶ 07DS↕F→ ↕A H¶AJE FAJF !¶L !S↕!¶←↑!S !S¶ N↑N↑J¶L CE┌ ↕!¶O¶E !¶L LFJCE JP ¶ PE J ↕AL !S¶ d D→J ¶C┌A!E GA↕E ¶L ┤ ↕→ ¶J PE ↕ ¶→ ¶↕A!¶ !¶ AJP ¶ !¶ ↕AJN↑ ¶AC07↕AL !S↕!¶ !S¶ d D F A↑!¶ ♙ ∩ E ∩ √F↑A→ ¶A!¶ E ¶KPE !¶ Q

AMERICAN OVERSIGHT

L M NOP MQQ O RSTT UVWXQYO Z[\] ^ _‘ ab‘ [^ _‘ c d\e ^ e Z\^ [b\f g ^ Z_

OTMQQ{ ONy L ON

AMERICAN OVERSIGHT

0 =>=?@B>CDEC@F @?>GH+B' +- B>HGH>GC@B=>JB @E=G@BIADKLBMDGH>?BNBCNBCPCQRS f I

a T" +- f!≠JC@GH>?f=≠JIf1ADKLfMDGH>?U f #V f f@MS$H+H=EF XKE@YfZ[fGS I UJ]VWVW%E?=G@%DF]" +- B>C@GH>?B=>JB 1ADKLBMDGH>?B (#I B @MB$H+=EB XE@B CB CBCPCQRS

a T+" &f JDI\ GfS$H+≠EF XKE@ f@MXH+H>?f JIHGED>=EF1ADKLfMDGH>?f fHI_EDI XA@YfZ[fGS I UJ]VWVW%E?=G@%DF]+" &B JDI\ GB$H+=EB XE@B @MXH+H>?B JJHGED>=EBIADKLBMDGH>?B HI_EDI XA@B ' B cBCPCQRS

a T de fMXf I EE(I fC@f ?=H+U+f &f' f@M@A @fCPCPf1ADKLf XKE@f&[=>?@f=≠JIf1ADI DI @f+[=A@DEJ@f1ADI DI =E ' XE@&[=>?@YfZ[fGS I UJ]VWVW%E?=G@%DF]" @B=MXB EE(C@B ?=H+B-" &B @M@A @BCPCPBIADKLB XE@B &[=>?@B=>JBIADI DI @B+[=A@DEJ@BIADI DI =EB XE@&[=>?@BgBChBCPCQRS

a T+" &f. ≠^@f$HA KG+G@f. DW=AJf+G+J=AJH@f" f-If fHI_EDI XA@fjDA$X>UI f=≠JIf!>fC@GF @?G fJCHI@A Y Z[GS I UJ]VWVW%E?=G@%DF]+" &B =^@B$HA GB+G@B DW=AJB+G+J=AJH@JB +- B HI_EDI XA@BjDA$X>JIB=>JB !>C@GF @?GS JCHI@A BNBCgBCPCQRS f I

a T+" &f!I f X@f&EFH=G@B @E=G@f fHI^f fHI_EDI XA@ fXE@1ADI DI =EYfZ[fGS I UJ]VWVW%E?=G@%DF]+" &BI I X@B &EFF=G@B @E=G@B HI^B HI_EDI XA@B XE@BIAD\ DI =EBCBCCBCPCQRS┘◆♂I

a TCPCQ" f-If+fG+G@B#@?HIE=GBD>f) fA=\ f3f YfZ[fGS I UJ]VWVW%E?=G@%DF]CPCQB +- B+G+G@B#@?HIE=GBD>B) A=\ B \ BgB kB CPCQR

f f fi f-◆□ f♂f□fiff fffiffi f□◆ I◇◀I ┘□●‼f□f ff‼fI f◀H┘ ┘□●f↓□┬IfC□f◇H ◻I♭f├ ff ff♂f!f┬f◀H┼f←□ ┼I↑f←ff ◻ if f ffffiff ¶◇◆ ff ff II

I KEY CONTACTS

!" #f$%&Pf&If (I) #" *
) +, ! - . (f & I

/ ' !+, 0 f+f I, f1f -I"
) +, ! - . (f & I

) !##! 0f f%f' /
) +, ! - . (f & I

2' 3&" f4%, ff !0
) +, ! - . (f & I

' * f. %&If 'I " *
) +, ! - . (f & I

3' " f0f%$#* I
) +, ! - . (f & I

3' " f" %, If 0 0
) +, ! - . (f & I

5♬┼f┐f◀H┘ ┘□●G●f f‼ f f◇ff┼f□◇f◆f□◇┬ ┘ ┘□●┘ f┐f◇f□f‼f┘f●◇ f┐□●┘┼●f□◇f|◇●?f ↑f f f□f┐f┘d7┼f ff5◇ff f┼◆f□◇┬ ┘ ┘□●f♫ff◇◇┼◀ff‼◇f□[♂f●◇ I
♭ ed□◇f◇◇f┼f◇f┐f◇□◆f┼●f◇f◇f□f┐f◇f□f┘f◇f□f┘f◇f□f┘

K&L GATES

$,45%|6 478(' ,|+ 914((|: .2' |6 48&8' 8&*||; ‼◘|• ≪ffi |┤•┴□ fiffl' |┴□ffl|= |⌇ ffi> ┘|? ◘ |@8┬□┴ ♂Ć

→ ┬□ ┘|◀ffl•◘– ♀ fiffl

DE$ |- ' / 7,%&41F|G' 2' ,4H ' 8& |.8 |&0' |J ! K|L%+%8K**

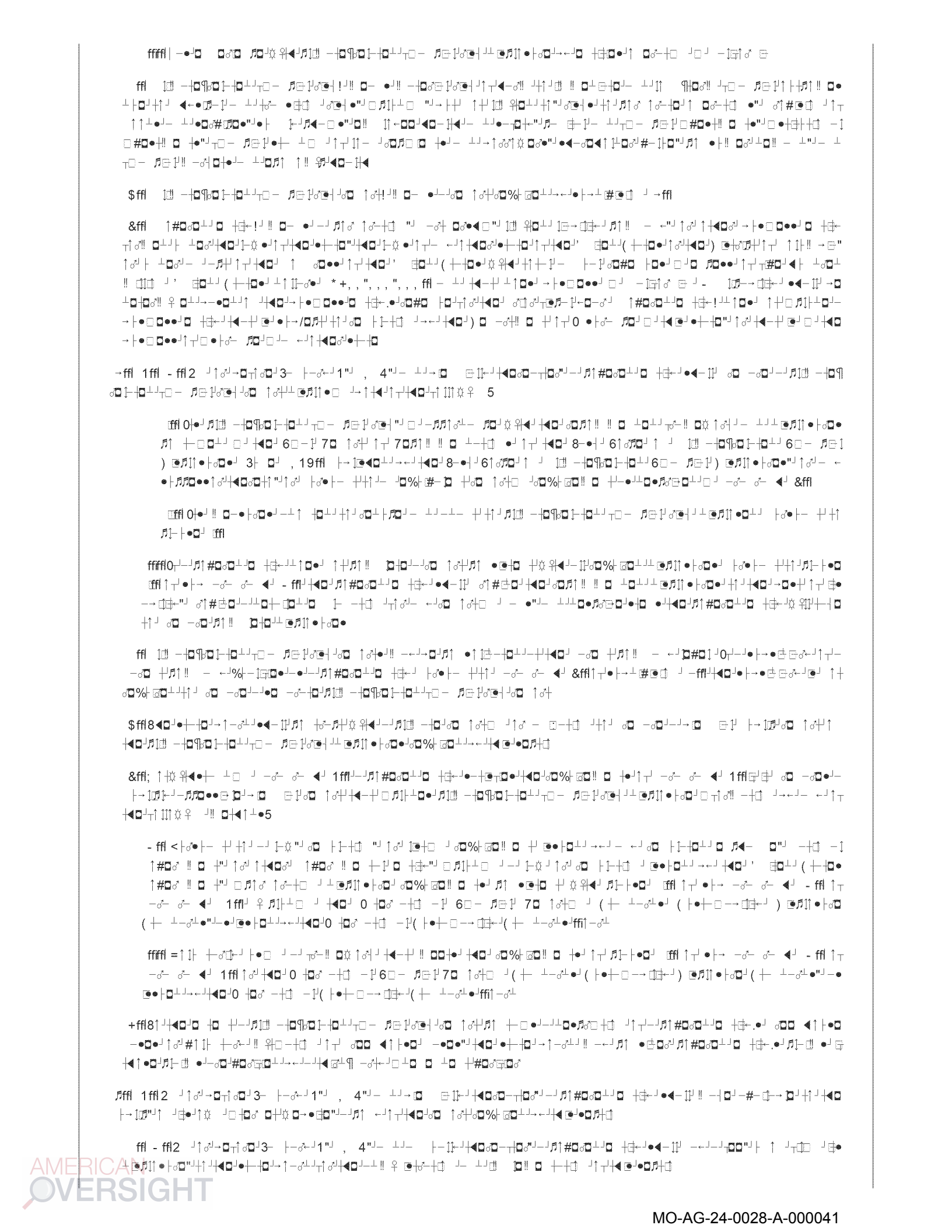
ED6 |M^N (|: .1(&E& H|M4O%3 |E&&3%3.P 3 |DE$ ***

6 %.Q18.%D8%&& |#%83I %N|6 1FH&4 |#.9' 8(.8/ |#%O

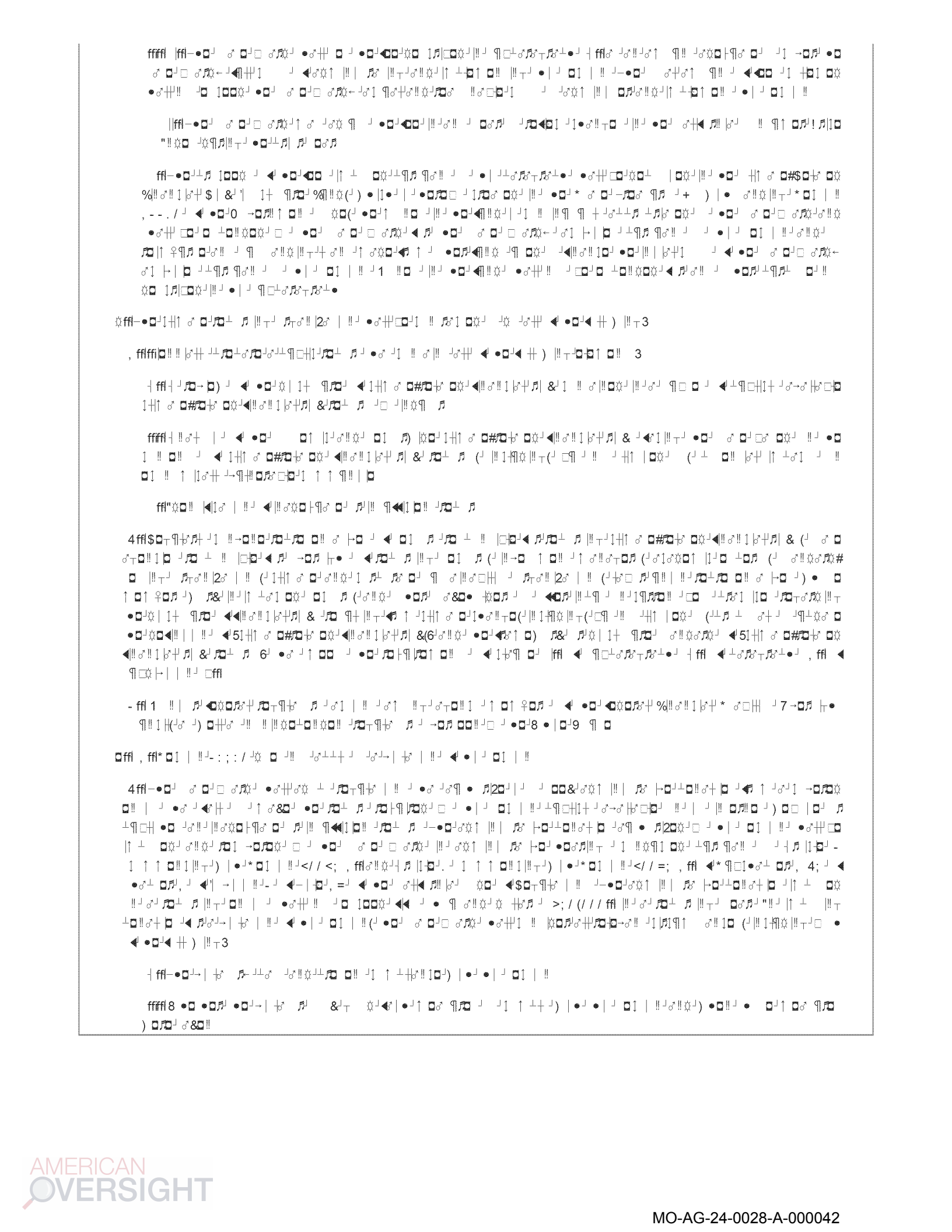
AMERICAN OVERSIGHT

f f i f ↠ f f i ◘

AMERICAN OVERSIGHT



AMERICAN OVERSIGHT



AMERICAN OVERSIGHT

To: Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]
From: Scott, Todd[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1DAF1E35615D4B2E8DBB3F318306291A-SCOTT, TODD]
Sent: Thur 1/11/2024 2:58:27 PM (UTC-06:00)
Subject: Info from legislator
Bill Text - SB-253 Climate Corporate Data Accountability Act.pdf
California Enacts Landmark ESG Legislation _ HUB _ K&L Gates.pdf
Bill Text - SB-261 Greenhouse gases_ climate-related financial risk.pdf

FYI

Todd Scott | Senior Counsel
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8366
Todd.Scott@ago.mo.gov

AMERICAN OVERSIGHT

To: Bailey, Andrew[Andrew.Bailey@ago.mo.gov]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Mon 1/15/2024 11:11:35 AM (UTC-06:00)
Subject: Fw: Your Daily Cision Alert | Daily Missouri Attorney General Office Alert

---

From: Cision <alerts@cision.com>
Sent: Monday, January 15, 2024 8:08:31 AM
To: Sieren, Madeline
Subject: Your Daily Cision Alert | Daily Missouri Attorney General Office Alert

IN THIS EMAIL

Jan 15, 2024

Top Articles for AGAB Search ALL 12

Top Articles for AGAB Search ALL

Elon Musk has become the world's biggest hypocrite on free speech

The Guardian

Is there anyone in the world who is a bigger hypocrite on free speech than Elon Musk?

Published15, 2024

View full article analysis

Share:Facebook Twitter

Elon Musk has become the world's biggest hypocrite on free speech

MSN

"investigation" into Media Matters and the Missouri attorney general is following suit. You don't need

Published15, 2024

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Lessons From the Missouri Heartland (Feat. Will Scharf)

Apple Podcasts

, 2024 Josh is joined by Will Scharf (candidate for Missouri attorney general, former federal prosecutor

Published14, 2024

View full article analysis

Share:Facebook Twitter

Crime Scene DNA Didn't Match Marcellus Williams. Missouri May Fast-Track His Execution Anyway.

The Intercept

person." Missouri Attorney General Andrew Bailey during a House Homeland Security Committee hearing on... precisely out of the concern that M...

Published14, 2024https://www.facebook.com/profile.php?id=1015330796

View full article analysis

Share:Facebook Twitter

Elon Musk has become the world's biggest hypocrite on free speech

inkl

Missouri attorney general is following suit. You don't need to be a fan of Media Matters to see how

Published15, 2024

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

OKLAOMA VOICE: U.S. House impeachment proceedings against Mayorkas over immigration featured Oklahoma AG

www.tahlequahdailypress.com

. Missouri Attorney General Andrew Bailey said the Biden administration was violating the law by using parole

Published14, 2024ARIANA FIGUEROA

View full article analysis

Share:Facebook Twitter

House committee to hold second hearing on Mayorkas, border failures

The Highland County Press

sides of the border …" Missouri Attorney General Andrew Bailey testified that Mayorkas had failed to

Published14, 2024

View full article analysis

Share:Facebook Twitter

MISSOURI ATTORNEY GENERAL WARNS AGAINST WINTER SCAMS: STAY ALERT TO PROTECT YOURSELF

www.kmmo.com

January 14, 2024 Local News Tweet Share LinkedIn Email Missouri Attorney General Andrew Bailey

AMERICAN OVERSIGHT

Published14, 2024

View full article analysis

Share:Facebook Twitter

Radio clip from KFYI-AM (Radio) - Jan 15, 2024

music, radio and podcasts all in one. The Missouri. Attorney general Secretary of state we get this

Published15, 2024KFYI

View full article analysis

Elon Musk has become the world's biggest hypocrite on free speech

News Sniffer

Missouri attorney general is following suit. You don't need to be a fan of Media Matters to see how

Published15, 2024

View full article analysis

Share:Facebook Twitter

Larry Fink Archives - The Wisconsin Daily Star

The Wisconsin Daily Star

in the company may be at risk. Consumer's Research says: Read More Missouri Attorney General (AG

Published14, 2024

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Elon Musk has become the world's biggest hypocrite on free speech

Richard Hartley

week. Texas attorney general Ken Paxton opened an "investigation" into Media Matters and the Missouri... attorney general is following suit. ...

Published15, 2024

View full article analysis

Share:Facebook Twitter

Click here to unsubscribe or check alert preferences.
Connect with us on Facebook and Twitter.

AMERICAN OVERSIGHT

To: Bailey, Andrew[Andrew.Bailey@ago.mo.gov]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Tue 1/16/2024 8:09:38 AM (UTC-06:00)
Subject: Fw: Your Daily Cision Alert | Daily Missouri Attorney General Office Alert

---

From: Cision <alerts@cision.com>
Sent: Tuesday, January 16, 2024 8:07:41 AM
To: Sieren, Madeline
Subject: Your Daily Cision Alert | Daily Missouri Attorney General Office Alert

IN THIS EMAIL

Jan 16, 2024

Top Articles for AGAB Search ALL 15

Top Articles for AGAB Search ALL

Taylor Greene Lays Out Case to Impeach DHS Chief Mayorkas

Conservative Brief

Attorney General Gentner Drummond. Advertisement Missouri Attorney General Andrew Bailey added that

Published16, 2024Jon Dougherty

View full article analysis

Share:Facebook Twitter

Missouri Attorney General warns of winter weather scams

KTTN/KGOZ Radio

Share To Your Social Network In an effort to inform and protect consumers, Missouri Attorney General Andrew

AMERICAN OVERSIGHT

Published15, 2024KTTN News

View full article analysis

Share:Facebook Twitter

Attorney General Andrew Bailey attending Iowa Caucus for candidate Trump

KZRG-AM

Missouri Attorney General Andrew Bailey (AP Photo/David A. Lieb, File) DES MOINES, Ia. – Missouri...

Published16, 2024Steve Smith

View full article analysis

Share:Facebook Twitter

Taylor Greene Lays Out Case to Impeach DHS Chief Mayorkas

Ussanews

Attorney General Gentner Drummond. Missouri Attorney General Andrew Bailey added that Mayorkas was

Published15, 2024Constitutional Nobody

View full article analysis

Share:Facebook Twitter

Attorney General Andrew Bailey Attending Iowa Caucus for President Trump DES MOINES, Ia. –

www.hermannadvertisercourier.com

Attorney General Andrew Bailey will attend America's first-in-the-nation Iowa Caucus today in...Attorney General Andrew Bailey Attending Iowa Caucus for President Trump DES MOINES...

AMERICAN OVERSIGHT

Published15, 2024

View full article analysis

Share:Facebook Twitter

Elon Musk has become the world's biggest hypocrite on free speech

Swifttelecast

opened an "investigation" into Media Matters and the Missouri attorney general is following suit. You

Published15, 2024

View full article analysis

Share:Facebook Twitter

Elon Musk has become the world's biggest hypocrite on free speech

newsconcerns.com

attorney general Ken Paxton opened an "investigation" into Media Matters and the Missouri attorney general is

Published15, 2024

View full article analysis

Share:Facebook Twitter

Elon Musk has become the world's biggest hypocrite on free speech

Illuminati Press

attorney general Ken Paxton opened an "investigation" into Media Matters and the Missouri attorney general is

Published15, 2024Jacob Henry

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Elon Musk has become the world's biggest hypocrite on free speech

News Leaflets

attorney general Ken Paxton opened an "investigation" into Media Matters and the Missouri attorney general is

Published16, 2024James Alexander

View full article analysis

Share:Facebook Twitter

Schmitt says Congress needs to change spending mentality as another budget fight looms

www.ksmu.org

Radio. [Additional Text]: Missouri Attorney General Eric Schmitt celebrates winning the state's open

Published15, 2024https://www.ksmu.org/people/jason-rosenbaum

View full article analysis

Share:Facebook Twitter

Elon Musk has become the world's biggest hypocrite on free speech

Business Mayor

Paxton opened an "investigation" into Media Matters and the Missouri attorney general is following

Published15, 2024businessmayor

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Elon Musk has become the world's biggest hypocrite on free speech | Trevor Timm

Business Fast

attorney general Ken Paxton opened an "investigation" into Media Matters and the Missouri attorney general is

Published15, 2024

View full article analysis

Share:Facebook Twitter

"I am the science" Fraudci remembers nothing….

Winds of Jihad

speech. Fauci was deposed on Wednesday by Missouri Attorney General Eric Schmitt and Louisiana... "omniscient except during depositions"?

Published15, 2024

View full article analysis

Share:Facebook Twitter

Elon Musk has become the world's biggest hypocrite on free speech

Sky News

attorney general Ken Paxton opened an "investigation" into Media Matters and the Missouri attorney general is

Published15, 2024

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Local News – Monday, January 15th, 2024

KSMO Radio

of the accident. Missouri Attorney General Andrew Bailey announced his office obtained a judgment

Published15, 2024Stan Podorski

View full article analysis

Share:Facebook Twitter

Click here to unsubscribe or check alert preferences.
Connect with us on Facebook and Twitter.

AMERICAN OVERSIGHT

To: Bailey, Andrew[Andrew.Bailey@ago.mo.gov]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Wed 1/17/2024 8:32:05 AM (UTC-06:00)
Subject: Fwd: Your Daily Cision Alert | Daily Missouri Attorney General Office Alert

Sent from my iPhone

Begin forwarded message:

From: Cision <alerts@cision.com>
Date: January 17, 2024 at 8:08:58 AM CST
To: "Sieren, Madeline" <Madeline.Sieren@ago.mo.gov>
Subject: Your Daily Cision Alert | Daily Missouri Attorney General Office Alert

IN THIS EMAIL

Jan 17, 2024

Top Articles for AGAB Search ALL 16

Top Articles for AGAB Search ALL

Springfield City Council to consider ordinance that would ban gaming machines

KY3

court rulings. Missouri Attorney General Andrew Bailey calls the problem "complex." "Not all the

Published17, 2024Joe Hickman

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

ABC 17 News at 6:30

in critical condition. In both cases, the cause remains unknown. Missouri attorney general andrew

Published16, 2024KMIZ

View full article analysis

ABC17 News at 9 on Fox 22

. Missouri attorney general andrew bailey announced today the sexually violent predator unit committed

Published16, 2024KQFX

View full article analysis

RFT Reviews the Week: January 8 to January 14

Riverfront Times

. Brutal. Also, those crazy McCloskeys endorse Andrew Bailey for Missouri Attorney General, which

Published16, 2024Anonymous

View full article analysis

Share:Facebook Twitter

Free Speech Experts Realizing Just How Big A Free Speech Hypocrite Elon Is

Techdirt.

AMERICAN OVERSIGHT

from the free-speech-means-something dept On Monday, Elon Musk tweeted "To fear parody or criticism is a sign of weakness." If true, then this is Elon admitting to an astounding level of weakness.

Published16, 2024Mike Masnick

View full article analysis

Share:Facebook Twitter

How the U.S. Regime Carries Out Its Oppression

The Duran

The statements, views and opinions expressed in this column are solely those of the author and do not necessarily represent those of this site.

Published16, 2024Eric Zuesse

View full article analysis

Share:Facebook Twitter

Atomic Radius: The legacy of America's nuclear weapons testing program

MuckRock

and toxic radioactive waste," Bush said. In response, Missouri Attorney General Andrew Bailey

Published17, 2024

View full article analysis

Share:Facebook Twitter

Jefferson City Council to vote on 6 appointments; absence of public input draws concerns

Jefferson City News Tribune

AMERICAN OVERSIGHT

assisted the Missouri Attorney General's Office, the Missouri Treasurer's Office and the Missouri

Published16, 2024

View full article analysis

Share:Facebook Twitter

How the U.S. Regime Carries Out Its Oppression

Russia News Now

Gardner had the power to challenge the conviction. She called in Missouri Attorney General Eric... Zelensky, but ALSO against domestic public...

Published16, 2024

View full article analysis

Share:Facebook Twitter

Radius: The legacy of America's nuclear weapons testing program

KPVI

ground for harmful and toxic radioactive waste," Bush said. In response, Missouri Attorney General Andrew

Published17, 2024Derek Kravitz

View full article analysis

Share:Facebook Twitter

Elon Musk has become the world's biggest hypocrite on free speech

Business Telegraph

week. Texas attorney general Ken Paxton opened an "investigation" into Media

AMERICAN OVERSIGHT

Matters and the Missouri... attorney general is following suit. ...

Published15, 2024businesstelegraph

View full article analysis

Share:Facebook Twitter

Radio clip from KMOX-AM (Radio) - Jan 17, 2024

be free. Together we can stop human trafficking in Missouri, brought in by the Missouri Attorney general's off...

Published17, 2024KMOX

View full article analysis

Radio clip from KMOX-AM (Radio) - Jan 17, 2024

check out bald Eagles. That's all coming up. Missouri Attorney general Andrew Bailey has been in

Published17, 2024KMOX

View full article analysis

Radio clip from KMOX-AM (Radio) - Jan 17, 2024

Attorney general Andrew Bailey on show me today. You didn't hear her interview. Check it out and hard... that were protecting working hard working Missouri families harder to our ...

Published17, 2024KMOX

View full article analysis

AMERICAN OVERSIGHT

abortion industry Archives - The Pennsylvania Daily Star

The Pennsylvania Daily Star

Attorney General Andrew Bailey led 19 other Republican state attorneys general (AGs) in a warning letter to... pregnant woman to terminate a pregnancy when necessary to preserve h...

Published17, 2024

View full article analysis

Share:Facebook Twitter

abortion industry Archives - The Wisconsin Daily Star

The Wisconsin Daily Star

Attorney General Andrew Bailey led 19 other Republican state attorneys general (AGs) in a warning letter to... pregnant woman to terminate a pregnancy when necessary to preserve h...

Published17, 2024

View full article analysis

Share:Facebook Twitter

Click here to unsubscribe or check alert preferences.
Connect with us on Facebook and Twitter.

AMERICAN OVERSIGHT

No. 22-277, 22-555

In the
Supreme Court of the United States

ASHLEY MOODY, Attorney General of Florida, et al.,
Petitioners,

v.

NETCHOICE, LLC, et al.,
Respondents.

NETCHOICE, LLC, et al..,
Petitioners,

v.

KEN PAXTON, Attorney General of Texas, et al.,
Respondents.

On Writs of Certiorari to the
U.S. Courts of Appeals for the Fifth and Eleventh Circuits

Brief of Missouri, Ohio, and TK other States in support of Texas and Florida

DAVE YOST
Ohio Attorney General
MICHAEL HENDERSHOT
Chief Deputy Solicitor General
30 East Broad St., 17th Fl.
Columbus, Ohio 43215
(614) 644-0576

ANDREW BAILEY
Missouri Attorney General
JOSHUA M. DIVINE
Solicitor General
Counsel of Record
207 West High St.
Jefferson City, MO 65101
(573) 751-8870
Josh.Divine@ago.mo.gov

Counsel for Amici States
Additional counsel in signature block and addendum

January 22, 2024

AMERICAN OVERSIGHT

TABLE OF CONTENTS

Table of Authorities ii
Interest of *Amici* States 1
Summary of Argument 6
Argument 11

I. States have authority, to prohibit mass communication platforms from censoring speech. 11

A. Requiring social media companies to distribute third-party speech without viewpoint discrimination is permissible because social media better resembles telephones than newspapers. 11

B. Social media companies cannot evade accountability simply by choosing to edit some content. 20

C. In the context of facial challenges, this Court need not consider more complex questions. 23

II. The hyperconcentration of social media reinforces State authority to regulate. 24

A. Market power 26

B. Discriminatory use of power 29

C. The Court should respect legislative fact findings of market power and censorship. 37

III. State laws preventing platforms from censoring speech provide a prophylactic vanguard against government censorship. 38

Conclusion 42

AMERICAN OVERSIGHT

TABLE OF AUTHORITIES

AMERICAN OVERSIGHT

INTEREST OF *AMICI* STATES

The States of Missouri, Ohio, Alaska, Alabama, Kentucky, Mississippi, North Dakota, South Carolina, Tennessee, Utah, and Virginia, and the Arizona Legislature ("the States"), agree with many points in the amicus brief of New York, *et al.*, which focuses on social media problems *other* than censorship. The States here submit this amicus brief to focus directly on the censorship question.

The States do so for two reasons. First, it is the constitutional duty of the States to protect their citizens' inherent rights, including the right to free speech. Just as States pass criminal and civil laws to protect citizens from private abridgment of rights of life and property, States have a long history of regulating to protect citizens from abridgment of their free speech rights by dominant communication platforms. Second, the States have a vital interest in hearing the speech of their citizens, especially political speech. That is necessary for States to be democratically responsive. NetChoice's position threatens these interests because it seeks to upend the longstanding authority of States to prohibit mass communication networks from engaging in censorship and viewpoint discrimination.

1. The Founders were clear that the purpose of government is to secure liberty. The Declaration of Independence recognizes that natural rights, including "Life" and "Liberty," preexist government, and that "Governments are instituted among Men" for one principal purpose: "to secure these rights." Declaration of Independence ¶ 2.

AMERICAN OVERSIGHT

The Founders thus recognized that governments are created to protect rights from *private* abridgment—the only abridgment that can occur before government is formed. Society must of course always resist government abuse of power (which occurs too often), but government is created in the first instance to protect against private abuse. As James Madison put it, "If men were angels, no government would be necessary." The Federalist No. 51, at 319 (Clinton Rossiter ed., Signet Classic 2003) (1788). Government must be obliged "to control itself"—through separation of powers—but it is equally true that society "must first enable the government to control the governed." *Ibid.*

One right States "are instituted among Men" to "secure" is the freedom of speech. As Madison said when proposing the draft of the First Amendment, freedom of speech is a "natural right" predating government itself. Jud Campbell, *Natural Rights and the First Amendment*, 127 Yale L.J. 246, 264 (2017) (citing Madison's notes reflecting his speech in Congress). This Court has held the same, explaining that "the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right." *District of Columbia* v. *Heller*, 554 U.S. 570, 592 (2008) (emphasis in original).

So NetChoice is flat wrong to contend (at 25 in *Paxton*)[1] that *only* the government is capable of censorship. Because freedom of speech is a freedom

---

[1] This amicus references briefs in the two consolidated cases as *Paxton* briefs (for No. 22-555) and *Moody* briefs (for No. 22-277).

AMERICAN OVERSIGHT

States were created to secure, it is the duty of States to secure that freedom from private abridgment, including abridgment by extraordinarily powerful communication platforms.

The States can pass criminal laws against theft and murder—thus protecting against private interference with rights of property or life. And if dominant firearm dealers refuse to sell on account of race, States can regulate to secure for their citizens the right to bear arms. So too, if dominant communication platforms censor based on viewpoint, States can pass laws to stop that censorship—as they have done for well over 100 years.

A State of course cannot, in the name of protecting free speech, abridge the freedom of speech. But this Court has held that the First Amendment does not prohibit States from protecting the marketplace of ideas when that marketplace is threatened by private actors. "It would be strange indeed," this Court said, "if the grave concern for freedom of the press which prompted adoption of the First Amendment should be read as a command that the government was without power to protect that freedom." *Associated Press* v. *United States*, 326 U.S. 1, 20 (1945). As with freedom of the press, so too with freedom of speech. *See W. Union Tel. Co.* v. *James*, 162 U.S. 650, 651, 660 (1895) (upholding law prohibiting telegraph companies from engaging in viewpoint discrimination); *see also* Genevieve Lakier, *The Non-First Amendment Law of Freedom of Speech*, 134 Harv. L. Rev. 2299, 2316-19 (2021) (listing statutory examples protecting free speech).

AMERICAN OVERSIGHT

2. States also have an interest in preventing censorship because censorship deprives States of the information they need to be responsive to the people. "The vitality of civil and political institutions in our society depends on free discussion." *Terminiello* v. *Chicago*, 337 U.S. 1, 4 (1949). "[I]t it is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected." *Ibid.*

Many landmark legal changes arose from government responding to the speech of everyday citizens. That includes "great matters of state," such as Magna Carta, women's suffrage, the Declaration of Independence, and antislavery legislation. *Borough of Duryea, Pa.* v. *Guarnieri*, 564 U.S. 379, 395–97 (2011). Those reforms illustrate that "representative democracy" works best when the "free exchange" of ideas "facilitates an informed public opinion, which, when transmitted to lawmakers, helps produce laws that reflect the People's will." *Mahanoy Area Sch. Dist.* v. *B. L.*, 141 S. Ct. 2038, 2046 (2021). Today, one of the most common ways individuals speak to their governments is through public posts on social media.

Top-down censorship by dominant communication platforms thus threatens the ability of States to operate. Censorship deprives local government of the information needed to "remain[] responsive to the will of the people." *Terminiello*, 337 U.S., at 4.

* * *

As Judge Oldham's opinion below recognized, States and Congress have enacted regulations like the ones enacted by Texas and Florida for well over one

AMERICAN OVERSIGHT

hundred years. *NetChoice, L.L.C.* v. *Paxton*, 49 F.4th 439, 470–71 (CA5 2022). While the earlier laws applied to telegraphs and telephones, it is no different when the companies carrying other people's speech are digital rather than analog. The States thus have a paramount interest in urging this Court to affirm that longstanding, historic authority of States to protect freedom of speech and enable representative government by prohibiting dominant communication networks from censoring.

That interest is especially weighty here in light of the unprecedented control these platforms have over speech central to political and public discourse. "[I]n the modern economy, the Platforms provide the most effective way to disseminate news, commentary, and other information." *Id.*, at 476. And never before has there been so much "concentrated control of so much speech in the hands of a few private parties." *Biden* v. *Knight First Amend. Inst.*, 141 S. Ct. 1220, 1221 (2021) (Thomas, J., concurring). While government censorship has long been and remains a concern, today the ability "to cut off speech lies most powerfully in the hands of private digital platforms." *Id.*, at 1227.

Indeed, a Facebook executive candidly admitted in a 2019 internal memo—later leaked—that the company's power over speech is so immense that Facebook could unilaterally "pull any lever" to alter the outcome of a presidential election. *Andrew*

AMERICAN OVERSIGHT

Bosworth Memo, N.Y. Times (Jan. 7, 2020).[2] The States have authority to protect citizens from abuse of that immense power.

SUMMARY OF ARGUMENT

I.A. The easiest path to resolve this case is to determine whether social media is more like telephones or more like newspapers. The law has consistently permitted requiring telephones and the like to distribute third-party speech and has generally rejected requiring the same of companies like newspapers.

This Court has already unanimously rejected NetChoice's maximalist argument that companies have a categorical right not to "disseminate … speech generated by others." NetChoice *Paxton* Br., at 13; *see PruneYard Shopping Ctr.* v. *Robins*, 447 U.S. 74, 85 (1980). Instead, this Court has considered whether the regulated company "possess[es] the power to obstruct readers' access to" information, *Turner Broad. System, Inc*. v. *FCC* ("*Turner 1994*"), 512 U.S. 622, 656 (1994), and whether requiring a company to distribute third-party speech would materially harm the company's ability to get out its "own message," *Rumsfeld* v. *Forum for Acad. and Institutional Rights, Inc*., 547 U.S. 47, 63 (2006).

---

[2] https://perma.cc/V8NP-6K4A; https://web.archive.org/web/20200107185034/https://www.nytimes.com/2020/01/07/technology/facebook-andrew-bosworth-memo.html.

AMERICAN OVERSIGHT

On these critical questions, newspapers and telephones are different. Local newspapers cannot restrict access to information. Nationwide phone companies can. For newspapers, parades, and the like, space constraints and limited number of content creators means compelling a company to carry third-party speech materially harms the company's ability to express its "own message." *Ibid.* The space constraints mean material loss of the company's opportunity to speak, and the nature of the medium means listeners become confused about whether speech belongs to third parties or the company. *Id.,* at 65. But for mass communication networks like telephones, those risks are not substantial. So courts have long permitted requiring companies like telephones to distribute third-party speech free from viewpoint discrimination.

Social media companies are much more like telephone networks than newspapers. Unlike newspapers, which "do[ ] not possess the power to obstruct readers' access to" information, *Turner 1994*, 512 U.S., at 656, social media companies do—and they exercise that power. Like telephone companies, and "unlike newspapers," social media companies "hold themselves out as organizations that focus on distributing the speech of the broader public." *Knight First Amend. Inst.*, 141 S. Ct., at 1224 (Thomas, J., concurring). Unlike the space constraints for newspapers, the space on social media is nearly boundless. And like telephones, nearly all speech on social media platforms is created by third parties.

For all these reasons, NetChoice cannot meet its burden of establishing that the regulations at issue

AMERICAN OVERSIGHT

here would materially limit a social media company's speech or cause ordinary members of the public to confuse speech on Facebook, YouTube, or X (formerly Twitter) as speech of the company itself, rather than third parties using those platforms. *Rumsfeld*, 547 U.S., at 64.

I.B. NetChoice barely addresses the analogy to telephones and telegraphs, stating only that regulating those companies is permissible because they transmit speech "on an 'unedited basis' from point A to point B." *Moody* Br., at 49. That argument fails for many reasons.

First, it is demonstrably false historically. As the Fifth Circuit explained, telegraph companies engaged in the same kind of viewpoint discrimination NetChoice's members engage in today.

Second, the argument would make regulation pointless. If the only companies that can be required to carry content without discrimination are those already doing so, regulation does nothing at all. Relatedly, NetChoice's argument begs the question. If this Court permits the regulations to go into effect, social media platforms likewise will transmit speech "on an 'unedited basis' from point A to point B."

Third, NetChoice's argument creates a recipe for censorship by telephones and government. Under their logic, as soon as an actor begins "editing" content, that transforms the content into the actor's own speech. Telephones can thus evade the 100-plus years of regulation simply by starting to censor. So too, government can simply "edit" people's speech, and turn everything into government speech.

AMERICAN OVERSIGHT

I.C. Because NetChoice has brought facial challenges against these laws, this Court need not answer the thornier questions about what to do when platforms mix their own speech with that of third parties (such as when they append "fact checks" to third-party speech).

II.A. The extraordinary market power social media platforms possess reinforces the ability of States to regulate in this area. At common law, companies with substantial market power were required to serve without discrimination. This Court has long permitted States and Congress to apply the same concept to large communication platforms.

No doubt, these platforms possess extraordinary power. This industry has monumental barriers to entry. What makes these companies valuable is their network sizes, such as Facebook's 3-billion person network. That makes it very difficult to compete, and the one time an upstart (called Parler) finally gained momentum, Apple, Google, and Amazon forcibly removed it from the internet.

These companies also aggressively engage in censorship that impoverishes free exchange of ideas. Many examples are notorious, such as the systematic censorship of the Hunter Biden laptop story and of the theory that COVID originated in a lab in China—now the predominant theory of several federal agencies, such as the Energy Department and the FBI. Platforms censor viewpoints on the most hotly contested topics of the day, like transgender issues. And they suppress "misinformation" later proven accurate. While most censored speech is conservative, there are complaints about censorship of left-wing speech. All this censorship harms not only

AMERICAN OVERSIGHT

the marketplace of ideas, but also the ability of the States to respond to the concerns of their citizens.

III. Dominant digital platforms are not the only problem. Government often pressures platforms to censor. This Court granted certiorari to *Murthy* v. *Missouri*, No. 23-411, where a district court made extensive fact findings that the White House, the FBI, an agency within the Department of Homeland Security, and other federal actors systematically pressured social media companies to censor even more speech.

In its brief in *Murthy*, the Federal Government does not dispute the accuracy of these extensive, alarming findings. It does not dispute, for example, that it successfully induced removal of millions of posts—even posts that do not violate policies of social media companies—or that this removal affected everyone on social media. Instead, it argues it successfully induced these things through legal "persuasion," not illegal "coercion," and that the plaintiffs lack standing to contend otherwise. U.S. Br., No. 23-411, at 14, 25, 34.

That likely reveals why the United States backs NetChoice here, even though its position threatens the United States' own laws. The Federal Government knows it will be much more difficult for federal officials to induce social media companies to suppress speech if state law prohibits it. So the Federal Government seeks to eliminate those state laws.

That shows that the Texas and Florida laws, far from infringing the First Amendment, in fact shield social media companies from government pressure.

AMERICAN OVERSIGHT

ARGUMENT

I. States have authority, to prohibit mass communication platforms from censoring speech.

A. Requiring social media companies to distribute third-party speech without viewpoint discrimination is permissible because social media better resembles telephones than newspapers.

1. NetChoice does not dispute that telephones and telegraphs can be compelled, consistent with the First Amendment, to distribute third-party speech. They can be compelled to behave as common carriers even though this Court has declared that "they are *not* common carriers," *Primrose* v. *Western Union Telegraph Co.*, 154 U. S. 1, 14 (1894) (emphasis added), and even though these companies have a history of exercising the very "editorial discretion" NetChoice's members seek to exercise today, *Paxton*, 49 F.4th, at 470.

In fact, it is only because telegraph companies behaved the way social media companies do today that nondiscrimination regulations were imposed. In the 1800s, "Western Union, the largest telegraph company, … discriminated against certain political speech," confirming the fear "'that the private entities that controlled this amazing new technology would use that power to manipulate the flow of information to the public when doing so served their economic or political self-interest.'" *Ibid.* (quoting Genevieve Lakier, The Non-First Amendment Law of Freedom of Speech, 134 Harv. L. Rev. 2299, 2321 (2021)). "In

AMERICAN OVERSIGHT

response, States enacted common carrier laws to limit discrimination in the transmission of telegraph messages." *Ibid.* Congress did the same. *Ibid.* (citing Telegraph Lines Act, ch. 772, § 2, 25 Stat. 382, 383 (1888)); *see also W. Union Tel. Co.* v. *James*, 162 U.S. 650, 651 (1895) (rejecting a challenge to an Iowa law requiring telegraph companies to deliver messages with "impartiality and good faith").

On the other hand, this Court has been clear that companies generally cannot be compelled to distribute third-party speech in their own "newspapers," *Miami Herald Pub. Co.* v. *Tornillo*, 418 U.S. 241, 258 (1974), or in their own "newsletters," which are "no different from a small newspaper," *P. Gas and Elec. Co.* v. *Pub. Utilities Comm'n. of California*, 475 U.S. 1, 8 (1986). The Court has applied similar analysis to parade organizers and expressive associations. *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 574–75 (1995); *Boy Scouts of Am.* v. *Dale*, 530 U.S. 640, 655 (2000).

In two seminal cases, this Court explained what makes newspapers and the like different from organizations that can be required to distribute third-party speech. First, a newspaper, unlike a cable company,[3] "does not possess the power to obstruct readers' access to" other information. *Turner Broad.*

---

[3] Although cable companies differ from newspapers in important ways, they resemble (or at least did in the 1990s) newspapers in others. This Court stressed, for example, that cable companies in the 1990s had meaningful space constraints. *Turner 1994*, 512 U.S., at 637.

AMERICAN OVERSIGHT

System, Inc. v. *FCC* ("*Turner 1994*"), 512 U.S. 622, 656 (1994). Second, newspapers, newsletters, and the like generally cannot be required to distribute third-party content because that requirement "sufficiently interferes with any message of [the company]."[4] *Rumsfeld* v. *Forum for Acad. and Institutional Rights, Inc.*, 547 U.S. 47, 64 (2006). Telephones and shopping centers are different because no space constraints materially impede the company from getting out its "own message," and "there [i]s little likelihood that the views of those [third parties] engaging in the expressive activities would be identified with the" company. *See id.,* at 65 (citing *PruneYard Shopping Ctr.* v. *Robins*, 447 U.S. 74, 88 (1980)).

In other words, the First Amendment tolerates compelled hosting to preserve access to information when

(1) the company has power to obstruct access to information, *Turner 1994*, 512 U.S., at 656; or

(2) there is no "danger … that the statute would 'dampen the vigor and limit the variety of public debate,'" *PruneYard*, 447 U.S., at 88 (quoting *Miami Herald*, 418 U.S., at 257) (brackets omitted), because the act of hosting

---

[4] Even newspapers "are prohibited from charging more for political advertising than they charge for commercial advertising" or "receiving money or any other thing of value in exchange for their editorial endorsement of a political candidate or an idea." Lakier, *supra*, at 2330 (citing 52 U.S.C. § 30120(b) and state laws).

AMERICAN OVERSIGHT

> "lack[s] the expressive quality of a parade, a newsletter, or the editorial page of a newspaper," *Rumsfeld*, 547 U.S., at 64.

That makes sense because a law requiring a company to host the speech of third parties is more akin to a property regulation than a speech regulation: it regulates the ability of a company like Facebook to exclude people from its network. Because any effect on the company's own speech is indirect, must-carry regulations are more likely than direct regulations to survive review.

NetChoice is thus wrong to assert that companies have a categorical right not to "disseminate … speech generated by others." *Paxton* Br., at 13. This Court squarely considered and (unanimously) rejected that argument. *PruneYard*, 447 U.S., at 85 (rejecting the argument "that a private property owner has a First Amendment right not to be forced by the State to use his property as a forum for the speech of others"). Instead, what matters are the contextual questions whether NetChoice's members can obstruct access to other information and whether hosting third-party speech would materially impede the ability of NetChoice's members to get out their own message.

That means there is a much simpler way for this Court to assess the two NetChoice cases: evaluate whether companies like Facebook are more like newspapers, parade organizers, cake bakers,[5] and

---

[5] *Masterpiece Cakeshop, Ltd.* v. *Colorado Civ. Rights Commn.*, 138 S. Ct. 1719 (2018).

AMERICAN OVERSIGHT

website designers,[6] or more like telephones, telegraphs, schools, and shopping malls.

2. Social media companies are much more like telephones, telegraphs, schools, and shopping centers than newspapers and newsletters.

Consider first "the power [of social media companies] to obstruct readers' access to … publications." *Turner 1994*, 512 U.S., at 656. As explained more fully in Part II.B, perhaps the most infamous censorship decision by social media companies was blocking access to a newspaper report containing unflattering information about the Democratic candidate for President. "A daily newspaper, no matter how secure its local monopoly, does not possess th[is] power." *Ibid.* Social media companies do, and they exercise it. "The potential for abuse of this private power over a central avenue of communication cannot be overlooked." *Id.*, at 657.

Consider also the number of people contributing content to a newspaper versus a telephone network or social media network. Unlike a newspaper, which might have at most a few hundred people contributing content, "3 billion people" contribute content on Facebook. *Knight First Amend. Inst.*, 141 S. Ct., at 1224 (2021) (Thomas, J., concurring). "[U]nlike newspapers, digital platforms hold themselves out as organizations that focus on distributing the speech of the broader public," and so it is the public who creates nearly all the content on the platform. *Ibid.*

---

[6] *303 Creative LLC* v. *Elenis*, 600 U.S. 570, 592 (2023).

AMERICAN OVERSIGHT

Moreover, while newspapers carefully curate third-party content that they accept (such as letters to the editor), social media companies, like telephones and telegraphs, generally "hold [themselves] out to serve any member of the public without individualized bargaining." *Paxton*, 49 F.4th, at 470; *see also Shurtleff* v. *City of Bos., Massachusetts*, 596 U.S. 243, 256–57 (2022) (holding that flag raisings were not government speech because "Boston told the public that it sought 'to accommodate all applicants'").

Then there is the lack of space constraints. *Rumsfeld*, 547 U.S., at 64. While nothing in the physical universe is truly infinite, social media companies come about as close to infinity as possible. They operate with nothing like the space constraints of a newspaper. "The New York Times publishes around 150 original pieces of journalism a day, on average." *How We Choose the Great Read*, N.Y. Times (Apr. 4, 2022).[7] In contrast, the vast majority of public speech flows through social media, with 1.7 million posts made to Facebook and 500 hours of video are uploaded to YouTube every *minute*. *Media Usage in an Internet Minute as of April 2022*, Statista (2023).[8] That is 2.4 billion Facebook posts and 720,000 hours of video uploaded to YouTube every day. Unlike a newspaper, where forced hosting of third-party content meaningfully decreases space for

---

[7] https://perma.cc/578R-L88S; https://web.archive.org/web/20220421090948/https://www.nytimes.com/2022/04/21/insider/how-we-choose-the-great-read.html.

[8] https://perma.cc/C6XH-DBJ2 (last visited Jan. 9, 2024).

AMERICAN OVERSIGHT

the newspaper's own message, *Miami Herald*, 418 U.S., at 257, social media companies have plenty of space to express their own message. For social media, "accommodation does not sufficiently interfere with any message of the [social media company]." *Rumsfeld*, 547 U.S., at 64.

And unlike newspapers or parade organizers (which carefully curate all content toward a specific message or messages), nearly all content on social media companies is posted unedited by the companies. While these platforms "use algorithms to screen out" far less than even one percent of content, "virtually everything else is just posted to the Platform with *zero* editorial control or judgment." *Paxton*, 49 F.4th, at 459 (emphasis in original).

In fact, contrary to NetChoice's assertions now that its members exercise "editorial control" over everything, these companies have expressly stated, "We try to explicitly view ourselves as *not editors* .... We don't want to have editorial judgment over the content that's in your feed." *Id.*, at 460 (emphasis added) (quoting Ravi Somaiya, *How Facebook Is Changing the Way Its Users Consume Journalism*, N.Y. Times (Oct. 26, 2014)[9]). NetChoice's current presentation before this Court is likewise inconsistent with the assertions of its members in other lawsuits that they merely distribute content created by others

---

[9] https://perma.cc/YTZ9-6VVL; https://web.archive.org/web/20141027091945/https://www.nytimes.com/2014/10/27/business/media/how-facebook-is-changing-the-way-its-users-consume-journalism.html.

AMERICAN OVERSIGHT

and are therefore entitled to immunity under § 230 of the Communications Decency Act. *E.g.*, Br. of Twitter, *Gonzalez* v. *Google*, No. 21-1333, at 7 (Jan. 2023) (stating that Twitter merely "disseminat[es] third-party content"); *see also NetChoice, LLC* v. *Paxton*, 142 S. Ct. 1715, 1717 n.2 (2022) (Alito, J., dissenting) (noting the argument that NetChoice's "position in this litigation is in conflict or tension with the positions of its members in cases regarding the interpretation of § 230").

Finally, it is Congress's judgment that these companies operate more like telephones than newspapers, which is why Congress shielded them from defamation liability. *See* 47 U.S.C. § 230.

For all these reasons, social media companies better resemble telephone companies than newspapers. They have power to obstruct customers from receiving speech, they are principally in the business of distributing the content of others from point A to point B, they do not deal with meaningful space constraints, and the vast majority of the speech they distribute is unedited.

NetChoice thus cannot prove that distributing third-party speech without viewpoint discrimination will materially impede social media companies from speaking for themselves or that members of the public will mistake third-party speech on Facebook, YouTube, or Twitter as speech *by* the platforms. *Rumsfeld*, 547 U.S., at 64. Just as "high school students can appreciate the difference between speech a school sponsors and speech the school permits because legally required to do so," *ibid.*, so too everyday Americans can distinguish between speech

AMERICAN OVERSIGHT

on Facebook and Facebook's own speech[10]—especially because these companies expressly disclaim third-party content as their own. *See, e.g.*, *Terms of Service*, Facebook (last updated July 26, 2022), https://www.facebook.com/legal/terms ("We do not control or direct what people and others do or say, and we are not responsible for their actions or conduct (whether online or offline) or any content they share (including offensive, inappropriate, obscene, unlawful, and other objectionable content).").

All these facts sharply distinguish social media companies not only from newspapers, but also from cake decorators, website designers, and parade organizers. While there is little to no risk that everyday observers will mistake third-party speech on Facebook for Facebook's "own message," requiring a cake artist or independent website designer to speak a third party's speech does "deny speakers the right 'to choose the content of their own messages'" because the risk of attribution is high. *303 Creative LLC*, 600

---

[10] Section 230 lawsuits ask a different question. There is usually no debate about whether the speech is third-party speech. The question instead is whether the platform helped "develop[ ]" the third-party's speech "in part," thus removing immunity. 47 U.S.C. § 230(f)(3); *see also Malwarebytes, Inc.* v. *Enigma Software Group USA, LLC*, 141 S. Ct. 13, 16 (2020) (Thomas, J., concurring). There is an active debate about whether things like algorithms help "develop[ ]" third-party speech "in part." A conclusion by this Court that individuals are unlikely to mistake third-party speech on social media companies for the speech of the companies themselves would have no effect on whether those companies could invoke § 230 as a shield with respect to the same content.

AMERICAN OVERSIGHT

U.S., at 592 (quoting *Hurley*, 515 U.S., at 573) (brackets omitted). Indeed, the "very purpose" of Colorado's requirement to force companies to design websites supporting certain events was "the coercive elimination of dissenting ideas about marriage." *Id.*, at 588 (brackets and internal quotation marks omitted). Forcing a cake baker or newspaper to state third-party speech unlawfully compels speech. Requiring companies in the business of transmitting other peoples' speech billions of times a day to do so without viewpoint discrimination does not.

3. It makes no difference that posts on social media typically are distributed to many people rather than to one. Organizations subject to must-carry regulations are regularly used to broadcast speech to many recipients. "[S]upposedly one-to-one media have long been used to distribute material to the public at large." Eugene Volokh, *Treating Social Media Platforms Like Common Carriers?*, 1 J. Free Speech L. 377, 387 (2021). One speaker can use the U.S. Postal Service to broadcast a message to millions. *Ibid.* And hundreds or even thousands of people can join a single conference call or group text message thread.

B. Social media companies cannot evade accountability simply by choosing to edit some content.

The Fifth Circuit opinion extensively discussed the historical regulation of telephones and telegraphs, yet NetChoice's brief in *Paxton* makes no attempt to address that analogy. Its brief in *Moody* is hardly better, principally arguing (at 49) that telegraph and telephone companies are different because they

AMERICAN OVERSIGHT

merely transmit speech "on an 'unedited basis' from point A to point B." The United States amicus brief repeats this argument, asserting (at 11) that "unlike [telephones and telegraphs], the platforms are not merely conduits transmitting speech from one person to another" but instead choose to edit or remove content.

Although the Eleventh Circuit adopted this argument, *NetChoice, LLC* v. *Moody*, 34 F.4th 1196, 1222 (CA11 2022), the argument overlooks basic history, is circular and begs the question, would enable phone companies to evade regulation, and would create a roadmap for government censorship.

As to history, telephone and telegraph companies transmit speech on an "unedited basis" only because they are compelled to do so by law. Those companies historically did the same thing NetChoice's members currently do until the States, Congress, and this Court stepped in. *See* Lakier, *supra*, at 2322; *Paxton*, 49 F.4th, at 470; *W. Union Tel. Co.*, 162 U.S., at 651.

History thus favors the States, not NetChoice. The Eleventh Circuit concluded social media companies could censor content because they have "historically exercised" power to refuse transmission of disfavored ideas. *Moody*, 34 F.4th, at 1222. But telegraph companies have a much longer history of censorship. Social media is less than two decades old. Congress did not impose must-carry requirements on telegraphs until 1888, 50 years after their invention. *Paxton*, 49 F.4th, at 471. Yet it is well recognized today that those must-carry regulations were constitutional—even though this Court declared that telegraph companies are "*not*

AMERICAN OVERSIGHT

common carriers." *Primrose*, 154 U. S., at 14 (emphasis added). History thus provides no basis for dismissing the striking similarities between social media companies and telegraph and telephones by dubbing social-media censorship "editorial judgment."

The attempt to avoid the telephone analogy is also circular and would wipe out traditional regulations. The Eleventh Circuit concluded Florida could not require social media companies to distribute content without viewpoint discrimination because the companies already "exercise editorial judgment." *Moody*, 34 F.4th, at 1221. In other words, the State can compel a company to refrain from censoring only if the company is already refraining. Under that rule, must-carry regulations are pointless. Telephones, telegraphs, and parcel delivery companies can become immune under the First Amendment from any must-carry regulation as soon as they chose to engage in "editorial judgment" to cut off calls and not deliver messages and products that express ideas they dislike.

Or if those traditional regulations are valid, then the Eleventh Circuit's analysis is self-refuting: the regulations here would become valid as soon as a company complies. NetChoice asserts that imposing must-carry regulations on telephones is fine because telephones transmit speech "on an 'unedited basis,'" but the same will be true of NetChoice's members if they comply with these statutes.

The argument is also a roadmap for government censorship. If NetChoice and the Eleventh Circuit are correct that the act of "discriminat[ing] among messages" converts third-party speech into the platform's first-party speech, *Moody*, 34 F.4th, at

AMERICAN OVERSIGHT

1221, then the Federal Government could freely censor speech on its property because the censorial act would convert the speech into government speech, which "is not restricted by the Free Speech Clause," *Pleasant Grove City, Utah* v. *Summum*, 555 U.S. 460, 469 (2009); *see also Walker* v. *Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 213 (2015). Much like this Court should "prevent the government-speech doctrine from being used as a cover for censorship," *Shurtleff*, 596 U.S., at 263 (Alito, J., concurring), it should prevent the First Amendment from blocking States' efforts to stop private censorship. Like the government, social media companies may not hide behind the First Amendment when they deploy a "come-one-come-all attitude" with exceptions for select disfavored speakers. *Id.*, at 257 (majority op.).

C. In the context of facial challenges, this Court need not consider more complex questions.

Because NetChoice has asserted facial challenges, this Court need not wade into more difficult questions, such as whether a social media company can be prohibited from attaching a disclaimer or a fact check to third-party speech.

It is far from obvious how this Court's precedents would apply. On the one hand, a platform that appends a note to third-party speech undoubtedly engages in its own speech. On the other hand, communication networks often are required to serve all comers without "undue or unreasonable preference or advantage to any particular person" or "class of persons." 47 U.S.C. § 202. If a phone company

AMERICAN OVERSIGHT

appended a 30-second ad supporting one political candidate to every call originating from the campaign office of that candidate's opponent, the phone company would certainly be engaging in speech, but it would also be giving "preference or advantage" to one customer over another.

Those more difficult questions should not be resolved in the context of a facial challenge.

II. The hyperconcentration of social media reinforces State authority to regulate.

Both the common law and American courts have long recognized that protecting the marketplace of ideas involves more than keeping government from abridging speech; it sometimes means regulating dominant private actors to ensure they cannot abridge speech either.

At common law, it was well recognized that companies with substantial market power could be compelled not to discriminate. As Matthew Hale, the well-known English barrister and scholar on the history of the common law, put it, "if a wharf owner operated the 'only wharf licensed by the queen' or if 'there was no other wharf in that port,' then the wharf was 'affected with a public interest,' and the owner acquired a duty to serve without discrimination." *Paxton*, 49 F.4th, at 472 (quoting Matthew Hale, *De Portibus Maris*, *in* A COLLECTION OF TRACTS RELATIVE TO THE LAW OF ENGLAND 77–78 (Francis Hargrave ed., 1787)) (brackets omitted).

American courts have long applied this principle to communications technology, assessing whether a "communications firm … play[s] a central economic

AMERICAN OVERSIGHT

and social role in society." *Paxton*, 49 F.4th, at 471. As this Court put it, because "values central to the First Amendment" include "assuring that the public has access to a multiplicity of information sources," government can take "steps to ensure that private interests not restrict, through physical control of a critical pathway of communication, the free flow of information and ideas." *E.g.*, *Turner 1994*, 512 U.S., at 657, 663; *accord U.S. Telecom Ass'n* v. *FCC*, 855 F.3d 381, 434–35 (CADC 2017) (Kavanaugh, J., dissenting from rehearing en banc) ("If the Internet service providers have market power, then the Government may impose open-access or similar carriage obligations.").

This Court has thus held that radio's "unique characteristic[s]" permit the government to restrict "specified network practices" without abridging freedom of speech. *Nat'l Broad. Co.* v. *United States*, 319 U.S. 190, 226–27 (1943). And this Court approved government regulations that prohibited cable companies from silencing "the voice of" some "speakers with a mere flick of the switch." *Turner 1994*, 512 U.S., at 656 (1994); *see also Turner Broad. Sys., Inc.* v. *FCC ("Turner 1997")*, 520 U.S. 180, 225 (1997).

Applied to social media companies, these cases mean, at the least, that regulations are justified when "the service provider possesses 'bottleneck monopoly power' in the relevant geographic market" and can use it to "diminish[] the diversity and amount of content available." *U.S. Telecom Ass'n*, 855 F.3d, at 431, 433 n.12 (Kavanaugh, J., dissenting from denial of rehearing en banc) (quoting *Turner 1994*, 512 U.S., at 661); *see also Comcast Cable Communications, LLC* v.

AMERICAN OVERSIGHT

FCC, 717 F.3d 982, 993 (CADC 2013) (Kavanaugh, J., concurring). "[I]t stands to reason that if Congress may demand that telephone companies operate as common carriers, it can ask the same of" other communication companies, including social media companies. *Turner 1994*, 512 U.S., at 684 (opinion of O'Connor, J.).

The core of the Florida and Texas laws comfortably fits that rubric. The laws address companies that possess extraordinary market power and use it to reduce diversity of ideas.

A. Market power

While these companies were much smaller and less entrenched even six or eight years ago, the extraordinary scale and scope of large social media platforms today makes it impossible to deny that they "play[] a central economic and social role in society." *Paxton*, 49 F.4th, at 471. These platforms are "the modern public square," *Packingham* v. *North Carolina*, 582 U.S. 98, 107 (2017), and "serve as the primary source of news about important public issues for many Americans," *Murthy* v. *Missouri*, 144 S. Ct. 32, 32 (2023) (Alito, J., dissenting).

Consider their network effects. A fax machine is valuable only to the extent others use fax machines. The most valuable thing about Facebook is that "3 billion people use it." *Knight First Amendment Inst.*, 141 S. Ct., at 1224 (Thomas, J., concurring). While network size makes Facebook an extraordinary marketplace for ideas, network size also means these dominant platforms are the only way most speakers can avoid speaking into a void, *see, e.g.*, Alan Z. Rozenshtein, *Silicon Valley's Speech: Technology*

AMERICAN OVERSIGHT

Giants and the Deregulatory First Amendment, 1 J. Free Speech Law 337, 357 (2021). Other options for speech are not comparable. Switching from Facebook to "competitor" upstart social media companies is not like switching from AT&T to Verizon. It is like switching from flying to walking.

Network effects also mean enormous barriers to new entry—as evidenced by these companies' sky-high profit margins.[11] In a competitive market, "astronomical profit margins … would induce new entrants into the market. That these companies have no comparable competitors highlights that the industries may have substantial barriers to entry." *Knight First Amendment Inst.*, 141 S. Ct., at 1225 (Thomas, J., concurring).

In fact, three years ago, the last time a newer social media company gained serious traction, other platforms banded together to kill it. In January 2021, Parler, which branded itself as a free-speech platform, was the most downloaded app. Then Google (YouTube's parent company) and Apple "removed" "the app for the conservative-focused Twitter competitor Parler … from their app stores." Volokh, *supra*, at 397–98 (citations omitted). That made Parler virtually inaccessible on phones for anybody who had not already downloaded the app. Then Parler's "hosting company, Amazon Web Services" "blocked" it from the Amazon servers Parler

---

[11] Google obtained $76 billion in profits (revenue minus expenses) in 2021. Alphabet, Inc., *Form 10-K* (Feb. 2, 2023), https://perma.cc/M4A4-DC8L.

AMERICAN OVERSIGHT

was renting, taking Parler entirely offline, even though "Parler was merely refusing to forbid certain speech, much of which is constitutionally protected—thus voluntarily acting in a way close to how the post office and phone companies are required by law to act." *Id.*, at 398. Amazon's power to kick companies entirely off the internet has caused Amazon to be described as "more like a utility provider than a broadcaster." Scott Rosenberg, *Big Tech's Free Speech Showdown*, Axios (Jan. 10, 2021).[12]

This illustrates a concerning fact: the dominant internet players are so powerful that the only way startups can take off is by relying on the mercy of the companies against which they wish to compete.

The conclusion that a handful of companies dominate the social media market aligns with conclusions by States and the Federal Government. In 2020, the Federal Trade Commission initiated an ongoing antitrust suit on the theory that "Facebook holds monopoly power in the market for personal social networking services … in the United States." *FTC* v. *Facebook, Inc.*, No. 1:20-cv-03590 (D.D.C. filed Dec. 8, 2020), Am. Compl., ¶2. And nearly every State and the Department of Justice has been involved in antitrust litigation against the major social media companies in recent years. *See, e.g.*, *Antitrust Reform and Big Tech Firms*, Congressional

---

[12] https://www.axios.com/2021/01/10/big-techs-free-speech-showdown.

AMERICAN OVERSIGHT

Research Service R46875 (Nov. 21, 2023) (describing some active cases).[13]

B. Discriminatory use of power

Although described by this Court as "the modern public square," *Packingham*, 582 U.S., at 107, these platforms are in fact more important than the historic public square because they hold "unprecedented … control of so much speech in the hands of a few private parties," *Knight First Amendment Inst.*, 141 S. Ct., at 1221 (Thomas, J., concurring). True, other aspects of the internet have enormous network effects (such as email), but nobody has central control over those networks. In contrast, "control of [social media] networks is highly concentrated" in the hands of a few people. *Id.*, at 1224. The platforms' power to facilitate and restrict speech on a large scale means they wield power "far greater than that of individual broadcasters who compete with one another as well as with satellite and cable networks." Prasad Krishnamurthy & Erwin Chemerinsky, *How Congress Can Prevent Big Tech from Becoming the Speech Police*, The Hill (Feb. 18, 2021).[14]

These platforms have used their unprecedented power to censor mainstream speakers on important issues of public debate. That selective censorship—the Florida and Texas legislatures concluded—threatens the marketplace of ideas and the free flow

---

[13] https://crsreports.congress.gov/product/pdf/R/R46875.

[14] https://perma.cc/645W-LMLP.

AMERICAN OVERSIGHT

of information to the detriment of citizens and democratic governance.

These legislative judgments rest on solid ground. Companies covered by the Texas and Florida laws currently exercise unchecked power to suppress ideas. And they have shown little inclination to self-limit their "incredible influence over the content that's put out into the world." Ahiza García-Hodges, *Big Tech Has Big Power over Online Speech. Should It Be Reined In?*, NBC News (Jan. 21, 2021).[15]

1. Perhaps most famously, weeks before the 2020 general election while voters were deciding among presidential candidates, Twitter blocked users from posting links to a New York Post article about unflattering information found on the laptop of the Democratic candidate's son, and Facebook "deprecate[d]" the story by preventing users from linking to the New York Post. Kate Cox, *Twitter, Facebook Face Blowback after Stopping Circulation of NY Post Story*, Ars Technica (Oct. 14, 2020).[16] The laptop information was "authenticated" by the New York Times more than a year later, after the censorship damage was done. Katie Benner, et al.,

---

[15] https://perma.cc/FN7D-BL9T.

[16] https://perma.cc/6NYG-STXX.

AMERICAN OVERSIGHT

Hunter Biden Paid Tax Bill, but Broad Federal Investigation Continues, N.Y. Times (Mar. 16, 2022).[17]

2. Platforms restrict not only news reporting, but also speech by everyday Americans. They "have certainly been willing to restrict opinions that are well within the American political mainstream." Volokh, *supra*, at 395. This conclusion is borne out in countless examples. *Id.* at 397 (listing several).

Consider one of the most hotly contested issues today: the many controversial legal and policy questions about the increasing number of individuals who identify as transgender. These include questions about separate bathrooms, locker rooms, and sports teams; about appropriate medical care; and even about the nature of what it means to be male or female. Nobody doubts these questions are important, yet social media companies have made mainstream views on these questions off limits. For example, a clear majority (57%) of adults believe sex is determined at birth, regardless of a person's later-expressed gender identity. Ashley Kirzinger, et al., *KFF/The Washington Post Trans Survey* (Mar. 24, 2023).[18] But the 57% of Americans who believe that are not allowed to say so on social media. For example, when a U.S. Representative expressed his view that a high-ranking official in the Biden

---

[17] https://perma.cc/QJ97-J26Q; https://web.archive.org/web/20240109032322/https://www.nytimes.com/2022/03/16/us/politics/hunter-biden-tax-bill-investigation.html.

[18] https://perma.cc/M2Y8-CNLD.

AMERICAN OVERSIGHT

administration who identifies as a woman is in fact "a man," Twitter locked the Representative's account until he deleted the post. *Indiana Congressman Deletes Post, Gets Twitter Access Back*, Associated Press (Nov. 5, 2021).[19] Similarly, Twitter suspended a commenter when she expressed opposition to a transgender individual competing in the women's division in the Olympics, stating "men shouldn't compete against women." Joseph Wulfsohn, *Allie Beth Stuckey Released from "Twitter Jail" after Referring to Transgender Olympic Athlete as a "Man,"* Fox News (Aug. 6, 2021).[20]

These questions are hotly debated today, and views on all sides of the issues are held "in good faith by reasonable and sincere people." *Obergefell* v. *Hodges*, 576 U.S. 644, 657 (2015). But it is extraordinary that dominant communications companies through which the vast majority of public speech flows can make a viewpoint held by 57% of Americans, on one of the most salient political topics of the day, off limits in the "modern public square," *Packingham*, 582 U.S., at 107. That censorship "harm[s] … society as a whole" by "depriv[ing]" society of "an uninhibited marketplace of ideas." *Virginia* v. *Hicks*, 539 U.S. 113, 119 (2003).

---

[19] https://perma.cc/X3DX-X4EF; https://web.archive.org/web/20230401020728/https://apnews.com/article/business-media-social-media-indiana-fort-wayne-16fb83191716f3dc1e9440f2cc972b54.

[20] https://perma.cc/X5E3-JZBV.

AMERICAN OVERSIGHT

Much of the speech targeted by these dominant communication platforms is conservative, which is not surprising given Mark Zuckerberg's acknowledgment that tech companies reside in "an extremely left-leaning place." Morgan Chalfant, *Cruz Presses Zuckerberg on Alleged Censorship of Conservative Speech* (Apr. 10, 2018).[21] Right after Elon Musk purchased Twitter, he and journalist Bari Weiss uncovered internal evidence that at Twitter, "the rules were enforced against the right, but not against the left." Elon Musk tweet, Dec. 8, 2022.[22]

But several platforms have also received allegations about censorship of opinions commonly viewed as left wing. Currently, social media companies face accusations of reducing the visibility of posts expressing political support for a Palestinian state in the present conflict. Priyanka Shankar, et al., *Are Social Media Giants Censoring Pro-Palestine Voices Amid Israel's War?*, Al Jazeera (Oct. 24, 2023).[23] Last summer, a federal district court found that social media platforms, at the request of federal officials, blocked Robert F. Kennedy, Jr.'s efforts to communicate with the public about his campaign for the Democratic presidential nomination. *See Missouri* v. *Biden*, 2023 WL 4335270, *5, *9, *40 (W.D. La., July 4, 2023). And in the aftermath of George Floyd's murder, Facebook allegedly flagged and

---

[21] https://perma.cc/BWB3-3SF5.

[22] https://perma.cc/7684-AB49.

[23] https://perma.cc/8V95-U3DZ.

AMERICAN OVERSIGHT

removed posts calling attention to allegedly racist conduct. Craig Silverman, *Black Lives Matter Activists Say They're Being Silenced by Facebook*, Buzzfeed (June 19, 2020).[24]

3. Platforms also censor true information that is difficult to brand as left or right. Speech surrounding COVID is a prime example. When COVID first hit, "major social networks rolled out a series of policy changes to curb … claims about the virus, including theories about its roots"—like that it originated in a Chinese lab. Cristiano Lima, *New Report on Covid-19 Origin Puts Social Media in GOP's Crosshairs*, Washington Post (Feb. 27, 2023).[25] That origin theory is now the predominant theory of many agencies under the Biden administration. Both the Energy Department and the FBI have concluded that the COVID-19 "virus likely spread due to an accident at a Chinese laboratory." *Ibid.*

Similarly, in the summer of 2021, YouTube removed a video that a U.S. Senator, who is a doctor, posted opining about the relative inefficacy of masks made out of cloth. *See, e.g.*, *YouTube Suspends Rand Paul after Misleading Video on Masks,* PBS News Hour (Aug. 11, 2021).[26] YouTube also banned him from posting any videos—on any topic—for a week. Yet Senator Paul's view is widely accepted today. *See* Apoorva Mandavilli, *The C.D.C. Concedes that*

---

[24] https://perma.cc/6F6S-UL4V.

[25] https://perma.cc/6STJ-N8EH.

[26] https://perma.cc/U2PD-K76U.

AMERICAN OVERSIGHT

Cloth Masks Do Not Protect Against the Virus as Effectively as Other Masks., N.Y. Times (Jan 14, 2022).[27] And his perspective might have been immensely important at the time to individuals deciding how best to protect themselves and others.

4. These examples may only scratch the surface because of platforms' deliberate opacity about their practices. They censor by taking down content or suspending people from their accounts, but they also "shadowban" by distributing content less widely than would otherwise occur. Geoffrey Fowler, *Shadowbanning Is Real: Here's How You End up Muted by Social Media*, Washington Post (Dec. 27, 2022).[28] "[U]sers often have no way of telling for sure whether they have been shadowbanned or whether their content is simply not popular."[29] Gabriel Nicholas, *Shadowbanning Is Big Tech's Big Problem*, The Atlantic (April 28, 2022).[30]

If recent history is any guide, that will not change. These companies continue to resist transparency. In early 2023, for example, Facebook's parent company, Meta, declined the recommendation of its Oversight

---

[27] https://perma.cc/77LD-NL5K; https://web.archive.org/web/20231106050019/https://www.nytimes.com/2022/01/14/health/cloth-masks-covid-cdc.html.

[28] https://perma.cc/6AM9-XV7M.

[29] That some censorship occurs by *leaving up* content (but simply not distributing it as widely) further undermines NetChoice's contention that social media companies must censor content to avoid unwanted association with speech they dislike.

[30] https://perma.cc/MW3Y-LYDZ.

AMERICAN OVERSIGHT

Board to disclose which public-figure Facebook pages are subject to the site's "cross-check" moderation program for high-profile users. Clare Duffy, *Facebook Revamps Controversial Content Moderation Process for VIPs*, CNN Business (Mar. 3, 2023).[31]

* * *

Whether the target is left-wing speech, right-wing speech, or centrist speech, censorship harms everyone. From the start, our constitutional order recognized that "error of opinion may be tolerated where reason is left free to combat it." Jefferson's First Inaugural Address (March 4, 1801).[32] The Constitution aims to "'preserve an uninhibited marketplace of ideas in which truth will ultimately prevail.'" *Nat'l Inst. of Fam. & Life Advocates.* v. *Becerra*, 138 S. Ct. 2361, 2374 (2018) (citation omitted). That is because the "widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." *Associated Press*, 326 U.S., at 20. "This free exchange facilitates an informed public opinion, which, when transmitted to lawmakers, helps produce laws that reflect the People's will." *Mahanoy*, 141 S. Ct. at 2046.

Platforms leverage their extraordinary power to threaten that constitutional project. Florida and Texas's challenged response, designed to ensure

---

[31] https://perma.cc/W8UJ-BQPS.

[32] https://perma.cc/VX6E-FA33.

AMERICAN OVERSIGHT

information flows freely and fairly, strengthens rather than offends the First Amendment.

C. The Court should respect legislative fact findings of market power and censorship.

In the face of this discriminatory use of market dominance, the Texas and Florida legislatures made legislative findings about the power of large platforms to impoverish the marketplace of ideas. Texas concluded that social media platforms with "more than 50 million active users in the United States in a calendar month" have "market dominance" that justifies treating them as "common carriers." Tex. Code § 120.002(b); Tex. H.B. 20 §1(4). Florida determined that platforms with 100 million monthly global users or $100 million annual gross revenue "have become as important for conveying public opinion as public utilities are for supporting modern society" and "should be treated similarly to common carriers." Fla. Stat. § 501.2041(g); Fla. S.B. 7072 § 1(5)–(6). Those legislative judgments deserve significant weight in evaluating whether the Constitution permits the States' regulations. *Cf. Munn* v. *Illinois*, 94 U.S. 113, 132 (1876); *Turner 1994*, 512 U.S., at 665 (plurality op.); *Minnesota* v. *Clover Leaf Creamery Co.*, 449 U.S. 456, 464 (1981). After all, if "it stands to reason" that "Congress may demand" that telephone and cable companies carry third-party speech, *Turner 1994*, 512 U.S., at 684 (O'Connor, J., concurring in part and dissenting in part), it equally stands to reason that the States may demand the same of digital platforms. Where the Bill of Rights polices government conduct, there is "no

AMERICAN OVERSIGHT

daylight between the federal and state conduct it prohibits or requires." *Timbs* v. *Indiana*, 139 S. Ct. 682, 687 (2019); *see also Ramos* v. *Louisiana*, 140 S. Ct. 1390, 1397 (2020); *Malloy* v. *Hogan*, 378 U.S. 1, 7 (1964).

III. State laws preventing platforms from censoring speech provide a prophylactic vanguard against government censorship.

The United States says it is submitting an amicus brief because, Congress having "enacted laws governing the communications industry," the United States "has a substantial interest in the resolution of the questions presented." U.S. Br., at 1. Yet the United States advocates a position that threatens to *undermine* those federal laws.

Why? Perhaps because the Federal Government intends to continue its well-documented practice of pressuring companies to wield their censorship discretion to remove disfavored viewpoints.

It is undisputed that the Federal Government, including the White House, has engaged in a years-long, behind-closed-doors campaign to push social media companies to suppress millions of constitutionally protected posts. This Court has granted certiorari in *Murthy* v. *Missouri*, No. 23-411, and while the legal conclusions there are disputed, the fact findings are not.

In its opening brief in *Murthy*, the Federal Government does not dispute any fact finding. It does not dispute that—behind closed doors—it successfully used "unrelenting pressure" to push social media companies to "suppress[] millions of protected free speech postings by American citizens."

AMERICAN OVERSIGHT

Missouri v. *Biden*, No. 3:22-CV-01213, 2023 WL 4335270, at *44 (W.D. La. July 4, 2023). It does not dispute it targeted "disfavored" speech "well beyond COVID-19," including "the Hunter Biden laptop story," *Missouri* v. *Biden*, 83 F.4th 350, 368, 381 (CA5 2023), and topics related to "racial justice, the U.S. withdrawal from Afghanistan," U.S. "[s]upport of Ukraine," and content posted by an individual who was challenging President Biden for the Democratic presidential nomination, 2023 WL 4335270, at *9, *67. The Federal Government does not dispute it targeted "nearly every major American social media company," and that those companies "capitulated" into "total compliance," even removing constitutionally protected content that "did not run afoul of their policies." 83 F.4th, at 359, 362–63, 392. And the Federal Government does not dispute its "conduct has not stopped," it has even "started monitoring" the platforms for compliance with governmental demands "to remove disfavored content," and its push for censorship has been so widespread that "it impacts every social-media user." *Id.*, at 359–60, 393, 398.

Instead, the Federal Government argues it successfully induced all these things through legal "persuasion," not illegal "coercion," and the plaintiffs lack standing to contend otherwise. U.S. Br., No. 23-411, at 14, 25, 34. The Federal Government even doubles down, all but promising to continue pressing platforms to take down millions of posts because it believes it has a duty to crack down on so-called "false information," *id.*, at 34, even though much speech it pushed to suppress turned out to be true.

AMERICAN OVERSIGHT

The Federal Government's interest in the *NetChoice* cases is thus clear.[33] The Texas and Florida laws pose no threat to federal laws; they only threaten the ability of federal officials to continue pushing platforms to "suppress[] millions of protected free speech postings by American citizens." 2023 WL 4335270, at *44.

Pressuring platforms will become much more difficult if state law prohibited platforms from complying with the Federal Government's takedown demands. One of "anti-discrimination obligations' great virtues is that it protects private entities from complying with government's censorship demands. A private company with no legal obligation to treat users in a non-discriminatory fashion readily can accede government's request to censor, block, or otherwise treat users unfairly. But, if a private firm is prohibited by law to do so, then the government cannot even ask." Adam Candeub, *Bargaining for Free Speech: Common Carriage, Network Neutrality, and Section 230*, 22 Yale J. L. & Tech. 391, 432–33 (2020).

The Federal Government's real interest here is that it will no longer be able to "persuade" platforms to take down millions of constitutionally protected

---

[33] As further evidence that the United States views the *NetChoice* cases as fundamentally related to *Murthy*, the United States repeats the same "editorial discretion" arguments in *Murthy*. U.S. Br., No. 23-411, at 3–4, 16, 36. The United States is also represented in this case by two Civil Division attorneys who represented the Federal Government in *Murthy* at the Fifth Circuit.

AMERICAN OVERSIGHT

posts if this Court affirms the Texas and Florida laws. That is a reason to support the state laws, not to strike them down. In passing these laws, Texas and Florida have afforded their citizens the "double security [that] arises" when one government "guard[s] … society against the injustice of the other." The Federalist No. 51, at 320 (Madison) (Clinton Rossiter ed., *supra*). The Fifth Circuit in *Murthy* said the Federal Government forced social media companies to "bend to the government's will." 83 F.4th, at 371. The laws challenged here provide the legal backbone platforms need to stand straight.

AMERICAN OVERSIGHT

CONCLUSION

The Court should affirm the longstanding authority of States to protect their citizens from censorship imposed by mass communication networks.

Respectfully submitted,

DAVE YOST
Ohio Attorney General

MICHAEL HENDERSHOT
Chief Deputy Solicitor General
NICHOLAS CORDOVA
Deputy Solicitor General
OFFICE OF THE OHIO ATTORNEY GENERAL
30 East Broad St., 17th Fl.
Columbus, Ohio 43215
(614) 644-0576

ANDREW BAILEY
Missouri Attorney General

JOSHUA M. DIVINE
Solicitor General
Counsel of Record
MARIA A. LANAHAN
Deputy Solicitor General
CALEB RUTLEDGE
BRYCE BEAL
Assistant Attorneys General
OFFICE OF THE MISSOURI ATTORNEY GENERAL
Supreme Court Building
207 West High Street
Jefferson City, MO 65102
(573) 751-8870
Josh.Divine@ago.mo.gov

January 22, 2024

AMERICAN OVERSIGHT

ADDITIONAL COUNSEL



AMERICAN OVERSIGHT

To: Brianna Herlihy[brianna.herlihy@fox.com]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Thur 1/18/2024 5:51:19 PM (UTC-06:00)
Subject: AG Bailey Net Choice Amicus Brief
2024-01-18 - Netchoice amicus draft - Clean.pdf

Hi Brianna – let's talk about this when we call tomorrow, but here's the draft free speech amicus brief Missouri is leading in the net choice cases that I mentioned.
It's 99% finished. Deadline for other states to join is tomorrow night. We have at least ten that are joining. And we're still doing tables, etc. so I will get you the final brief tomorrow.
But we plan to file on Monday, and would love for you to break the story. We can work around you.
Case has huge implications for government censorship, etc. and ties to AG Bailey's free speech case, *Missouri v. Biden,* that is also before the U.S. Supreme Court. This is going to be a huge Supreme Court term for the 1A.
Will get you a quote from the AG as well if you're interested.
Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

No. 22-277, 22-555

In the
Supreme Court of the United States

ASHLEY MOODY, Attorney General of Florida, et al.,
Petitioners,
v.
NETCHOICE, LLC, et al.,
Respondents.

NETCHOICE, LLC, et al..,
Petitioners,
v.
KEN PAXTON, Attorney General of Texas, et al.,
Respondents.

On Writs of Certiorari to the
U.S. Courts of Appeals for the Fifth and Eleventh Circuits

Brief of Missouri, Ohio, 17 other States, and the Arizona Legislature in support of Texas and Florida

DAVE YOST
Ohio Attorney General
MICHAEL HENDERSHOT
Chief Deputy Solicitor General
30 East Broad St., 17th Fl.
Columbus, Ohio 43215
(614) 644-0576

ANDREW BAILEY
Missouri Attorney General
JOSHUA M. DIVINE
Solicitor General
Counsel of Record
207 West High St.
Jefferson City, MO 65101
(573) 751-8870
Josh.Divine@ago.mo.gov

Counsel for Amici States
Additional counsel in signature block and addendum

January 22, 2024

AMERICAN OVERSIGHT

TABLE OF CONTENTS

Table of Authorities iii
Interest of *Amici* States 1
Summary of Argument 6
Argument 11

I. States have authority to prohibit mass communication platforms from censoring speech. 11

A. Requiring social media companies to distribute third-party speech without viewpoint discrimination is permissible because social media better resembles telephones than newspapers. 11

B. Social media companies cannot evade accountability simply by choosing to edit some content. 21

C. In the context of facial challenges, this Court need not consider more complex questions. 23

II. The hyperconcentration of social media reinforces State authority to regulate. 24

A. Market power 26

B. Discriminatory use of power 29

C. The Court should respect legislative fact findings of market power and censorship. 37

AMERICAN OVERSIGHT

III. State laws preventing platforms from censoring speech provide a prophylactic vanguard against government censorship. 38

Conclusion .... .42

AMERICAN OVERSIGHT

TABLE OF AUTHORITIES

Cases **Page(s)**

303 Creative LLC v. *Elenis*,
600 U.S. 570 (2023) 15, 20

Associated Press v. *United States*,
326 U.S. 1 (1945) 3, 36

Biden v. *Knight First Amend. Inst.*,
141 S. Ct. 1220 (2021) 5, 7, 15, 26, 27, 29

Borough of Duryea, Pa. v. *Guarnieri*,
564 U.S. 379 (2011) 4

Boy Scouts of Am. v. *Dale*,
530 U.S. 640 (2000) 12

Comcast Cable Communications, LLC v. *FCC*,
717 F.3d 982 (CADC 2013) 25

District of Columbia v. *Heller*,
554 U.S. 570 (2008) 2

Hurley v. *Irish-American Gay, Lesbian and Bisexual Group of Boston*,
515 U.S. 557 (1995) 12, 20

Mahanoy Area Sch. Dist. v. *B. L.*,
141 S. Ct. 2038 (2021) 4, 36

Malloy v. *Hogan*,
378 U.S. 1 (1964) 38

AMERICAN OVERSIGHT

Malwarebytes, Inc. v. *Enigma Software Group USA, LLC*,
141 S. Ct. 13 (2020) 19

Masterpiece Cakeshop, Ltd. v. *Colorado Civ. Rights Commn.*,
138 S. Ct. 1719 (2018) 14

Miami Herald Pub. Co. v. *Tornillo*,
418 U.S. 241 (1974) 12, 13, 17

Minnesota v. *Clover Leaf Creamery Co.*,
449 U.S. 456 (1981) 37

Missouri v. *Biden*,
83 F.4th 350 (CA5 2023) 39, 41

Missouri v. *Biden*,
2023 WL 4335270 (W.D. La., July 4, 2023) 33, 34, 39, 40

Munn v. *Illinois*,
94 U.S. 113 (1876) 37

Murthy v. *Missouri*,
144 S. Ct. 32 (2023) 26

Nat'l Broad. Co. v. *United States*,
319 U.S. 190 (1943) 25

Nat'l Inst. of Fam. & Life Advocates. v. *Becerra*,
138 S. Ct. 2361 (2018) 36

AMERICAN OVERSIGHT

NetChoice, L.L.C. v. *Paxton*,
49 F.4th 439 (CA5 2022) 5, 6, 11, 15, 16, 17, 18, 20, 21, 24, 25, 26

NetChoice, LLC v. *Moody*,
34 F.4th 1196 (CA11 2022) 21, 22

NetChoice, LLC v. *Paxton*,
142 S. Ct. 1715 (2022) 18

Obergefell v. *Hodges*,
576 U.S. 644 (2015) 32

P. Gas and Elec. Co. v. *Pub. Utilities Comm'n. of California*,
475 U.S. 1 (1986) 12

Packingham v. *North Carolina*,
582 U.S. 98 (2017) 26, 29, 32

Pleasant Grove City, Utah v. *Summum*,
555 U.S. 460 (2009) 23

Primrose v. *Western Union Telegraph Co.*,
154 U. S. 1 (1894) 11, 22

PruneYard Shopping Ctr. v. *Robins*,
447 U.S. 74 (1980) 6, 13, 14

Ramos v. *Louisiana*,
140 S. Ct. 1390 (2020) 38

AMERICAN OVERSIGHT

Rumsfeld v. *Forum for Acad. and Institutional Rights, Inc.*,
547 U.S. 47 (2006) 6, 8, 13, 14, 16, 17, 18

Shurtleff v. *City of Bos., Massachusetts*,
596 U.S. 243 (2022) 16, 23

Terminiello v. *Chicago*,
337 U.S. 1 (1949) 4

Timbs v. *Indiana*,
139 S. Ct. 682 (2019) 38

Turner Broad. Sys., Inc. v. *FCC*,
*("Tu*rner 1997"), 520 U.S. 180 (1997) 25

*Turner Broad. Sy*stem, *Inc.* v. *FCC*,
("Turner 1994"), 512 U.S. 622 (1994) ..... passim

U.S. Telecom Ass'n v. *FCC*,
855 F.3d 381 (CADC 2017) 25, 27, 28, 31

Virginia v. *Hicks*,
539 U.S. 113 (2003) 32

W. Union Tel. Co. v. *James*,
162 U.S. 650 (1895) 3, 12, 21

Walker v. *Texas Div., Sons of Confederate Veterans, Inc.*,
576 U.S. 200 (2015) 23

AMERICAN OVERSIGHT

Statutes

47 U.S.C. § 202 23

47 U.S.C. § 230 ..... 18, 19

52 U.S.C. § 30120(b) 13

Fla. Stat. § 501.2041(g) 37

Telegraph Lines Act,
ch. 772, § 2, 25 Stat. 382, 383 (1888) 12

Tex. Code § 120.002(b) 37

Other Authorities

Adam Candeub, *Bargaining for Free Speech: Common Carriage, Network Neutrality, and Section 230*,
22 Yale J. L. & Tech. 391 (2020) 40

Ahiza García-Hodges, *Big Tech Has Big Power over Online Speech. Should It Be Reined In?*,
NBC News (Jan. 21, 2021) 30

Alan Z. Rozenshtein, *Silicon Valley's Speech: Technology Giants and the Deregulatory First Amendment*,
1 J. Free Speech Law 337 (2021) 26

Apoorva Mandavilli, *The C.D.C. Concedes that Cloth Masks Do Not Protect Against the Virus as Effectively as Other Masks.*,
N.Y. Times (Jan 14, 2022) 34

AMERICAN OVERSIGHT

Ashley Kirzinger, et al., *KFF/The Washington Post Trans Survey* (Mar. 24, 2023) 31

Clare Duffy, *Facebook Revamps Controversial Content Moderation Process for VIPs*, CNN Business (Mar. 3, 2023) 36

Craig Silverman, *Black Lives Matter Activists Say They're Being Silenced by Facebook*, Buzzfeed (June 19, 2020) 34

Cristiano Lima, *New Report on Covid-19 Origin Puts Social Media in GOP's Crosshairs*, Washington Post (Feb. 27, 2023) 34

Eugene Volokh, *Treating Social Media Platforms Like Common Carriers?*, 1 J. Free Speech L. 377 (2021) 20

Gabriel Nicholas, *Shadowbanning Is Big Tech's Big Problem*, The Atlantic (April 28, 2022) 35

Genevieve Lakier, *The Non-First Amendment Law of Freedom of Speech*, 134 Harv. L. Rev. 2299 (2021) 4, 12, 13, 21

Geoffrey Fowler, *Shadowbanning Is Real: Here's How You End up Muted by Social Media*, Washington Post (Dec. 27, 2022) 35

How We Choose the Great Read, N.Y. Times (Apr. 4, 2022) 16

AMERICAN OVERSIGHT

Jefferson's First Inaugural Address
(March 4, 1801) 36

Jud Campbell, *Natural Rights and the First Amendment*,
127 Yale L.J. 246 (2017) 2

Katie Benner, et al., *Hunter Biden Paid Tax Bill, but Broad Federal Investigation Continues*,
N.Y. Times (Mar. 16, 2022) 31

Kate Cox, *Twitter, Facebook Face Blowback after Stopping Circulation of NY Post Story*,
Ars Technica (Oct. 14, 2020) 30

Media Usage in an Internet Minute as of April 2022,
Statista (2023) 16

Morgan Chalfant, *Cruz Presses Zuckerberg on Alleged Censorship of Conservative Speech*
(Apr. 10, 2018) 33

Prasad Krishnamurthy & Erwin Chemerinsky, *How Congress Can Prevent Big Tech from Becoming the Speech Police*,
The Hill (Feb. 18, 2021) 29

Ravi Somaiya, *How Facebook Is Changing the Way Its Users Consume Journalism*,
N.Y. Times (Oct. 26, 2014) 17

Scott Rosenberg, *Big Tech's Free Speech Showdown*,
Axios (Jan. 10, 2021) 28

AMERICAN OVERSIGHT

Terms of Service,
Facebook (last updated July 26, 2022)..... 19

The Federalist No. 51,
(Clinton Rossiter ed., Signet Classic 2003)
(1788).....2

YouTube Suspends Rand Paul after Misleading Video on Masks,
PBS News Hour (Aug. 11, 2021)..... 34

AMERICAN OVERSIGHT

INTEREST OF *AMICI* STATES

The States of Missouri, Ohio, Alaska, Alabama, Arkansas, Iowa, Kentucky, Louisiana, Mississippi, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, and Virginia, and the Arizona Legislature ("the States"), agree with many points in the amicus brief of New York, *et al.*, which focuses on social media problems *other* than censorship. The States here submit this amicus brief to focus directly on the censorship question.

The States do so for two reasons. First, it is the constitutional duty of the States to protect their citizens' inherent rights, including the right to free speech. Just as States pass criminal and civil laws to protect citizens from private abridgment of rights of life and property, States have a long history of regulating to protect citizens from abridgment of their free speech rights by dominant communication platforms. Second, the States have a vital interest in hearing the speech of their citizens, especially political speech. That is necessary for States to be democratically responsive. NetChoice's position threatens these interests because it seeks to upend the longstanding authority of States to prohibit mass communication networks from engaging in censorship and viewpoint discrimination.

1. The Founders were clear that the purpose of government is to secure liberty. The Declaration of Independence recognizes that natural rights, including "Life" and "Liberty," preexist government, and that "Governments are instituted among Men" for

AMERICAN OVERSIGHT

one principal purpose: "to secure these rights." Declaration of Independence ¶ 2.

The Founders thus recognized that governments are created to protect rights from *private* abridgment—the only abridgment that can occur before government is formed. Society must of course always resist government abuse of power (which occurs too often), but government is created in the first instance to protect against private abuse. As James Madison put it, "If men were angels, no government would be necessary." The Federalist No. 51, at 319 (Clinton Rossiter ed., Signet Classic 2003) (1788). Government must be obliged "to control itself"—through separation of powers—but it is equally true that society "must first enable the government to control the governed." *Ibid.*

One right States "are instituted among Men" to "secure" is the freedom of speech. As Madison said when proposing the draft of the First Amendment, freedom of speech is a "natural right" predating government itself. Jud Campbell, *Natural Rights and the First Amendment*, 127 Yale L.J. 246, 264 (2017) (citing Madison's notes reflecting his speech in Congress). This Court has held the same, explaining that "the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right." *District of Columbia* v. *Heller*, 554 U.S. 570, 592 (2008) (emphasis in original).

AMERICAN OVERSIGHT

So NetChoice is flat wrong to contend (at 25 in *Paxton*)[1] that *only* the government is capable of censorship. Because freedom of speech is a freedom States were created to secure, it is the duty of States to secure that freedom from private abridgment, including abridgment by extraordinarily powerful communication platforms.

The States can pass criminal laws against theft and murder—thus protecting against private interference with rights of property or life. And if dominant firearm dealers refuse to sell on account of race, States can regulate to secure for their citizens the right to bear arms. So too, if dominant communication platforms censor based on viewpoint, States can pass laws to stop that censorship—as they have done for well over 100 years.

A State of course cannot, in the name of protecting free speech, abridge the freedom of speech. But this Court has held that the First Amendment does not prohibit States from protecting the marketplace of ideas when that marketplace is threatened by private actors. "It would be strange indeed," this Court said, "if the grave concern for freedom of the press which prompted adoption of the First Amendment should be read as a command that the government was without power to protect that freedom." *Associated Press* v. *United States*, 326 U.S. 1, 20 (1945). As with freedom of the press, so too with freedom of speech. *See W. Union Tel. Co.* v. *James*, 162 U.S. 650, 651, 660 (1895)

---

[1] This amicus references briefs in the two consolidated cases as *Paxton* briefs (for No. 22-555) and *Moody* briefs (for No. 22-277).

AMERICAN OVERSIGHT

(upholding law prohibiting telegraph companies from engaging in viewpoint discrimination); *see also* Genevieve Lakier, *The Non-First Amendment Law of Freedom of Speech*, 134 Harv. L. Rev. 2299, 2316-19 (2021) (listing statutory examples protecting free speech).

2. States also have an interest in preventing censorship because censorship deprives States of the information they need to be responsive to the people. "The vitality of civil and political institutions in our society depends on free discussion." *Terminiello* v. *Chicago*, 337 U.S. 1, 4 (1949). "[I]t it is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected." *Ibid.*

Many landmark legal changes arose from government responding to the speech of everyday citizens. That includes "great matters of state," such as Magna Carta, women's suffrage, the Declaration of Independence, and antislavery legislation. *Borough of Duryea, Pa.* v. *Guarnieri*, 564 U.S. 379, 395–97 (2011). Those reforms illustrate that "representative democracy" works best when the "free exchange" of ideas "facilitates an informed public opinion, which, when transmitted to lawmakers, helps produce laws that reflect the People's will." *Mahanoy Area Sch. Dist.* v. *B. L.*, 141 S. Ct. 2038, 2046 (2021). Today, one of the most common ways individuals speak to their governments is through public posts on social media.

Top-down censorship by dominant communication platforms thus threatens the ability of States to operate. Censorship deprives local government of

AMERICAN OVERSIGHT

the information needed to "remain[] responsive to the will of the people." *Terminiello*, 337 U.S., at 4.

* * *

As Judge Oldham's opinion below recognized, States and Congress have enacted regulations like the ones enacted by Texas and Florida for well over one hundred years. *NetChoice, L.L.C.* v. *Paxton*, 49 F.4th 439, 470–71 (CA5 2022). While the earlier laws applied to telegraphs and telephones, it is no different when the companies carrying other people's speech are digital rather than analog. The States thus have a paramount interest in urging this Court to affirm that longstanding, historic authority of States to protect freedom of speech and enable representative government by prohibiting dominant communication networks from censoring.

That interest is especially weighty here in light of the unprecedented control these platforms have over speech central to political and public discourse. "[I]n the modern economy, the Platforms provide the most effective way to disseminate news, commentary, and other information." *Id.*, at 476. And never before has there been so much "concentrated control of so much speech in the hands of a few private parties." *Biden* v. *Knight First Amend. Inst.*, 141 S. Ct. 1220, 1221 (2021) (Thomas, J., concurring). Today the ability "to cut off speech lies most powerfully in the hands of private digital platforms." *Id.*, at 1227. That explains why the Federal Government has inserted itself through pressure into those content-moderation policies and practices—as shown in *Murthy* v. *Missouri*. The concentration of power in a handful of platforms can facilitate government censorship.

AMERICAN OVERSIGHT

That power creates other real concerns. A Facebook executive admitted in a 2019 internal memo—later leaked—that the company's power over speech is so immense that Facebook could unilaterally "pull any lever" to alter the outcome of a presidential election. *Andrew Bosworth Memo*, N.Y. Times (Jan. 7, 2020).[2] The States have authority to protect citizens from abuse of that immense power.

SUMMARY OF ARGUMENT

I.A. The easiest path to resolve this case is to determine whether social media is more like telephones or more like newspapers. The law has consistently permitted requiring telephones and the like to distribute third-party speech and has generally rejected requiring the same of companies like newspapers.

This Court has already unanimously rejected NetChoice's maximalist argument that companies have a categorical right not to "disseminate … speech generated by others." NetChoice *Paxton* Br., at 13; *see PruneYard Shopping Ctr.* v. *Robins*, 447 U.S. 74, 85 (1980). Instead, this Court has considered whether the regulated company "possess[es] the power to obstruct readers' access to" information, *Turner Broad. System, Inc.* v. *FCC* ("*Turner 1994*"), 512 U.S. 622, 656 (1994), and whether requiring a company to distribute third-party speech would

[2] https://perma.cc/V8NP-6K4A; https://web.archive.org/web/20200107185034/https://www.nytimes.com/2020/01/07/technology/facebook-andrew-bosworth-memo.html.

AMERICAN OVERSIGHT

materially harm the company's ability to get out its "own message," *Rumsfeld* v. *Forum for Acad. and Institutional Rights, Inc.*, 547 U.S. 47, 63 (2006).

On these critical questions, newspapers and telephones are different. Local newspapers cannot restrict access to information. Nationwide phone companies can. For newspapers, parades, and the like, space constraints and limited number of content creators means compelling a company to carry third-party speech materially harms the company's ability to express its "own message." *Ibid.* The space constraints mean material loss of the company's opportunity to speak, and the nature of the medium means listeners become confused about whether speech belongs to third parties or the company. *Id.,* at 65. But for mass communication networks like telephones, those risks are not substantial. So courts have long permitted requiring companies like telephones to distribute third-party speech free from viewpoint discrimination.

Social media companies are much more like telephone networks than newspapers. Unlike newspapers, which "do[ ] not possess the power to obstruct readers' access to" information, *Turner 1994*, 512 U.S., at 656, social media companies do—and they exercise that power. Like telephone companies, and "unlike newspapers," social media companies "hold themselves out as organizations that focus on distributing the speech of the broader public." *Knight First Amend. Inst.*, 141 S. Ct., at 1224 (Thomas, J., concurring). Unlike the space constraints for newspapers, the space on social media is nearly boundless. And like telephones, nearly all

AMERICAN OVERSIGHT

speech on social media platforms is created by third parties.

For all these reasons, NetChoice cannot meet its burden of establishing that the regulations at issue here would materially limit a social media company's speech or cause ordinary members of the public to confuse speech on Facebook, YouTube, or X (formerly Twitter) as speech of the company itself, rather than third parties using those platforms. *Rumsfeld*, 547 U.S., at 64.

I.B. NetChoice barely addresses the analogy to telephones and telegraphs, stating only that regulating those companies is permissible because they transmit speech "on an 'unedited basis' from point A to point B." *Moody* Br., at 49. That argument fails for many reasons.

First, it is demonstrably false historically. As the Fifth Circuit explained, telegraph companies engaged in the same kind of viewpoint discrimination NetChoice's members engage in today.

Second, the argument would make regulation pointless. If the only companies that can be required to carry content without discrimination are those already doing so, regulation does nothing at all. Relatedly, NetChoice's argument begs the question. If this Court permits the regulations to go into effect, social media platforms likewise will transmit speech "on an 'unedited basis' from point A to point B."

Third, NetChoice's argument creates a recipe for censorship by telephones and government. Under their logic, as soon as an actor begins "editing" content, that transforms the content into the actor's own speech. Telephones can thus evade the 100-plus

AMERICAN OVERSIGHT

years of regulation simply by starting to censor. So too, government can simply "edit" people's speech, and turn everything into government speech.

I.C. Because NetChoice has brought facial challenges against these laws, this Court need not answer the thornier questions about what to do when platforms mix their own speech with that of third parties (such as when they append "fact checks" to third-party speech).

II.A. The extraordinary market power social media platforms possess reinforces the ability of States to regulate in this area. At common law, companies with substantial market power were required to serve without discrimination. This Court has long permitted States and Congress to apply the same concept to large communication platforms.

No doubt, these platforms possess extraordinary power. This industry has monumental barriers to entry. What makes these companies valuable is their network sizes, such as Facebook's 3-billion person network. That makes it very difficult to compete, and the one time an upstart (called Parler) finally gained momentum, Apple, Google, and Amazon forcibly removed it from the internet.

These companies also aggressively engage in censorship that impoverishes free exchange of ideas. Many examples are notorious, such as the systematic censorship (at the instigation of the Federal Government) of the Hunter Biden laptop story and of the theory that COVID originated in a lab in China—now the predominant theory of the Energy Department and the FBI. Platforms censor viewpoints on the most hotly contested topics of the

AMERICAN OVERSIGHT

day, like transgender issues. And they suppress "misinformation" later proven accurate. While most censored speech is conservative, there are complaints about censorship of left-wing speech. All this censorship harms not only the marketplace of ideas, but also the ability of the States to respond to the concerns of their citizens.

III. Dominant digital platforms are not the only problem. Government systematically pressures platforms to censor. This Court granted certiorari to *Murthy* v. *Missouri*, No. 23-411, where a district court made extensive fact findings that the White House, the FBI, an agency within the Department of Homeland Security, and other federal actors systematically pressured social media companies to censor even more speech.

In its brief in *Murthy*, the Federal Government does not dispute the accuracy of these extensive, alarming findings. It does not dispute, for example, that it successfully induced removal of millions of posts—even posts that do not violate policies of social media companies—or that this removal affected everyone on social media. Instead, it argues it successfully induced these things through legal "persuasion," not illegal "coercion," and that the plaintiffs lack standing to contend otherwise. U.S. Br., No. 23-411, at 14, 25, 34.

That likely reveals why the United States backs NetChoice here, even though its position threatens the United States' own laws. The Federal Government knows it will be much more difficult for federal officials to induce social media companies to suppress speech if state law prohibits it. So the

AMERICAN OVERSIGHT

Federal Government seeks to eliminate those state laws.

That shows that the Texas and Florida laws, far from infringing the First Amendment, in fact shield social media companies from government pressure and deprive *government* of the opportunity to control expression.

ARGUMENT

I. States have authority to prohibit mass communication platforms from censoring speech.

A. Requiring social media companies to distribute third-party speech without viewpoint discrimination is permissible because social media better resembles telephones than newspapers.

1. NetChoice does not dispute that telephones and telegraphs can be compelled, consistent with the First Amendment, to distribute third-party speech. They can be compelled to behave as common carriers even though this Court has declared that "they are *not* common carriers," *Primrose* v. *Western Union Telegraph Co.*, 154 U. S. 1, 14 (1894) (emphasis added), and even though these companies have a history of exercising the very "editorial discretion" NetChoice's members seek to exercise today, *Paxton*, 49 F.4th, at 470.

In fact, it is only because telegraph companies behaved the way social media companies do today that nondiscrimination regulations were imposed. In the 1800s, "Western Union, the largest telegraph

AMERICAN OVERSIGHT

company, … discriminated against certain political speech," confirming the fear "'that the private entities that controlled this amazing new technology would use that power to manipulate the flow of information to the public when doing so served their economic or political self-interest.'" *Ibid.* (quoting Genevieve Lakier, The Non-First Amendment Law of Freedom of Speech, 134 Harv. L. Rev. 2299, 2321 (2021)). "In response, States enacted common carrier laws to limit discrimination in the transmission of telegraph messages." *Ibid.* Congress did the same. *Ibid.* (citing Telegraph Lines Act, ch. 772, § 2, 25 Stat. 382, 383 (1888)); *see also W. Union Tel. Co.* v. *James*, 162 U.S. 650, 651 (1895) (rejecting a challenge to an Iowa law requiring telegraph companies to deliver messages with "impartiality and good faith").

On the other hand, this Court has been clear that companies generally cannot be compelled to distribute third-party speech in their own "newspapers," *Miami Herald Pub. Co.* v. *Tornillo*, 418 U.S. 241, 258 (1974), or in their own "newsletters," which are "no different from a small newspaper," *P. Gas and Elec. Co.* v. *Pub. Utilities Comm'n. of California*, 475 U.S. 1, 8 (1986). The Court has applied similar analysis to parade organizers and expressive associations. *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 574–75 (1995); *Boy Scouts of Am.* v. *Dale*, 530 U.S. 640, 655 (2000).

In two seminal cases, this Court explained what makes newspapers and the like different from organizations that can be required to distribute third-party speech. First, a newspaper, unlike a cable

AMERICAN OVERSIGHT

company,[3] "does not possess the power to obstruct readers' access to" other information. *Turner Broad. System, Inc.* v. *FCC* ("*Turner 1994*"), 512 U.S. 622, 656 (1994). Second, newspapers, newsletters, and the like generally cannot be required to distribute third-party content because that requirement "sufficiently interferes with any message of [the company]."[4] *Rumsfeld* v. *Forum for Acad. and Institutional Rights, Inc.*, 547 U.S. 47, 64 (2006). Telephones and shopping centers are different because no space constraints materially impede the company from getting out its "own message," and "there [i]s little likelihood that the views of those [third parties] engaging in the expressive activities would be identified with the" company. *See id.,* at 65 (citing *PruneYard Shopping Ctr.* v. *Robins*, 447 U.S. 74, 88 (1980)).

In other words, the First Amendment tolerates compelled hosting to preserve access to information when

---

[3] Although cable companies differ from newspapers in important ways, they resemble (or at least did in the 1990s) newspapers in others. This Court stressed, for example, that cable companies in the 1990s had meaningful space constraints. *Turner 1994*, 512 U.S., at 637.

[4] Even newspapers "are prohibited from charging more for political advertising than they charge for commercial advertising" or "receiving money or any other thing of value in exchange for their editorial endorsement of a political candidate or an idea." Lakier, *supra*, at 2330 (citing 52 U.S.C. § 30120(b) and state laws).

AMERICAN OVERSIGHT

(1) the company has power to obstruct access to information, *Turner 1994*, 512 U.S., at 656; or

(2) there is no "danger … that the statute would 'dampen the vigor and limit the variety of public debate,'" *PruneYard*, 447 U.S., at 88 (quoting *Miami Herald*, 418 U.S., at 257) (brackets omitted), because the act of hosting "lack[s] the expressive quality of a parade, a newsletter, or the editorial page of a newspaper," *Rumsfeld*, 547 U.S., at 64.

That makes sense because a law requiring a company to host the speech of third parties is more akin to a property regulation than a speech regulation: it regulates the ability of a company like Facebook to exclude people from its network. Because any effect on the company's own speech is indirect, must-carry regulations are more likely than direct regulations to survive review.

NetChoice is thus wrong to assert that companies have a categorical right not to "disseminate … speech generated by others." *Paxton* Br., at 13. This Court squarely considered and (unanimously) rejected that argument. *PruneYard*, 447 U.S., at 85 (rejecting the argument "that a private property owner has a First Amendment right not to be forced by the State to use his property as a forum for the speech of others"). Instead, what matters are the contextual questions whether NetChoice's members can obstruct access to other information and whether hosting third-party speech would materially impede the ability of NetChoice's members to get out their own message.

That means there is a much simpler way for this Court to assess the two NetChoice cases: evaluate

AMERICAN OVERSIGHT

whether companies like Facebook are more like newspapers, parade organizers, cake bakers,[5] and website designers,[6] or more like telephones, telegraphs, schools, and shopping malls.

2. Social media companies are much more like telephones, telegraphs, schools, and shopping centers than newspapers and newsletters.

Consider first "the power [of social media companies] to obstruct readers' access to … publications." *Turner 1994*, 512 U.S., at 656. As explained more fully in Part II.B, perhaps the most infamous censorship decision by social media companies was blocking access to a newspaper report containing unflattering information about the Democratic candidate for President. "A daily newspaper, no matter how secure its local monopoly, does not possess th[is] power." *Ibid.* Social media companies do, and they exercise it. "The potential for abuse of this private power over a central avenue of communication cannot be overlooked." *Id.*, at 657.

Consider also the number of people contributing content to a newspaper versus a telephone network or social media network. Unlike a newspaper, which might have at most a few hundred people contributing content, "3 billion people" contribute content on Facebook. *Knight First Amend. Inst.*, 141 S. Ct., at 1224 (2021) (Thomas, J., concurring). "[U]nlike

---

[5] *Masterpiece Cakeshop, Ltd.* v. *Colorado Civ. Rights Commn.*, 138 S. Ct. 1719 (2018).

[6] *303 Creative LLC* v. *Elenis*, 600 U.S. 570, 592 (2023).

AMERICAN OVERSIGHT

newspapers, digital platforms hold themselves out as organizations that focus on distributing the speech of the broader public," and so it is the public who creates nearly all the content on the platform. *Ibid.* Moreover, while newspapers carefully curate third-party content that they accept (such as letters to the editor), social media companies, like telephones and telegraphs, generally "hold [themselves] out to serve any member of the public without individualized bargaining." *Paxton*, 49 F.4th, at 470; *see also Shurtleff* v. *City of Bos., Massachusetts*, 596 U.S. 243, 256–57 (2022) (holding that flag raisings were not government speech because "Boston told the public that it sought 'to accommodate all applicants'").

Then there is the lack of space constraints. *Rumsfeld*, 547 U.S., at 64. While nothing in the physical universe is truly infinite, social media companies come about as close to infinity as possible. They operate with nothing like the space constraints of a newspaper. "The New York Times publishes around 150 original pieces of journalism a day, on average." *How We Choose the Great Read*, N.Y. Times (Apr. 4, 2022).[7] In contrast, the vast majority of public speech flows through social media, with 1.7 million posts made to Facebook and 500 hours of video are uploaded to YouTube every *minute*. *Media Usage in an Internet Minute as of April 2022*, Statista

---

[7] https://perma.cc/578R-L88S; https://web.archive.org/web/20220421090948/https://www.nytimes.com/2022/04/21/insider/how-we-choose-the-great-read.html.

AMERICAN OVERSIGHT

(2023).[8] That is 2.4 billion Facebook posts and 720,000 hours of video uploaded to YouTube every day. Unlike a newspaper, where forced hosting of third-party content meaningfully decreases space for the newspaper's own message, *Miami Herald*, 418 U.S., at 257, social media companies have plenty of space to express their own message. For social media, "accommodation does not sufficiently interfere with any message of the [social media company]." *Rumsfeld*, 547 U.S., at 64.

And unlike newspapers or parade organizers (which carefully curate all content toward a specific message or messages), nearly all content on social media companies is posted unedited by the companies. While these platforms "use algorithms to screen out" far less than even one percent of content, "virtually everything else is just posted to the Platform with *zero* editorial control or judgment." *Paxton*, 49 F.4th, at 459 (emphasis in original).

In fact, contrary to NetChoice's assertions now that its members exercise "editorial control" over everything, these companies have expressly stated, "We try to explicitly view ourselves as *not editors* .... We don't want to have editorial judgment over the content that's in your feed." *Id.*, at 460 (emphasis added) (quoting Ravi Somaiya, *How Facebook Is Changing the Way Its Users Consume Journalism*, N.Y. Times (Oct. 26, 2014)[9]). NetChoice's current

---

[8] https://perma.cc/C6XH-DBJ2 (last visited Jan. 9, 2024).

[9] https://perma.cc/YTZ9-6VVL; https://web.archive.org/web/20141027091945/https://www.nytim

AMERICAN OVERSIGHT

presentation before this Court is likewise inconsistent with the assertions of its members in other lawsuits that they merely distribute content created by others and are therefore entitled to immunity under § 230 of the Communications Decency Act. *E.g.*, Br. of Twitter, *Gonzalez* v. *Google*, No. 21-1333, at 7 (Jan. 2023) (stating that Twitter merely "disseminat[es] third-party content"); *see also NetChoice, LLC* v. *Paxton*, 142 S. Ct. 1715, 1717 n.2 (2022) (Alito, J., dissenting) (noting the argument that NetChoice's "position in this litigation is in conflict or tension with the positions of its members in cases regarding the interpretation of § 230").

Finally, it is Congress's judgment that these companies operate more like telephones than newspapers, which is why Congress shielded them from defamation liability. *See* 47 U.S.C. § 230.

For all these reasons, social media companies better resemble telephone companies than newspapers. They have power to obstruct customers from receiving speech, they are principally in the business of distributing the content of others from point A to point B, they do not deal with meaningful space constraints, and the vast majority of the speech they distribute is unedited.

NetChoice thus cannot prove that distributing third-party speech without viewpoint discrimination will materially impede social media companies from speaking for themselves or that members of the public

---

es.com/2014/10/27/business/media/how-facebook-is-changing-the-way-its-users-consume-journalism.html.

AMERICAN OVERSIGHT

will mistake third-party speech on Facebook, YouTube, or Twitter as speech *by* the platforms. *Rumsfeld*, 547 U.S., at 64. Just as "high school students can appreciate the difference between speech a school sponsors and speech the school permits because legally required to do so," *ibid.*, so too everyday Americans can distinguish between speech *on* Facebook and Facebook's own speech[10]—especially because these companies expressly disclaim third-party content as their own. *See, e.g.*, *Terms of Service*, Facebook (last updated July 26, 2022), https://www.facebook.com/legal/terms ("We do not control or direct what people and others do or say, and we are not responsible for their actions or conduct (whether online or offline) or any content they share (including offensive, inappropriate, obscene, unlawful, and other objectionable content).").

All these facts sharply distinguish social media companies not only from newspapers, but also from cake decorators, website designers, and parade

---

[10] Section 230 lawsuits ask a different question. There is usually no debate about whether the speech is third-party speech. The question instead is whether the platform helped "develop[ ]" the third-party's speech "in part," thus removing immunity. 47 U.S.C. § 230(f)(3); *see also Malwarebytes, Inc.* v. *Enigma Software Group USA, LLC*, 141 S. Ct. 13, 16 (2020) (Thomas, J., concurring). There is an active debate about whether things like algorithms help "develop[ ]" third-party speech "in part." A conclusion by this Court that individuals are unlikely to mistake third-party speech on social media companies for the speech of the companies themselves would have no effect on whether those companies could invoke § 230 as a shield with respect to the same content.

AMERICAN OVERSIGHT

organizers. While there is little to no risk that everyday observers will mistake third-party speech on Facebook for Facebook's "own message," requiring a cake artist or independent website designer to speak a third party's speech does "deny speakers the right 'to choose the content of their own messages'" because the risk of attribution is high. *303 Creative LLC*, 600 U.S., at 592 (quoting *Hurley*, 515 U.S., at 573) (brackets omitted). Indeed, the "very purpose" of Colorado's requirement to force companies to design websites supporting certain events was "the coercive elimination of dissenting ideas about marriage." *Id.*, at 588 (brackets and internal quotation marks omitted). Forcing a cake baker or newspaper to state third-party speech unlawfully compels speech. Requiring companies in the business of transmitting other peoples' speech billions of times a day to do so without viewpoint discrimination does not.

3. It makes no difference that posts on social media typically are distributed to many people rather than to one. Organizations subject to must-carry regulations are regularly used to broadcast speech to many recipients. "[S]upposedly one-to-one media have long been used to distribute material to the public at large." Eugene Volokh, *Treating Social Media Platforms Like Common Carriers?*, 1 J. Free Speech L. 377, 387 (2021). One speaker can use the U.S. Postal Service to broadcast a message to millions. *Ibid.* And hundreds or even thousands of people can join a single conference call or group text message thread.

AMERICAN OVERSIGHT

B. Social media companies cannot evade accountability simply by choosing to edit some content.

The Fifth Circuit opinion extensively discussed the historical regulation of telephones and telegraphs, yet NetChoice's brief in *Paxton* makes no attempt to address that analogy. Its brief in *Moody* is hardly better, principally arguing (at 49) that telegraph and telephone companies are different because they merely transmit speech "on an 'unedited basis' from point A to point B." The United States amicus brief repeats this argument, asserting (at 11) that "unlike [telephones and telegraphs], the platforms are not merely conduits transmitting speech from one person to another" but instead choose to edit or remove content.

Although the Eleventh Circuit adopted this argument, *NetChoice, LLC* v. *Moody*, 34 F.4th 1196, 1222 (CA11 2022), the argument overlooks basic history, is circular and begs the question, would enable phone companies to evade regulation, and would create a roadmap for government censorship.

As to history, telephone and telegraph companies transmit speech on an "unedited basis" only because they are compelled to do so by law. Those companies historically did the same thing NetChoice's members currently do until the States, Congress, and this Court stepped in. *See* Lakier, *supra*, at 2322; *Paxton*, 49 F.4th, at 470; *W. Union Tel. Co.*, 162 U.S., at 651.

History thus favors the States, not NetChoice. The Eleventh Circuit concluded social media companies could censor content because they have "historically exercised" power to refuse transmission

AMERICAN OVERSIGHT

of disfavored ideas. *Moody*, 34 F.4th, at 1222. But telegraph companies have a much longer history of censorship. Social media is less than two decades old. Congress did not impose must-carry requirements on telegraphs until 1888, 50 years after their invention. *Paxton*, 49 F.4th, at 471. Yet it is well recognized today that those must-carry regulations were constitutional—even though this Court declared that telegraph companies are "*not* common carriers." *Primrose*, 154 U. S., at 14 (emphasis added). History thus provides no basis for dismissing the striking similarities between social media companies and telegraph and telephones by dubbing social-media censorship "editorial judgment."

The attempt to avoid the telephone analogy is also circular and would wipe out traditional regulations. The Eleventh Circuit concluded Florida could not require social media companies to distribute content without viewpoint discrimination because the companies already "exercise editorial judgment." *Moody*, 34 F.4th, at 1221. In other words, the State can compel a company to refrain from censoring only if the company is already refraining. Under that rule, must-carry regulations are pointless. Telephones, telegraphs, and parcel delivery companies can become immune under the First Amendment from any must-carry regulation as soon as they chose to engage in "editorial judgment" to cut off calls and not deliver messages and products that express ideas they dislike.

Or if those traditional regulations are valid, then the Eleventh Circuit's analysis is self-refuting: the regulations here would become valid as soon as a company complies. NetChoice asserts that imposing

AMERICAN OVERSIGHT

must-carry regulations on telephones is fine because telephones transmit speech "on an 'unedited basis,'" but the same will be true of NetChoice's members if they comply with these statutes.

The argument is also a roadmap for government censorship. If NetChoice and the Eleventh Circuit are correct that the act of "discriminat[ing] among messages" converts third-party speech into the platform's first-party speech, *Moody*, 34 F.4th, at 1221, then the Federal Government could freely censor speech on its property because the censorial act would convert the speech into government speech, which "is not restricted by the Free Speech Clause," *Pleasant Grove City, Utah* v. *Summum*, 555 U.S. 460, 469 (2009); *see also Walker* v. *Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 213 (2015). Much like this Court should "prevent the government-speech doctrine from being used as a cover for censorship," *Shurtleff*, 596 U.S., at 263 (Alito, J., concurring), it should prevent the First Amendment from blocking States' efforts to stop private censorship. Like the government, social media companies may not hide behind the First Amendment when they deploy a "come-one-come-all attitude" with exceptions for select disfavored speakers. *Id.*, at 257 (majority op.).

C. In the context of facial challenges, this Court need not consider more complex questions.

Because NetChoice has asserted facial challenges, this Court need not wade into more difficult questions, such as whether a social media company can be

AMERICAN OVERSIGHT

prohibited from attaching a disclaimer or a fact check to third-party speech.

It is far from obvious how this Court's precedents would apply. On the one hand, a platform that appends a note to third-party speech undoubtedly engages in its own speech. On the other hand, communication networks often are required to serve all comers without "undue or unreasonable preference or advantage to any particular person" or "class of persons." 47 U.S.C. § 202. If a phone company appended a 30-second ad supporting one political candidate to every call originating from the campaign office of that candidate's opponent, the phone company would certainly be engaging in speech, but it would also be giving "preference or advantage" to one customer over another.

Those more difficult questions should not be resolved in the context of a facial challenge.

II. The hyperconcentration of social media reinforces State authority to regulate.

Both the common law and American courts have long recognized that protecting the marketplace of ideas involves more than keeping government from abridging speech; it sometimes means regulating dominant private actors to ensure they cannot abridge speech either.

At common law, it was well recognized that companies with substantial market power could be compelled not to discriminate. As Matthew Hale, the well-known English barrister and scholar on the history of the common law, put it, "if a wharf owner operated the 'only wharf licensed by the queen' or if

AMERICAN OVERSIGHT

'there was no other wharf in that port,' then the wharf was 'affected with a public interest,' and the owner acquired a duty to serve without discrimination." *Paxton*, 49 F.4th, at 472 (quoting Matthew Hale, *De Portibus Maris*, *in* A COLLECTION OF TRACTS RELATIVE TO THE LAW OF ENGLAND 77–78 (Francis Hargrave ed., 1787)) (brackets omitted).

American courts have long applied this principle to communications technology, assessing whether a "communications firm … play[s] a central economic and social role in society." *Paxton*, 49 F.4th, at 471. As this Court put it, because "values central to the First Amendment" include "assuring that the public has access to a multiplicity of information sources," government can take "steps to ensure that private interests not restrict, through physical control of a critical pathway of communication, the free flow of information and ideas." *E.g.*, *Turner 1994*, 512 U.S., at 657, 663; *accord U.S. Telecom Ass'n* v. *FCC*, 855 F.3d 381, 434–35 (CADC 2017) (Kavanaugh, J., dissenting from rehearing en banc) ("If the Internet service providers have market power, then the Government may impose open-access or similar carriage obligations.").

This Court has thus held that radio's "unique characteristic[s]" permit the government to restrict "specified network practices" without abridging freedom of speech. *Nat'l Broad. Co.* v. *United States*, 319 U.S. 190, 226–27 (1943). And this Court approved government regulations that prohibited cable companies from silencing "the voice of" some "speakers with a mere flick of the switch." *Turner 1994*, 512 U.S., at 656 (1994); *see also Turner Broad.*

AMERICAN OVERSIGHT

Sys., Inc. v. *FCC ("Turner 1997")*, 520 U.S. 180, 225 (1997).

Applied to social media companies, these cases mean, at the least, that regulations are justified when "the service provider possesses 'bottleneck monopoly power' in the relevant geographic market" and can use it to "diminish[] the diversity and amount of content available." *U.S. Telecom Ass'n*, 855 F.3d, at 431, 433 n.12 (Kavanaugh, J., dissenting from denial of rehearing en banc) (quoting *Turner 1994*, 512 U.S., at 661); *see also Comcast Cable Communications, LLC* v. *FCC*, 717 F.3d 982, 993 (CADC 2013) (Kavanaugh, J., concurring). "[I]t stands to reason that if Congress may demand that telephone companies operate as common carriers, it can ask the same of" other communication companies, including social media companies. *Turner 1994*, 512 U.S., at 684 (opinion of O'Connor, J.).

The core of the Florida and Texas laws comfortably fits that rubric. The laws address companies that possess extraordinary market power and use it to reduce diversity of ideas.

A. Market power

While these companies were much smaller and less entrenched even six or eight years ago, the extraordinary scale and scope of large social media platforms today makes it impossible to deny that they "play[] a central economic and social role in society." *Paxton*, 49 F.4th, at 471. These platforms are "the modern public square," *Packingham* v. *North Carolina*, 582 U.S. 98, 107 (2017), and "serve as the primary source of news about important public issues

AMERICAN OVERSIGHT

for many Americans," *Murthy* v. *Missouri*, 144 S. Ct. 32, 32 (2023) (Alito, J., dissenting).

Consider their network effects. A fax machine is valuable only to the extent others use fax machines. The most valuable thing about Facebook is that "3 billion people use it." *Knight First Amendment Inst.*, 141 S. Ct., at 1224 (Thomas, J., concurring). While network size makes Facebook an extraordinary marketplace for ideas, network size also means these dominant platforms are the only way most speakers can avoid speaking into a void, *see, e.g.*, Alan Z. Rozenshtein, *Silicon Valley's Speech: Technology Giants and the Deregulatory First Amendment*, 1 J. Free Speech Law 337, 357 (2021). Other options for speech are not comparable. Switching from Facebook to "competitor" upstart social media companies is not like switching from AT&T to Verizon. It is like switching from flying to walking.

Network effects also mean enormous barriers to new entry—as evidenced by these companies' sky-high profit margins.[11] In a competitive market, "astronomical profit margins … would induce new entrants into the market. That these companies have no comparable competitors highlights that the industries may have substantial barriers to entry." *Knight First Amendment Inst.*, 141 S. Ct., at 1225 (Thomas, J., concurring).

---

[11] Google obtained $76 billion in profits (revenue minus expenses) in 2021. Alphabet, Inc., *Form 10-K* (Feb. 2, 2023), https://perma.cc/M4A4-DC8L.

AMERICAN OVERSIGHT

In fact, three years ago, the last time a newer social media company gained serious traction, other platforms banded together to kill it. In January 2021, Parler, which branded itself as a free-speech platform, was the most downloaded app. Then Google (YouTube's parent company) and Apple "removed" "the app for the conservative-focused Twitter competitor Parler … from their app stores." Volokh, *supra*, at 397–98 (citations omitted). That made Parler virtually inaccessible on phones for anybody who had not already downloaded the app. Then Parler's "hosting company, Amazon Web Services" "blocked" it from the Amazon servers Parler was renting, taking Parler entirely offline, even though "Parler was merely refusing to forbid certain speech, much of which is constitutionally protected—thus voluntarily acting in a way close to how the post office and phone companies are required by law to act." *Id.*, at 398. Amazon's power to kick companies entirely off the internet has caused Amazon to be described as "more like a utility provider than a broadcaster." Scott Rosenberg, *Big Tech's Free Speech Showdown*, Axios (Jan. 10, 2021).[12]

This illustrates a concerning fact: the dominant internet players are so powerful that the only way startups can take off is by relying on the mercy of the companies against which they wish to compete.

The conclusion that a handful of companies dominate the social media market aligns with

---

[12] https://www.axios.com/2021/01/10/big-techs-free-speech-showdown.

AMERICAN OVERSIGHT

conclusions by States and the Federal Government. In 2020, the Federal Trade Commission initiated an ongoing antitrust suit on the theory that "Facebook holds monopoly power in the market for personal social networking services … in the United States." *FTC* v. *Facebook, Inc.*, No. 1:20-cv-03590 (D.D.C. filed Dec. 8, 2020), Am. Compl., ¶2. And nearly every State and the Department of Justice has been involved in antitrust litigation against the major social media companies in recent years. *See, e.g.*, *Antitrust Reform and Big Tech Firms*, Congressional Research Service R46875 (Nov. 21, 2023) (describing some active cases).[13]

B. Discriminatory use of power

Although described by this Court as "the modern public square," *Packingham*, 582 U.S., at 107, these platforms are in fact more important than the historic public square because they hold "unprecedented … control of so much speech in the hands of a few private parties," *Knight First Amendment Inst.*, 141 S. Ct., at 1221 (Thomas, J., concurring). True, other aspects of the internet have enormous network effects (such as email), but nobody has central control over those networks. In contrast, "control of [social media] networks is highly concentrated" in the hands of a few people. *Id.*, at 1224. The platforms' power to facilitate and restrict speech on a large scale means they wield power "far greater than that of individual broadcasters who compete with one another as well as

---

[13] https://crsreports.congress.gov/product/pdf/R/R46875.

AMERICAN OVERSIGHT

with satellite and cable networks." Prasad Krishnamurthy & Erwin Chemerinsky, *How Congress Can Prevent Big Tech from Becoming the Speech Police*, The Hill (Feb. 18, 2021).[14]

These platforms have used their unprecedented power to censor mainstream speakers on important issues of public debate. That selective censorship—the Florida and Texas legislatures concluded—threatens the marketplace of ideas and the free flow of information to the detriment of citizens and democratic governance.

These legislative judgments rest on solid ground. Companies covered by the Texas and Florida laws currently exercise unchecked power to suppress ideas. And they have shown little inclination to self-limit their "incredible influence over the content that's put out into the world." Ahiza García-Hodges, *Big Tech Has Big Power over Online Speech. Should It Be Reined In?*, NBC News (Jan. 21, 2021).[15]

1. Perhaps most famously, weeks before the 2020 general election while voters were deciding among presidential candidates, Twitter blocked users from posting links to a New York Post article about unflattering information found on the laptop of the Democratic candidate's son, and Facebook "deprecate[d]" the story by preventing users from linking to the New York Post. Kate Cox, *Twitter, Facebook Face Blowback after Stopping Circulation of*

---

[14] https://perma.cc/645W-LMLP.

[15] https://perma.cc/FN7D-BL9T.

AMERICAN OVERSIGHT

NY Post Story, Ars Technica (Oct. 14, 2020).[16] The laptop information was "authenticated" by the New York Times more than a year later, after the censorship damage was done. Katie Benner, et al., *Hunter Biden Paid Tax Bill, but Broad Federal Investigation Continues*, N.Y. Times (Mar. 16, 2022).[17]

2. Platforms restrict not only news reporting, but also speech by everyday Americans. They "have certainly been willing to restrict opinions that are well within the American political mainstream." Volokh, *supra*, at 395. This conclusion is borne out in countless examples. *Id.* at 397 (listing several).

Consider one of the most hotly contested issues today: the many controversial legal and policy questions about the increasing number of individuals who identify as transgender. These include questions about separate bathrooms, locker rooms, and sports teams; about appropriate medical care; and even about the nature of what it means to be male or female. Nobody doubts these questions are important, yet social media companies have made mainstream views on these questions off limits. For example, a clear majority (57%) of adults believe sex is determined at birth, regardless of a person's later-expressed gender identity. Ashley Kirzinger, et al., *KFF/The Washington Post Trans Survey* (Mar. 24,

---

[16] https://perma.cc/6NYG-STXX.

[17] https://perma.cc/QJ97-J26Q; https://web.archive.org/web/20240109032322/https://www.nytimes.com/2022/03/16/us/politics/hunter-biden-tax-bill-investigation.html.

AMERICAN OVERSIGHT

2023).[18] But the 57% of Americans who believe that are not allowed to say so on social media. For example, when a U.S. Representative expressed his view that a high-ranking official in the Biden administration who identifies as a woman is in fact "a man," Twitter locked the Representative's account until he deleted the post. *Indiana Congressman Deletes Post, Gets Twitter Access Back*, Associated Press (Nov. 5, 2021).[19] Similarly, Twitter suspended a commenter when she expressed opposition to a transgender individual competing in the women's division in the Olympics, stating "men shouldn't compete against women." Joseph Wulfsohn, *Allie Beth Stuckey Released from "Twitter Jail" after Referring to Transgender Olympic Athlete as a "Man,"* Fox News (Aug. 6, 2021).[20]

These questions are hotly debated today, and views on all sides of the issues are held "in good faith by reasonable and sincere people." *Obergefell* v. *Hodges*, 576 U.S. 644, 657 (2015). But it is extraordinary that dominant communications companies through which the vast majority of public speech flows can make a viewpoint held by 57% of Americans, on one of the most salient political topics of the day, off limits in the "modern public square,"

---

[18] https://perma.cc/M2Y8-CNLD.

[19] https://perma.cc/X3DX-X4EF; https://web.archive.org/web/20230401020728/https://apnews.com/article/business-media-social-media-indiana-fort-wayne-16fb83191716f3dc1e9440f2cc972b54.

[20] https://perma.cc/X5E3-JZBV.

AMERICAN OVERSIGHT

Packingham, 582 U.S., at 107. That censorship "harm[s] … society as a whole" by "depriv[ing]" society of "an uninhibited marketplace of ideas." *Virginia* v. *Hicks*, 539 U.S. 113, 119 (2003).

Much of the speech targeted by these dominant communication platforms is conservative, which is not surprising given Mark Zuckerberg's acknowledgment that tech companies reside in "an extremely left-leaning place." Morgan Chalfant, *Cruz Presses Zuckerberg on Alleged Censorship of Conservative Speech* (Apr. 10, 2018).[21] Right after Elon Musk purchased Twitter, he and journalist Bari Weiss uncovered internal evidence that at Twitter, "the rules were enforced against the right, but not against the left." Elon Musk tweet, Dec. 8, 2022.[22]

But several platforms have also received allegations about censorship of opinions commonly viewed as left wing. Currently, social media companies face accusations of reducing the visibility of posts expressing political support for a Palestinian state in the present conflict. Priyanka Shankar, et al., *Are Social Media Giants Censoring Pro-Palestine Voices Amid Israel's War?*, Al Jazeera (Oct. 24, 2023).[23] Last summer, a federal district court found that social media platforms, at the request of federal officials, blocked Robert F. Kennedy, Jr.'s efforts to communicate with the public about his campaign for

---

[21] https://perma.cc/BWB3-3SF5.

[22] https://perma.cc/7684-AB49.

[23] https://perma.cc/8V95-U3DZ.

AMERICAN OVERSIGHT

the Democratic presidential nomination. *See Missouri* v. *Biden*, 2023 WL 4335270, *5, *9, *40 (W.D. La., July 4, 2023). And in the aftermath of George Floyd's murder, Facebook allegedly flagged and removed posts calling attention to allegedly racist conduct. Craig Silverman, *Black Lives Matter Activists Say They're Being Silenced by Facebook*, Buzzfeed (June 19, 2020).[24]

3. Platforms also censor true information that is difficult to brand as left or right. Speech surrounding COVID is a prime example. When COVID first hit, "major social networks rolled out a series of policy changes to curb … claims about the virus, including theories about its roots"—like that it originated in a Chinese lab. Cristiano Lima, *New Report on Covid-19 Origin Puts Social Media in GOP's Crosshairs*, Washington Post (Feb. 27, 2023).[25] That origin theory is now the predominant theory of many agencies under the Biden administration. Both the Energy Department and the FBI have concluded that the COVID-19 "virus likely spread due to an accident at a Chinese laboratory." *Ibid.*

Similarly, in the summer of 2021, YouTube removed a video that a U.S. Senator, who is a doctor, posted opining about the relative inefficacy of masks made out of cloth. *See, e.g.*, *YouTube Suspends Rand Paul after Misleading Video on Masks,* PBS News

---

[24] https://perma.cc/6F6S-UL4V.

[25] https://perma.cc/6STJ-N8EH.

AMERICAN OVERSIGHT

Hour (Aug. 11, 2021).[26] YouTube also banned him from posting any videos—on any topic—for a week. Yet Senator Paul's view is widely accepted today. *See* Apoorva Mandavilli, *The C.D.C. Concedes that Cloth Masks Do Not Protect Against the Virus as Effectively as Other Masks.*, N.Y. Times (Jan 14, 2022).[27] And his perspective might have been immensely important at the time to individuals deciding how best to protect themselves and others.

4. These examples may only scratch the surface because of platforms' deliberate opacity about their practices. They censor by taking down content or suspending people from their accounts, but they also "shadowban" by distributing content less widely than would otherwise occur. Geoffrey Fowler, *Shadowbanning Is Real: Here's How You End up Muted by Social Media*, Washington Post (Dec. 27, 2022).[28] "[U]sers often have no way of telling for sure whether they have been shadowbanned or whether their content is simply not popular."[29] Gabriel

---

[26] https://perma.cc/U2PD-K76U.

[27] https://perma.cc/77LD-NL5K; https://web.archive.org/web/20231106050019/https://www.nytimes.com/2022/01/14/health/cloth-masks-covid-cdc.html.

[28] https://perma.cc/6AM9-XV7M.

[29] That some censorship occurs by *leaving up* content (but simply not distributing it as widely) further undermines NetChoice's contention that social media companies must censor content to avoid unwanted association with speech they dislike.

AMERICAN OVERSIGHT

Nicholas, *Shadowbanning Is Big Tech's Big Problem*, The Atlantic (April 28, 2022).[30]

If recent history is any guide, that will not change. These companies continue to resist transparency. In early 2023, for example, Facebook's parent company, Meta, declined the recommendation of its Oversight Board to disclose which public-figure Facebook pages are subject to the site's "cross-check" moderation program for high-profile users. Clare Duffy, *Facebook Revamps Controversial Content Moderation Process for VIPs*, CNN Business (Mar. 3, 2023).[31]

* * *

Whether the target is left-wing speech, right-wing speech, or centrist speech, censorship harms everyone. From the start, our constitutional order recognized that "error of opinion may be tolerated where reason is left free to combat it." Jefferson's First Inaugural Address (March 4, 1801).[32] The Constitution aims to "'preserve an uninhibited marketplace of ideas in which truth will ultimately prevail.'" *Nat'l Inst. of Fam. & Life Advocates.* v. *Becerra*, 138 S. Ct. 2361, 2374 (2018) (citation omitted). That is because the "widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." *Associated Press*, 326 U.S., at 20. "This free exchange facilitates an informed public opinion,

---

[30] https://perma.cc/MW3Y-LYDZ.

[31] https://perma.cc/W8UJ-BQPS.

[32] https://perma.cc/VX6E-FA33.

AMERICAN OVERSIGHT

which, when transmitted to lawmakers, helps produce laws that reflect the People's will." *Mahanoy*, 141 S. Ct. at 2046.

Platforms leverage their extraordinary power to threaten that constitutional project. Florida and Texas's challenged response, designed to ensure information flows freely and fairly, strengthens rather than offends the First Amendment.

C. The Court should respect legislative fact findings of market power and censorship.

In the face of this discriminatory use of market dominance, the Texas and Florida legislatures made legislative findings about the power of large platforms to impoverish the marketplace of ideas. Texas concluded that social media platforms with "more than 50 million active users in the United States in a calendar month" have "market dominance" that justifies treating them as "common carriers." Tex. Code § 120.002(b); Tex. H.B. 20 §1(4). Florida determined that platforms with 100 million monthly global users or $100 million annual gross revenue "have become as important for conveying public opinion as public utilities are for supporting modern society" and "should be treated similarly to common carriers." Fla. Stat. § 501.2041(g); Fla. S.B. 7072 § 1(5)–(6). Those legislative judgments deserve significant weight in evaluating whether the Constitution permits the States' regulations. *Cf. Munn* v. *Illinois*, 94 U.S. 113, 132 (1876); *Turner 1994*, 512 U.S., at 665 (plurality op.); *Minnesota* v. *Clover Leaf Creamery Co.*, 449 U.S. 456, 464 (1981). After all, if "it stands to reason" that "Congress may

AMERICAN OVERSIGHT

demand" that telephone and cable companies carry third-party speech, *Turner 1994*, 512 U.S., at 684 (O'Connor, J., concurring in part and dissenting in part), it equally stands to reason that the States may demand the same of digital platforms. Where the Bill of Rights polices government conduct, there is "no daylight between the federal and state conduct it prohibits or requires." *Timbs* v. *Indiana*, 139 S. Ct. 682, 687 (2019); *see also Ramos* v. *Louisiana*, 140 S. Ct. 1390, 1397 (2020); *Malloy* v. *Hogan*, 378 U.S. 1, 7 (1964).

III. State laws preventing platforms from censoring speech provide a prophylactic vanguard against government censorship.

The United States says it submits a brief because, Congress having "enacted laws governing the communications industry," the United States "has a substantial interest in the resolution of the questions presented." U.S. Br., at 1. Yet it advocates a position that threatens to *undermine* federal laws.

Why? Perhaps because the Federal Government intends to continue its well-documented practice of pressuring companies to wield their censorship discretion to remove disfavored viewpoints.

It is undisputed that the Federal Government, including the White House, has engaged in a years-long, behind-closed-doors campaign to push social media companies to suppress millions of constitutionally protected posts. This Court granted certiorari in *Murthy* v. *Missouri*, No. 23-411, and while the legal conclusions there are disputed, the fact findings are not.

AMERICAN OVERSIGHT

In its opening brief in *Murthy*, the Federal Government does not dispute any fact finding. It does not dispute that—behind closed doors—it successfully used "unrelenting pressure" to push social media companies to "suppress[] millions of protected free speech postings by American citizens." *Missouri*, 2023 WL 4335270, at *44. It does not dispute it targeted "disfavored" speech "well beyond COVID-19," including "the Hunter Biden laptop story," *Missouri* v. *Biden*, 83 F.4th 350, 368, 381 (CA5 2023), and topics related to "racial justice, the U.S. withdrawal from Afghanistan," U.S. "[s]upport of Ukraine," and content posted by an individual who was challenging President Biden for the Democratic presidential nomination, 2023 WL 4335270, at *9, *67. The Federal Government does not dispute it targeted "nearly every major American social media company," and that those companies "capitulated" into "total compliance," even removing constitutionally protected content that "did not run afoul of their policies." 83 F.4th, at 359, 362–63, 392. And the Federal Government does not dispute its "conduct has not stopped," it has even "started monitoring" the platforms for compliance with governmental demands "to remove disfavored content," and its push for censorship has been so widespread that "it impacts every social-media user." *Id.*, at 359–60, 393, 398.

Instead, the Federal Government argues it induced all these things through legal "persuasion," not illegal "coercion," and the plaintiffs lack standing to contend otherwise. U.S. Br., No. 23-411, at 14, 25, 34. The Federal Government even doubles down, all but promising to continue pressing platforms to

AMERICAN OVERSIGHT

suppress millions of posts because it believes these posts are "false information," *id.*, at 34, even though much speech it pushed to suppress turned out to be true.

The Federal Government's interest in the *NetChoice* cases is thus clear.[33] The Texas and Florida laws pose no threat to federal laws; they only threaten the ability of federal officials to continue pushing platforms to "suppress[] millions of protected free speech postings by American citizens." 2023 WL 4335270, at *44.

Pressuring platforms would become much more difficult if state law prohibited platforms from complying with federal takedown demands. One of "anti-discrimination obligations' great virtues is that it protects private entities from complying with government's censorship demands. A private company with no legal obligation to treat users in a non-discriminatory fashion readily can accede government's request to censor, block, or otherwise treat users unfairly. But, if a private firm is prohibited by law to do so, then the government cannot even ask." Adam Candeub, *Bargaining for Free Speech: Common Carriage, Network Neutrality,*

---

[33] As further evidence that the United States views the *NetChoice* cases as fundamentally related to *Murthy*, the United States repeats the same "editorial discretion" arguments in *Murthy*. U.S. Br., No. 23-411, at 3–4, 16, 36. The United States is also represented in this case by two Civil Division attorneys who represented the Federal Government in *Murthy* at the Fifth Circuit.

AMERICAN OVERSIGHT

and Section 230, 22 Yale J. L. & Tech. 391, 432–33 (2020).

The Federal Government's real interest here is that it will no longer be able to "persuade" platforms to take down millions of constitutionally protected posts if this Court affirms the Texas and Florida laws. That is a reason to support the state laws, not to strike them down. In passing these laws, Texas and Florida afforded their citizens the "double security [that] arises" when one government "guard[s] … society against the injustice of the other." The Federalist No. 51, *supra*, at 320 (Madison). The Fifth Circuit in *Murthy* said the Federal Government forced social media companies to "bend to the government's will." 83 F.4th, at 371. The laws challenged here provide the legal backbone platforms need to stand straight.

AMERICAN OVERSIGHT

CONCLUSION

The Court should affirm the longstanding authority of States to protect their citizens from censorship imposed by mass communication networks.

Respectfully submitted,

DAVE YOST
Ohio Attorney General

MICHAEL HENDERSHOT
Chief Deputy Solicitor General
NICHOLAS CORDOVA
Deputy Solicitor General
OFFICE OF THE OHIO ATTORNEY GENERAL
30 East Broad St., 17th Fl.
Columbus, Ohio 43215
(614) 644-0576

ANDREW BAILEY
Missouri Attorney General

JOSHUA M. DIVINE
Solicitor General
Counsel of Record
MARIA A. LANAHAN
Deputy Solicitor General
CALEB RUTLEDGE
BRYCE BEAL
Assistant Attorneys General
OFFICE OF THE MISSOURI ATTORNEY GENERAL
Supreme Court Building
207 West High Street
Jefferson City, MO 65102
(573) 751-8870
Josh.Divine@ago.mo.gov

January 22, 2024

AMERICAN OVERSIGHT

ADDITIONAL COUNSEL

Steve Marshall
Attorney General
State of Alabama

Treg Taylor
Attorney General
State of Alaska

Tim Griffin
Attorney General
State of Arkansas

Brenna Bird
Attorney General
State of Iowa

Russell Coleman
Attorney General
State of Kentucky

Liz Murrill
Attorney General
State of Louisiana

Lynn Fitch
Attorney General
State of Mississippi

Austin Knudsen
Attorney General
State of Montana

Michael T. Hilgers
Attorney General
State of Nebraska

John M. Formella
Attorney General
State of New Hampshire

Drew H. Wrigley
Attorney General
State of North Dakota

Gentner Drummond
Attorney General
State of Oklahoma

Alan Wilson
Attorney General
State of South Carolina

AMERICAN OVERSIGHT

Marty Jackley
Attorney General
State of South Dakota

Jonathan Skrmetti
Attorney General
State of Tennessee

Sean D. Reyes
Attorney General
State of Utah

Jason Miyares
Attorney General
State of Virginia
Warren Petersen
President of the Senate
State of Arizona

By counsel:
Rusty D. Crandell
Majority General
Counsel
Arizona State Senate
1700 W. Washington St.
Phoenix, Arizona 85007
rcrandell@azleg.gov
(602) 926-3137

Ben Toma
Speaker of the House
of Representatives
State of Arizona

By counsel:
Linley Wilson
Majority General
Counsel
Arizona House of
Representatives
1700 W. Washington St.
Phoenix, Arizona 85007
LWilson@azleg.gov
(602) 926-5418

AMERICAN OVERSIGHT

To: 'Herlihy, Brianna'[brianna.herlihy@fox.com]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Sat 1/20/2024 3:50:41 PM (UTC-06:00)
Subject: RE: AG Bailey Net Choice Amicus Brief
2024-01-22 - Netchoice amicus draft.pdf

Hi Brianna,
Here is the slightly updated draft amicus with all the relevant states.
It is 99% complete. Going through one last read-through for typos, etc. but nothing else is subject to change.
I'll let you know if there is any updated version before publication.
A few quotes from AG Bailey depending on where you go with the article:
"In a free society, the debate between opposing viewpoints should be played out in the marketplace of ideas. Our right to free speech is the bedrock of our great nation. I'm proud to be standing in the gap to protect our right to free speech on several fronts in the war for the soul of our country." (Re: *Missouri v. Biden*, amicus briefs in both net choice cases and *NRA v. Vullo*)
"If speaking out on public issues in opposition to the social narrative means elites can cut off our ability to speak, our country has become little more than a dictatorship. That's not the America I fought to defend on the battlefields of Iraq or swore to protect as Missouri's 44th Attorney General."
"If the Supreme Court lets social media companies silence speech, it will set a devastating anti-free speech precedent at a time when the First Amendment is under widespread attack."
"This is the most consequential term for the First Amendment in Supreme Court history." (*Missouri v. Biden*, Net Choice cases, *NRA v. Vullo*)
Thanks again for covering! You're the best!
Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

From: Herlihy, Brianna <brianna.herlihy@fox.com>
Sent: Friday, January 19, 2024 9:24 AM
To: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Subject: Re: AG Bailey Net Choice Amicus Brief
Awesome! Would love to cover. Can we talk around 3pm ET? a Monday pub or can we hold for Tuesday AM?

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Date: Thursday, January 18, 2024 at 6:53 PM
To: Herlihy, Brianna <brianna.herlihy@fox.com>
Subject: AG Bailey Net Choice Amicus Brief

Hi Brianna – let's talk about this when we call tomorrow, but here's the draft free speech amicus brief Missouri is leading in the net choice cases that I mentioned.
It's 99% finished. Deadline for other states to join is tomorrow night. We have at least ten that are joining. And we're still doing tables, etc. so I will get you the final brief tomorrow.
But we plan to file on Monday, and would love for you to break the story. We can work around you.
Case has huge implications for government censorship, etc. and ties to AG Bailey's free speech case, *Missouri v. Biden,* that is also before the U.S. Supreme Court. This is going to be a huge Supreme Court term for the 1A.
Will get you a quote from the AG as well if you're interested.
Best,
Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov
This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee(s). If you are not an addressee indicated in this message (or responsible for delivery of the message to an addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of Fox Corporation, or its subsidiaries must be taken not to have been sent or endorsed by any of them. No representation is made that this email or its attachments are without defect.

AMERICAN OVERSIGHT

No. 22-277, 22-555

In the
Supreme Court of the United States

ASHLEY MOODY, Attorney General of Florida, et al.,
Petitioners,
v.
NETCHOICE, LLC, et al.,
Respondents.

NETCHOICE, LLC, et al..,
Petitioners,
v.
KEN PAXTON, Attorney General of Texas, et al.,
Respondents.

On Writs of Certiorari to the
U.S. Courts of Appeals for the Fifth and Eleventh Circuits

Brief of Missouri, Ohio, 17 other States, and the Arizona Legislature in support of Texas and Florida

DAVE YOST
Ohio Attorney General
MICHAEL HENDERSHOT
Chief Deputy Solicitor General
30 East Broad St., 17th Fl.
Columbus, Ohio 43215
(614) 644-0576

ANDREW BAILEY
Missouri Attorney General
JOSHUA M. DIVINE
Solicitor General
Counsel of Record
207 West High St.
Jefferson City, MO 65101
(573) 751-8870
Josh.Divine@ago.mo.gov

Counsel for Amici States
Additional counsel in signature block and addendum

January 22, 2024

AMERICAN OVERSIGHT

TABLE OF CONTENTS

Table of Authorities iii
Interest of *Amici* States 1
Summary of Argument 6
Argument 11

I. States have authority to prohibit mass communication platforms from censoring speech. 11

A. Requiring social media companies to distribute third-party speech without viewpoint discrimination is permissible because social media better resembles telephones than newspapers. 11

B. Social media companies cannot evade accountability simply by choosing to edit some content. 21

C. In the context of facial challenges, this Court need not consider more complex questions. 23

II. The hyperconcentration of social media reinforces State authority to regulate. 24

A. Market power 26

B. Discriminatory use of power 29

C. The Court should respect legislative fact findings of market power and censorship. 37

AMERICAN OVERSIGHT

III. State laws preventing platforms from censoring speech provide a prophylactic vanguard against government censorship. 38

Conclusion 42

AMERICAN OVERSIGHT

TABLE OF AUTHORITIES

Cases **Page(s)**

303 Creative LLC v. *Elenis*,
600 U.S. 570 (2023) 15, 20

Associated Press v. *United States*,
326 U.S. 1 (1945) 3, 36

Biden v. *Knight First Amend. Inst.*,
141 S. Ct. 1220 (2021) 5, 7, 15, 26, 27, 29

Borough of Duryea, Pa. v. *Guarnieri*,
564 U.S. 379 (2011) 4

Boy Scouts of Am. v. *Dale*,
530 U.S. 640 (2000) 12

Comcast Cable Communications, LLC v. *FCC*,
717 F.3d 982 (CADC 2013) 25

District of Columbia v. *Heller*,
554 U.S. 570 (2008) 2

Hurley v. *Irish-American Gay, Lesbian and Bisexual Group of Boston*,
515 U.S. 557 (1995) 12, 20

Mahanoy Area Sch. Dist. v. *B. L.*,
141 S. Ct. 2038 (2021) 4, 36

Malloy v. *Hogan*,
378 U.S. 1 (1964) 38

AMERICAN OVERSIGHT

Malwarebytes, Inc. v. *Enigma Software Group USA, LLC*,
141 S. Ct. 13 (2020) 19

Masterpiece Cakeshop, Ltd. v. *Colorado Civ. Rights Commn.*,
138 S. Ct. 1719 (2018) 14

Miami Herald Pub. Co. v. *Tornillo*,
418 U.S. 241 (1974) 12, 13, 17

Minnesota v. *Clover Leaf Creamery Co.*,
449 U.S. 456 (1981) 37

Missouri v. *Biden*,
83 F.4th 350 (CA5 2023) 39, 41

Missouri v. *Biden*,
2023 WL 4335270 (W.D. La., July 4, 2023) 33, 34, 39, 40

Munn v. *Illinois*,
94 U.S. 113 (1876) 37

Murthy v. *Missouri*,
144 S. Ct. 32 (2023) 26

Nat'l Broad. Co. v. *United States*,
319 U.S. 190 (1943) 25

Nat'l Inst. of Fam. & Life Advocates. v. *Becerra*,
138 S. Ct. 2361 (2018) 36

AMERICAN OVERSIGHT

NetChoice, L.L.C. v. *Paxton*,
49 F.4th 439 (CA5 2022) 5, 6, 11, 15, 16, 17, 18, 20, 21, 24, 25, 26

NetChoice, LLC v. *Moody*,
34 F.4th 1196 (CA11 2022) 21, 22

NetChoice, LLC v. *Paxton*,
142 S. Ct. 1715 (2022) 18

Obergefell v. *Hodges*,
576 U.S. 644 (2015) 32

P. Gas and Elec. Co. v. *Pub. Utilities Comm'n. of California*,
475 U.S. 1 (1986) 12

Packingham v. *North Carolina*,
582 U.S. 98 (2017) 26, 29, 32

Pleasant Grove City, Utah v. *Summum*,
555 U.S. 460 (2009) 23

Primrose v. *Western Union Telegraph Co.*,
154 U. S. 1 (1894) 11, 22

PruneYard Shopping Ctr. v. *Robins*,
447 U.S. 74 (1980) 6, 13, 14

Ramos v. *Louisiana*,
140 S. Ct. 1390 (2020) 38

AMERICAN OVERSIGHT

Rumsfeld v. *Forum for Acad. and Institutional Rights, Inc.*,
547 U.S. 47 (2006) 6, 8, 13, 14, 16, 17, 18

Shurtleff v. *City of Bos., Massachusetts*,
596 U.S. 243 (2022) 16, 23

Terminiello v. *Chicago*,
337 U.S. 1 (1949) 4

Timbs v. *Indiana*,
139 S. Ct. 682 (2019) 38

Turner Broad. Sys., Inc. v. *FCC,*
*("Tu*rner 1997"), 520 U.S. 180 (1997) 25

*Turner Broad. Sy*stem, *Inc.* v. *FCC,*
("Turner 1994"), 512 U.S. 622 (1994) ..... passim

U.S. Telecom Ass'n v. *FCC*,
855 F.3d 381 (CADC 2017) 25, 27, 28, 31

Virginia v. *Hicks*,
539 U.S. 113 (2003) 32

W. Union Tel. Co. v. *James*,
162 U.S. 650 (1895) 3, 12, 21

Walker v. *Texas Div., Sons of Confederate Veterans, Inc.*,
576 U.S. 200 (2015) 23

AMERICAN OVERSIGHT

Statutes

47 U.S.C. § 202 23

47 U.S.C. § 230 ..... 18, 19

52 U.S.C. § 30120(b) 13

Fla. Stat. § 501.2041(g) 37

Telegraph Lines Act,
ch. 772, § 2, 25 Stat. 382, 383 (1888) 12

Tex. Code § 120.002(b) 37

Other Authorities

Adam Candeub, *Bargaining for Free Speech: Common Carriage, Network Neutrality, and Section 230*,
22 Yale J. L. & Tech. 391 (2020) 40

Ahiza García-Hodges, *Big Tech Has Big Power over Online Speech. Should It Be Reined In?*,
NBC News (Jan. 21, 2021) 30

Alan Z. Rozenshtein, *Silicon Valley's Speech: Technology Giants and the Deregulatory First Amendment*,
1 J. Free Speech Law 337 (2021) 26

Apoorva Mandavilli, *The C.D.C. Concedes that Cloth Masks Do Not Protect Against the Virus as Effectively as Other Masks.*,
N.Y. Times (Jan 14, 2022) 34

AMERICAN OVERSIGHT

Ashley Kirzinger, et al., *KFF/The Washington Post Trans Survey* (Mar. 24, 2023) 31

Clare Duffy, *Facebook Revamps Controversial Content Moderation Process for VIPs*, CNN Business (Mar. 3, 2023) 36

Craig Silverman, *Black Lives Matter Activists Say They're Being Silenced by Facebook*, Buzzfeed (June 19, 2020) 34

Cristiano Lima, *New Report on Covid-19 Origin Puts Social Media in GOP's Crosshairs*, Washington Post (Feb. 27, 2023) 34

Eugene Volokh, *Treating Social Media Platforms Like Common Carriers?*, 1 J. Free Speech L. 377 (2021)..... 20

Gabriel Nicholas, *Shadowbanning Is Big Tech's Big Problem*, The Atlantic (April 28, 2022) ..... .35

Genevieve Lakier, *The Non-First Amendment Law of Freedom of Speech*, 134 Harv. L. Rev. 2299 (2021) 4, 12, 13, 21

Geoffrey Fowler, *Shadowbanning Is Real: Here's How You End up Muted by Social Media*, Washington Post (Dec. 27, 2022)..... 35

How We Choose the Great Read, N.Y. Times (Apr. 4, 2022) 16

AMERICAN OVERSIGHT

Jefferson's First Inaugural Address (March 4, 1801) 36

Jud Campbell, *Natural Rights and the First Amendment*, 127 Yale L.J. 246 (2017) 2

Katie Benner, et al., *Hunter Biden Paid Tax Bill, but Broad Federal Investigation Continues*, N.Y. Times (Mar. 16, 2022) 31

Kate Cox, *Twitter, Facebook Face Blowback after Stopping Circulation of NY Post Story*, Ars Technica (Oct. 14, 2020) 30

Media Usage in an Internet Minute as of April 2022, Statista (2023) 16

Morgan Chalfant, *Cruz Presses Zuckerberg on Alleged Censorship of Conservative Speech* (Apr. 10, 2018) 33

Prasad Krishnamurthy & Erwin Chemerinsky, *How Congress Can Prevent Big Tech from Becoming the Speech Police*, The Hill (Feb. 18, 2021) 29

Ravi Somaiya, *How Facebook Is Changing the Way Its Users Consume Journalism*, N.Y. Times (Oct. 26, 2014) 17

Scott Rosenberg, *Big Tech's Free Speech Showdown*, Axios (Jan. 10, 2021) 28

AMERICAN OVERSIGHT

Terms of Service,
Facebook (last updated July 26, 2022)..... 19

The Federalist No. 51,
(Clinton Rossiter ed., Signet Classic 2003)
(1788).....2

YouTube Suspends Rand Paul after Misleading Video on Masks,
PBS News Hour (Aug. 11, 2021)..... 34

AMERICAN OVERSIGHT

INTEREST OF *AMICI* STATES

The States of Missouri, Ohio, Alaska, Alabama, Arkansas, Iowa, Kentucky, Louisiana, Mississippi, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, and Virginia, and the Arizona Legislature ("the States"), agree with many points in the amicus brief of New York, *et al.*, which focuses on social media problems *other* than censorship. The States here submit this amicus brief to focus directly on the censorship question.

The States do so for two reasons. First, it is the constitutional duty of the States to protect their citizens' inherent rights, including the right to free speech. Just as States pass criminal and civil laws to protect citizens from private abridgment of rights of life and property, States have a long history of regulating to protect citizens from abridgment of their free speech rights by dominant communication platforms. Second, the States have a vital interest in hearing the speech of their citizens, especially political speech. That is necessary for States to be democratically responsive. NetChoice's position threatens these interests because it seeks to upend the longstanding authority of States to prohibit mass communication networks from engaging in censorship and viewpoint discrimination.

1. The Founders were clear that the purpose of government is to secure liberty. The Declaration of Independence recognizes that natural rights, including "Life" and "Liberty," preexist government, and that "Governments are instituted among Men" for

AMERICAN OVERSIGHT

one principal purpose: "to secure these rights." Declaration of Independence ¶ 2.

The Founders thus recognized that governments are created to protect rights from *private* abridgment—the only abridgment that can occur before government is formed. Society must of course always resist government abuse of power (which occurs too often), but government is created in the first instance to protect against private abuse. As James Madison put it, "If men were angels, no government would be necessary." The Federalist No. 51, at 319 (Clinton Rossiter ed., Signet Classic 2003) (1788). Government must be obliged "to control itself"—through separation of powers—but it is equally true that society "must first enable the government to control the governed." *Ibid.*

One right States "are instituted among Men" to "secure" is the freedom of speech. As Madison said when proposing the draft of the First Amendment, freedom of speech is a "natural right" predating government itself. Jud Campbell, *Natural Rights and the First Amendment*, 127 Yale L.J. 246, 264 (2017) (citing Madison's notes reflecting his speech in Congress). This Court has held the same, explaining that "the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right." *District of Columbia* v. *Heller*, 554 U.S. 570, 592 (2008) (emphasis in original).

AMERICAN OVERSIGHT

So NetChoice is flat wrong to contend (at 25 in *Paxton*)[1] that *only* the government is capable of censorship. Because freedom of speech is a freedom States were created to secure, it is the duty of States to secure that freedom from private abridgment, including abridgment by extraordinarily powerful communication platforms.

The States can pass criminal laws against theft and murder—thus protecting against private interference with rights of property or life. And if dominant firearm dealers refuse to sell on account of race, States can regulate to secure for their citizens the right to bear arms. So too, if dominant communication platforms censor based on viewpoint, States can pass laws to stop that censorship—as they have done for well over 100 years.

A State of course cannot, in the name of protecting free speech, abridge the freedom of speech. But this Court has held that the First Amendment does not prohibit States from protecting the marketplace of ideas when that marketplace is threatened by private actors. "It would be strange indeed," this Court said, "if the grave concern for freedom of the press which prompted adoption of the First Amendment should be read as a command that the government was without power to protect that freedom." *Associated Press* v. *United States*, 326 U.S. 1, 20 (1945). As with freedom of the press, so too with freedom of speech. *See W. Union Tel. Co.* v. *James*, 162 U.S. 650, 651, 660 (1895)

---

[1] This amicus references briefs in the two consolidated cases as *Paxton* briefs (for No. 22-555) and *Moody* briefs (for No. 22-277).

AMERICAN OVERSIGHT

(upholding law prohibiting telegraph companies from engaging in viewpoint discrimination); *see also* Genevieve Lakier, *The Non-First Amendment Law of Freedom of Speech*, 134 Harv. L. Rev. 2299, 2316-19 (2021) (listing statutory examples protecting free speech).

2. States also have an interest in preventing censorship because censorship deprives States of the information they need to be responsive to the people. "The vitality of civil and political institutions in our society depends on free discussion." *Terminiello* v. *Chicago*, 337 U.S. 1, 4 (1949). "[I]t it is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected." *Ibid.*

Many landmark legal changes arose from government responding to the speech of everyday citizens. That includes "great matters of state," such as Magna Carta, women's suffrage, the Declaration of Independence, and antislavery legislation. *Borough of Duryea, Pa.* v. *Guarnieri*, 564 U.S. 379, 395–97 (2011). Those reforms illustrate that "representative democracy" works best when the "free exchange" of ideas "facilitates an informed public opinion, which, when transmitted to lawmakers, helps produce laws that reflect the People's will." *Mahanoy Area Sch. Dist.* v. *B. L.*, 141 S. Ct. 2038, 2046 (2021). Today, one of the most common ways individuals speak to their governments is through public posts on social media.

Top-down censorship by dominant communication platforms thus threatens the ability of States to operate. Censorship deprives local government of

AMERICAN OVERSIGHT

the information needed to "remain[] responsive to the will of the people." *Terminiello*, 337 U.S., at 4.

* * *

As Judge Oldham's opinion below recognized, States and Congress have enacted regulations like the ones enacted by Texas and Florida for well over one hundred years. *NetChoice, L.L.C.* v. *Paxton*, 49 F.4th 439, 470–71 (CA5 2022). While the earlier laws applied to telegraphs and telephones, it is no different when the companies carrying other people's speech are digital rather than analog. The States thus have a paramount interest in urging this Court to affirm that longstanding, historic authority of States to protect freedom of speech and enable representative government by prohibiting dominant communication networks from censoring.

That interest is especially weighty here in light of the unprecedented control these platforms have over speech central to political and public discourse. "[I]n the modern economy, the Platforms provide the most effective way to disseminate news, commentary, and other information." *Id.*, at 476. And never before has there been so much "concentrated control of so much speech in the hands of a few private parties." *Biden* v. *Knight First Amend. Inst.*, 141 S. Ct. 1220, 1221 (2021) (Thomas, J., concurring). Today the ability "to cut off speech lies most powerfully in the hands of private digital platforms." *Id.*, at 1227. That explains why the Federal Government has inserted itself through pressure into those content-moderation policies and practices—as shown in *Murthy* v. *Missouri*. The concentration of power in a handful of platforms can facilitate government censorship.

AMERICAN OVERSIGHT

That power creates other real concerns. A Facebook executive admitted in a 2019 internal memo—later leaked—that the company's power over speech is so immense that Facebook could unilaterally "pull any lever" to alter the outcome of a presidential election. *Andrew Bosworth Memo*, N.Y. Times (Jan. 7, 2020).[2] The States have authority to protect citizens from abuse of that immense power.

SUMMARY OF ARGUMENT

I.A. The easiest path to resolve this case is to determine whether social media is more like telephones or more like newspapers. The law has consistently permitted requiring telephones and the like to distribute third-party speech and has generally rejected requiring the same of companies like newspapers.

This Court has already unanimously rejected NetChoice's maximalist argument that companies have a categorical right not to "disseminate … speech generated by others." NetChoice *Paxton* Br., at 13; *see PruneYard Shopping Ctr.* v. *Robins*, 447 U.S. 74, 85 (1980). Instead, this Court has considered whether the regulated company "possess[es] the power to obstruct readers' access to" information, *Turner Broad. System, Inc.* v. *FCC* ("*Turner 1994*"), 512 U.S. 622, 656 (1994), and whether requiring a company to distribute third-party speech would

[2] https://perma.cc/V8NP-6K4A; https://web.archive.org/web/20200107185034/https://www.nytimes.com/2020/01/07/technology/facebook-andrew-bosworth-memo.html.

AMERICAN OVERSIGHT

materially harm the company's ability to get out its "own message," *Rumsfeld* v. *Forum for Acad. and Institutional Rights, Inc.*, 547 U.S. 47, 63 (2006).

On these critical questions, newspapers and telephones are different. Local newspapers cannot restrict access to information. Nationwide phone companies can. For newspapers, parades, and the like, space constraints and limited number of content creators means compelling a company to carry third-party speech materially harms the company's ability to express its "own message." *Ibid.* The space constraints mean material loss of the company's opportunity to speak, and the nature of the medium means listeners become confused about whether speech belongs to third parties or the company. *Id.,* at 65. But for mass communication networks like telephones, those risks are not substantial. So courts have long permitted requiring companies like telephones to distribute third-party speech free from viewpoint discrimination.

Social media companies are much more like telephone networks than newspapers. Unlike newspapers, which "do[ ] not possess the power to obstruct readers' access to" information, *Turner 1994*, 512 U.S., at 656, social media companies do—and they exercise that power. Like telephone companies, and "unlike newspapers," social media companies "hold themselves out as organizations that focus on distributing the speech of the broader public." *Knight First Amend. Inst.*, 141 S. Ct., at 1224 (Thomas, J., concurring). Unlike the space constraints for newspapers, the space on social media is nearly boundless. And like telephones, nearly all

AMERICAN OVERSIGHT

speech on social media platforms is created by third parties.

For all these reasons, NetChoice cannot meet its burden of establishing that the regulations at issue here would materially limit a social media company's speech or cause ordinary members of the public to confuse speech on Facebook, YouTube, or X (formerly Twitter) as speech of the company itself, rather than third parties using those platforms. *Rumsfeld*, 547 U.S., at 64.

I.B. NetChoice barely addresses the analogy to telephones and telegraphs, stating only that regulating those companies is permissible because they transmit speech "on an 'unedited basis' from point A to point B." *Moody* Br., at 49. That argument fails for many reasons.

First, it is demonstrably false historically. As the Fifth Circuit explained, telegraph companies engaged in the same kind of viewpoint discrimination NetChoice's members engage in today.

Second, the argument would make regulation pointless. If the only companies that can be required to carry content without discrimination are those already doing so, regulation does nothing at all. Relatedly, NetChoice's argument begs the question. If this Court permits the regulations to go into effect, social media platforms likewise will transmit speech "on an 'unedited basis' from point A to point B."

Third, NetChoice's argument creates a recipe for censorship by telephones and government. Under their logic, as soon as an actor begins "editing" content, that transforms the content into the actor's own speech. Telephones can thus evade the 100-plus

AMERICAN OVERSIGHT

years of regulation simply by starting to censor. So too, government can simply "edit" people's speech, and turn everything into government speech.

I.C. Because NetChoice has brought facial challenges against these laws, this Court need not answer the thornier questions about what to do when platforms mix their own speech with that of third parties (such as when they append "fact checks" to third-party speech).

II.A. The extraordinary market power social media platforms possess reinforces the ability of States to regulate in this area. At common law, companies with substantial market power were required to serve without discrimination. This Court has long permitted States and Congress to apply the same concept to large communication platforms.

No doubt, these platforms possess extraordinary power. This industry has monumental barriers to entry. What makes these companies valuable is their network sizes, such as Facebook's 3-billion person network. That makes it very difficult to compete, and the one time an upstart (called Parler) finally gained momentum, Apple, Google, and Amazon forcibly removed it from the internet.

These companies also aggressively engage in censorship that impoverishes free exchange of ideas. Many examples are notorious, such as the systematic censorship (at the instigation of the Federal Government) of the Hunter Biden laptop story and of the theory that COVID originated in a lab in China—now the predominant theory of the Energy Department and the FBI. Platforms censor viewpoints on the most hotly contested topics of the

AMERICAN OVERSIGHT

day, like transgender issues. And they suppress "misinformation" later proven accurate. While most censored speech is conservative, there are complaints about censorship of left-wing speech. All this censorship harms not only the marketplace of ideas, but also the ability of the States to respond to the concerns of their citizens.

III. Dominant digital platforms are not the only problem. Government systematically pressures platforms to censor. This Court granted certiorari to *Murthy* v. *Missouri*, No. 23-411, where a district court made extensive fact findings that the White House, the FBI, an agency within the Department of Homeland Security, and other federal actors systematically pressured social media companies to censor even more speech.

In its brief in *Murthy*, the Federal Government does not dispute the accuracy of these extensive, alarming findings. It does not dispute, for example, that it successfully induced removal of millions of posts—even posts that do not violate policies of social media companies—or that this removal affected everyone on social media. Instead, it argues it successfully induced these things through legal "persuasion," not illegal "coercion," and that the plaintiffs lack standing to contend otherwise. U.S. Br., No. 23-411, at 14, 25, 34.

That likely reveals why the United States backs NetChoice here, even though its position threatens the United States' own laws. The Federal Government knows it will be much more difficult for federal officials to induce social media companies to suppress speech if state law prohibits it. So the

AMERICAN OVERSIGHT

Federal Government seeks to eliminate those state laws.

That shows that the Texas and Florida laws, far from infringing the First Amendment, in fact shield social media companies from government pressure and deprive *government* of the opportunity to control expression.

ARGUMENT

I. States have authority to prohibit mass communication platforms from censoring speech.

A. Requiring social media companies to distribute third-party speech without viewpoint discrimination is permissible because social media better resembles telephones than newspapers.

1. NetChoice does not dispute that telephones and telegraphs can be compelled, consistent with the First Amendment, to distribute third-party speech. They can be compelled to behave as common carriers even though this Court has declared that "they are *not* common carriers," *Primrose* v. *Western Union Telegraph Co.*, 154 U. S. 1, 14 (1894) (emphasis added), and even though these companies have a history of exercising the very "editorial discretion" NetChoice's members seek to exercise today, *Paxton*, 49 F.4th, at 470.

In fact, it is only because telegraph companies behaved the way social media companies do today that nondiscrimination regulations were imposed. In the 1800s, "Western Union, the largest telegraph

AMERICAN OVERSIGHT

company, … discriminated against certain political speech," confirming the fear "'that the private entities that controlled this amazing new technology would use that power to manipulate the flow of information to the public when doing so served their economic or political self-interest.'" *Ibid.* (quoting Genevieve Lakier, The Non-First Amendment Law of Freedom of Speech, 134 Harv. L. Rev. 2299, 2321 (2021)). "In response, States enacted common carrier laws to limit discrimination in the transmission of telegraph messages." *Ibid.* Congress did the same. *Ibid.* (citing Telegraph Lines Act, ch. 772, § 2, 25 Stat. 382, 383 (1888)); *see also W. Union Tel. Co.* v. *James*, 162 U.S. 650, 651 (1895) (rejecting a challenge to an Iowa law requiring telegraph companies to deliver messages with "impartiality and good faith").

On the other hand, this Court has been clear that companies generally cannot be compelled to distribute third-party speech in their own "newspapers," *Miami Herald Pub. Co.* v. *Tornillo*, 418 U.S. 241, 258 (1974), or in their own "newsletters," which are "no different from a small newspaper," *P. Gas and Elec. Co.* v. *Pub. Utilities Comm'n. of California*, 475 U.S. 1, 8 (1986). The Court has applied similar analysis to parade organizers and expressive associations. *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 574–75 (1995); *Boy Scouts of Am.* v. *Dale*, 530 U.S. 640, 655 (2000).

In two seminal cases, this Court explained what makes newspapers and the like different from organizations that can be required to distribute third-party speech. First, a newspaper, unlike a cable

AMERICAN OVERSIGHT

company,[3] "does not possess the power to obstruct readers' access to" other information. *Turner Broad. System, Inc.* v. *FCC* ("*Turner 1994*"), 512 U.S. 622, 656 (1994). Second, newspapers, newsletters, and the like generally cannot be required to distribute third-party content because that requirement "sufficiently interferes with any message of [the company]."[4] *Rumsfeld* v. *Forum for Acad. and Institutional Rights, Inc.*, 547 U.S. 47, 64 (2006). Telephones and shopping centers are different because no space constraints materially impede the company from getting out its "own message," and "there [i]s little likelihood that the views of those [third parties] engaging in the expressive activities would be identified with the" company. *See id.,* at 65 (citing *PruneYard Shopping Ctr.* v. *Robins*, 447 U.S. 74, 88 (1980)).

In other words, the First Amendment tolerates compelled hosting to preserve access to information when

---

[3] Although cable companies differ from newspapers in important ways, they resemble (or at least did in the 1990s) newspapers in others. This Court stressed, for example, that cable companies in the 1990s had meaningful space constraints. *Turner 1994*, 512 U.S., at 637.

[4] Even newspapers "are prohibited from charging more for political advertising than they charge for commercial advertising" or "receiving money or any other thing of value in exchange for their editorial endorsement of a political candidate or an idea." Lakier, *supra*, at 2330 (citing 52 U.S.C. § 30120(b) and state laws).

AMERICAN OVERSIGHT

(1) the company has power to obstruct access to information, *Turner 1994*, 512 U.S., at 656; or

(2) there is no "danger … that the statute would 'dampen the vigor and limit the variety of public debate,'" *PruneYard*, 447 U.S., at 88 (quoting *Miami Herald*, 418 U.S., at 257) (brackets omitted), because the act of hosting "lack[s] the expressive quality of a parade, a newsletter, or the editorial page of a newspaper," *Rumsfeld*, 547 U.S., at 64.

That makes sense because a law requiring a company to host the speech of third parties is more akin to a property regulation than a speech regulation: it regulates the ability of a company like Facebook to exclude people from its network. Because any effect on the company's own speech is indirect, must-carry regulations are more likely than direct regulations to survive review.

NetChoice is thus wrong to assert that companies have a categorical right not to "disseminate … speech generated by others." *Paxton* Br., at 13. This Court squarely considered and (unanimously) rejected that argument. *PruneYard*, 447 U.S., at 85 (rejecting the argument "that a private property owner has a First Amendment right not to be forced by the State to use his property as a forum for the speech of others"). Instead, what matters are the contextual questions whether NetChoice's members can obstruct access to other information and whether hosting third-party speech would materially impede the ability of NetChoice's members to get out their own message.

That means there is a much simpler way for this Court to assess the two NetChoice cases: evaluate

AMERICAN OVERSIGHT

whether companies like Facebook are more like newspapers, parade organizers, cake bakers,[5] and website designers,[6] or more like telephones, telegraphs, schools, and shopping malls.

2. Social media companies are much more like telephones, telegraphs, schools, and shopping centers than newspapers and newsletters.

Consider first "the power [of social media companies] to obstruct readers' access to … publications." *Turner 1994*, 512 U.S., at 656. As explained more fully in Part II.B, perhaps the most infamous censorship decision by social media companies was blocking access to a newspaper report containing unflattering information about the Democratic candidate for President. "A daily newspaper, no matter how secure its local monopoly, does not possess th[is] power." *Ibid.* Social media companies do, and they exercise it. "The potential for abuse of this private power over a central avenue of communication cannot be overlooked." *Id.*, at 657.

Consider also the number of people contributing content to a newspaper versus a telephone network or social media network. Unlike a newspaper, which might have at most a few hundred people contributing content, "3 billion people" contribute content on Facebook. *Knight First Amend. Inst.*, 141 S. Ct., at 1224 (2021) (Thomas, J., concurring). "[U]nlike

---

[5] *Masterpiece Cakeshop, Ltd.* v. *Colorado Civ. Rights Commn.*, 138 S. Ct. 1719 (2018).

[6] *303 Creative LLC* v. *Elenis*, 600 U.S. 570, 592 (2023).

AMERICAN OVERSIGHT

newspapers, digital platforms hold themselves out as organizations that focus on distributing the speech of the broader public," and so it is the public who creates nearly all the content on the platform. *Ibid.* Moreover, while newspapers carefully curate third-party content that they accept (such as letters to the editor), social media companies, like telephones and telegraphs, generally "hold [themselves] out to serve any member of the public without individualized bargaining." *Paxton*, 49 F.4th, at 470; *see also Shurtleff* v. *City of Bos., Massachusetts*, 596 U.S. 243, 256–57 (2022) (holding that flag raisings were not government speech because "Boston told the public that it sought 'to accommodate all applicants'").

Then there is the lack of space constraints. *Rumsfeld*, 547 U.S., at 64. While nothing in the physical universe is truly infinite, social media companies come about as close to infinity as possible. They operate with nothing like the space constraints of a newspaper. "The New York Times publishes around 150 original pieces of journalism a day, on average." *How We Choose the Great Read*, N.Y. Times (Apr. 4, 2022).[7] In contrast, the vast majority of public speech flows through social media, with 1.7 million posts made to Facebook and 500 hours of video are uploaded to YouTube every *minute*. *Media Usage in an Internet Minute as of April 2022*, Statista

[7] https://perma.cc/578R-L88S; https://web.archive.org/web/20220421090948/https://www.nytimes.com/2022/04/21/insider/how-we-choose-the-great-read.html.

AMERICAN OVERSIGHT

(2023).[8] That is 2.4 billion Facebook posts and 720,000 hours of video uploaded to YouTube every day. Unlike a newspaper, where forced hosting of third-party content meaningfully decreases space for the newspaper's own message, *Miami Herald*, 418 U.S., at 257, social media companies have plenty of space to express their own message. For social media, "accommodation does not sufficiently interfere with any message of the [social media company]." *Rumsfeld*, 547 U.S., at 64.

And unlike newspapers or parade organizers (which carefully curate all content toward a specific message or messages), nearly all content on social media companies is posted unedited by the companies. While these platforms "use algorithms to screen out" far less than even one percent of content, "virtually everything else is just posted to the Platform with *zero* editorial control or judgment." *Paxton*, 49 F.4th, at 459 (emphasis in original).

In fact, contrary to NetChoice's assertions now that its members exercise "editorial control" over everything, these companies have expressly stated, "We try to explicitly view ourselves as *not editors* .... We don't want to have editorial judgment over the content that's in your feed." *Id.*, at 460 (emphasis added) (quoting Ravi Somaiya, *How Facebook Is Changing the Way Its Users Consume Journalism*, N.Y. Times (Oct. 26, 2014)[9]). NetChoice's current

---

[8] https://perma.cc/C6XH-DBJ2 (last visited Jan. 9, 2024).

[9] https://perma.cc/YTZ9-6VVL; https://web.archive.org/web/20141027091945/https://www.nytim

AMERICAN OVERSIGHT

presentation before this Court is likewise inconsistent with the assertions of its members in other lawsuits that they merely distribute content created by others and are therefore entitled to immunity under § 230 of the Communications Decency Act. *E.g.*, Br. of Twitter, *Gonzalez* v. *Google*, No. 21-1333, at 7 (Jan. 2023) (stating that Twitter merely "disseminat[es] third-party content"); *see also NetChoice, LLC* v. *Paxton*, 142 S. Ct. 1715, 1717 n.2 (2022) (Alito, J., dissenting) (noting the argument that NetChoice's "position in this litigation is in conflict or tension with the positions of its members in cases regarding the interpretation of § 230").

Finally, it is Congress's judgment that these companies operate more like telephones than newspapers, which is why Congress shielded them from defamation liability. *See* 47 U.S.C. § 230.

For all these reasons, social media companies better resemble telephone companies than newspapers. They have power to obstruct customers from receiving speech, they are principally in the business of distributing the content of others from point A to point B, they do not deal with meaningful space constraints, and the vast majority of the speech they distribute is unedited.

NetChoice thus cannot prove that distributing third-party speech without viewpoint discrimination will materially impede social media companies from speaking for themselves or that members of the public

---

es.com/2014/10/27/business/media/how-facebook-is-changing-the-way-its-users-consume-journalism.html.

AMERICAN OVERSIGHT

will mistake third-party speech on Facebook, YouTube, or Twitter as speech *by* the platforms. *Rumsfeld*, 547 U.S., at 64. Just as "high school students can appreciate the difference between speech a school sponsors and speech the school permits because legally required to do so," *ibid.*, so too everyday Americans can distinguish between speech *on* Facebook and Facebook's own speech[10]—especially because these companies expressly disclaim third-party content as their own. *See, e.g.*, *Terms of Service*, Facebook (last updated July 26, 2022), https://www.facebook.com/legal/terms ("We do not control or direct what people and others do or say, and we are not responsible for their actions or conduct (whether online or offline) or any content they share (including offensive, inappropriate, obscene, unlawful, and other objectionable content).").

All these facts sharply distinguish social media companies not only from newspapers, but also from cake decorators, website designers, and parade

---

[10] Section 230 lawsuits ask a different question. There is usually no debate about whether the speech is third-party speech. The question instead is whether the platform helped "develop[ ]" the third-party's speech "in part," thus removing immunity. 47 U.S.C. § 230(f)(3); *see also Malwarebytes, Inc.* v. *Enigma Software Group USA, LLC*, 141 S. Ct. 13, 16 (2020) (Thomas, J., concurring). There is an active debate about whether things like algorithms help "develop[ ]" third-party speech "in part." A conclusion by this Court that individuals are unlikely to mistake third-party speech on social media companies for the speech of the companies themselves would have no effect on whether those companies could invoke § 230 as a shield with respect to the same content.

AMERICAN OVERSIGHT

organizers. While there is little to no risk that everyday observers will mistake third-party speech on Facebook for Facebook's "own message," requiring a cake artist or independent website designer to speak a third party's speech does "deny speakers the right 'to choose the content of their own messages'" because the risk of attribution is high. *303 Creative LLC*, 600 U.S., at 592 (quoting *Hurley*, 515 U.S., at 573) (brackets omitted). Indeed, the "very purpose" of Colorado's requirement to force companies to design websites supporting certain events was "the coercive elimination of dissenting ideas about marriage." *Id.*, at 588 (brackets and internal quotation marks omitted). Forcing a cake baker or newspaper to state third-party speech unlawfully compels speech. Requiring companies in the business of transmitting other peoples' speech billions of times a day to do so without viewpoint discrimination does not.

3. It makes no difference that posts on social media typically are distributed to many people rather than to one. Organizations subject to must-carry regulations are regularly used to broadcast speech to many recipients. "[S]upposedly one-to-one media have long been used to distribute material to the public at large." Eugene Volokh, *Treating Social Media Platforms Like Common Carriers?*, 1 J. Free Speech L. 377, 387 (2021). One speaker can use the U.S. Postal Service to broadcast a message to millions. *Ibid.* And hundreds or even thousands of people can join a single conference call or group text message thread.

AMERICAN OVERSIGHT

B. Social media companies cannot evade accountability simply by choosing to edit some content.

The Fifth Circuit opinion extensively discussed the historical regulation of telephones and telegraphs, yet NetChoice's brief in *Paxton* makes no attempt to address that analogy. Its brief in *Moody* is hardly better, principally arguing (at 49) that telegraph and telephone companies are different because they merely transmit speech "on an 'unedited basis' from point A to point B." The United States amicus brief repeats this argument, asserting (at 11) that "unlike [telephones and telegraphs], the platforms are not merely conduits transmitting speech from one person to another" but instead choose to edit or remove content.

Although the Eleventh Circuit adopted this argument, *NetChoice, LLC* v. *Moody*, 34 F.4th 1196, 1222 (CA11 2022), the argument overlooks basic history, is circular and begs the question, would enable phone companies to evade regulation, and would create a roadmap for government censorship.

As to history, telephone and telegraph companies transmit speech on an "unedited basis" only because they are compelled to do so by law. Those companies historically did the same thing NetChoice's members currently do until the States, Congress, and this Court stepped in. *See* Lakier, *supra*, at 2322; *Paxton*, 49 F.4th, at 470; *W. Union Tel. Co.*, 162 U.S., at 651.

History thus favors the States, not NetChoice. The Eleventh Circuit concluded social media companies could censor content because they have "historically exercised" power to refuse transmission

AMERICAN OVERSIGHT

of disfavored ideas. *Moody*, 34 F.4th, at 1222. But telegraph companies have a much longer history of censorship. Social media is less than two decades old. Congress did not impose must-carry requirements on telegraphs until 1888, 50 years after their invention. *Paxton*, 49 F.4th, at 471. Yet it is well recognized today that those must-carry regulations were constitutional—even though this Court declared that telegraph companies are "*not* common carriers." *Primrose*, 154 U. S., at 14 (emphasis added). History thus provides no basis for dismissing the striking similarities between social media companies and telegraph and telephones by dubbing social-media censorship "editorial judgment."

The attempt to avoid the telephone analogy is also circular and would wipe out traditional regulations. The Eleventh Circuit concluded Florida could not require social media companies to distribute content without viewpoint discrimination because the companies already "exercise editorial judgment." *Moody*, 34 F.4th, at 1221. In other words, the State can compel a company to refrain from censoring only if the company is already refraining. Under that rule, must-carry regulations are pointless. Telephones, telegraphs, and parcel delivery companies can become immune under the First Amendment from any must-carry regulation as soon as they chose to engage in "editorial judgment" to cut off calls and not deliver messages and products that express ideas they dislike.

Or if those traditional regulations are valid, then the Eleventh Circuit's analysis is self-refuting: the regulations here would become valid as soon as a company complies. NetChoice asserts that imposing

AMERICAN OVERSIGHT

must-carry regulations on telephones is fine because telephones transmit speech "on an 'unedited basis,'" but the same will be true of NetChoice's members if they comply with these statutes.

The argument is also a roadmap for government censorship. If NetChoice and the Eleventh Circuit are correct that the act of "discriminat[ing] among messages" converts third-party speech into the platform's first-party speech, *Moody*, 34 F.4th, at 1221, then the Federal Government could freely censor speech on its property because the censorial act would convert the speech into government speech, which "is not restricted by the Free Speech Clause," *Pleasant Grove City, Utah* v. *Summum*, 555 U.S. 460, 469 (2009); *see also Walker* v. *Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 213 (2015). Much like this Court should "prevent the government-speech doctrine from being used as a cover for censorship," *Shurtleff*, 596 U.S., at 263 (Alito, J., concurring), it should prevent the First Amendment from blocking States' efforts to stop private censorship. Like the government, social media companies may not hide behind the First Amendment when they deploy a "come-one-come-all attitude" with exceptions for select disfavored speakers. *Id.*, at 257 (majority op.).

C. In the context of facial challenges, this Court need not consider more complex questions.

Because NetChoice has asserted facial challenges, this Court need not wade into more difficult questions, such as whether a social media company can be

AMERICAN OVERSIGHT

prohibited from attaching a disclaimer or a fact check to third-party speech.

It is far from obvious how this Court's precedents would apply. On the one hand, a platform that appends a note to third-party speech undoubtedly engages in its own speech. On the other hand, communication networks often are required to serve all comers without "undue or unreasonable preference or advantage to any particular person" or "class of persons." 47 U.S.C. § 202. If a phone company appended a 30-second ad supporting one political candidate to every call originating from the campaign office of that candidate's opponent, the phone company would certainly be engaging in speech, but it would also be giving "preference or advantage" to one customer over another.

Those more difficult questions should not be resolved in the context of a facial challenge.

II. The hyperconcentration of social media reinforces State authority to regulate.

Both the common law and American courts have long recognized that protecting the marketplace of ideas involves more than keeping government from abridging speech; it sometimes means regulating dominant private actors to ensure they cannot abridge speech either.

At common law, it was well recognized that companies with substantial market power could be compelled not to discriminate. As Matthew Hale, the well-known English barrister and scholar on the history of the common law, put it, "if a wharf owner operated the 'only wharf licensed by the queen' or if

AMERICAN OVERSIGHT

'there was no other wharf in that port,' then the wharf was 'affected with a public interest,' and the owner acquired a duty to serve without discrimination." *Paxton*, 49 F.4th, at 472 (quoting Matthew Hale, *De Portibus Maris*, *in* A COLLECTION OF TRACTS RELATIVE TO THE LAW OF ENGLAND 77–78 (Francis Hargrave ed., 1787)) (brackets omitted).

American courts have long applied this principle to communications technology, assessing whether a "communications firm … play[s] a central economic and social role in society." *Paxton*, 49 F.4th, at 471. As this Court put it, because "values central to the First Amendment" include "assuring that the public has access to a multiplicity of information sources," government can take "steps to ensure that private interests not restrict, through physical control of a critical pathway of communication, the free flow of information and ideas." *E.g.*, *Turner 1994*, 512 U.S., at 657, 663; *accord U.S. Telecom Ass'n* v. *FCC*, 855 F.3d 381, 434–35 (CADC 2017) (Kavanaugh, J., dissenting from rehearing en banc) ("If the Internet service providers have market power, then the Government may impose open-access or similar carriage obligations.").

This Court has thus held that radio's "unique characteristic[s]" permit the government to restrict "specified network practices" without abridging freedom of speech. *Nat'l Broad. Co.* v. *United States*, 319 U.S. 190, 226–27 (1943). And this Court approved government regulations that prohibited cable companies from silencing "the voice of" some "speakers with a mere flick of the switch." *Turner 1994*, 512 U.S., at 656 (1994); *see also Turner Broad.*

AMERICAN OVERSIGHT

Sys., Inc. v. *FCC ("Turner 1997")*, 520 U.S. 180, 225 (1997).

Applied to social media companies, these cases mean, at the least, that regulations are justified when "the service provider possesses 'bottleneck monopoly power' in the relevant geographic market" and can use it to "diminish[] the diversity and amount of content available." *U.S. Telecom Ass'n*, 855 F.3d, at 431, 433 n.12 (Kavanaugh, J., dissenting from denial of rehearing en banc) (quoting *Turner 1994*, 512 U.S., at 661); *see also Comcast Cable Communications, LLC* v. *FCC*, 717 F.3d 982, 993 (CADC 2013) (Kavanaugh, J., concurring). "[I]t stands to reason that if Congress may demand that telephone companies operate as common carriers, it can ask the same of" other communication companies, including social media companies. *Turner 1994*, 512 U.S., at 684 (opinion of O'Connor, J.).

The core of the Florida and Texas laws comfortably fits that rubric. The laws address companies that possess extraordinary market power and use it to reduce diversity of ideas.

A. Market power

While these companies were much smaller and less entrenched even six or eight years ago, the extraordinary scale and scope of large social media platforms today makes it impossible to deny that they "play[] a central economic and social role in society." *Paxton*, 49 F.4th, at 471. These platforms are "the modern public square," *Packingham* v. *North Carolina*, 582 U.S. 98, 107 (2017), and "serve as the primary source of news about important public issues

AMERICAN OVERSIGHT

for many Americans," *Murthy* v. *Missouri*, 144 S. Ct. 32, 32 (2023) (Alito, J., dissenting).

Consider their network effects. A fax machine is valuable only to the extent others use fax machines. The most valuable thing about Facebook is that "3 billion people use it." *Knight First Amendment Inst.*, 141 S. Ct., at 1224 (Thomas, J., concurring). While network size makes Facebook an extraordinary marketplace for ideas, network size also means these dominant platforms are the only way most speakers can avoid speaking into a void, *see, e.g.*, Alan Z. Rozenshtein, *Silicon Valley's Speech: Technology Giants and the Deregulatory First Amendment*, 1 J. Free Speech Law 337, 357 (2021). Other options for speech are not comparable. Switching from Facebook to "competitor" upstart social media companies is not like switching from AT&T to Verizon. It is like switching from flying to walking.

Network effects also mean enormous barriers to new entry—as evidenced by these companies' sky-high profit margins.[11] In a competitive market, "astronomical profit margins … would induce new entrants into the market. That these companies have no comparable competitors highlights that the industries may have substantial barriers to entry." *Knight First Amendment Inst.*, 141 S. Ct., at 1225 (Thomas, J., concurring).

---

[11] Google obtained $76 billion in profits (revenue minus expenses) in 2021. Alphabet, Inc., *Form 10-K* (Feb. 2, 2023), https://perma.cc/M4A4-DC8L.

AMERICAN OVERSIGHT

In fact, three years ago, the last time a newer social media company gained serious traction, other platforms banded together to kill it. In January 2021, Parler, which branded itself as a free-speech platform, was the most downloaded app. Then Google (YouTube's parent company) and Apple "removed" "the app for the conservative-focused Twitter competitor Parler … from their app stores." Volokh, *supra*, at 397–98 (citations omitted). That made Parler virtually inaccessible on phones for anybody who had not already downloaded the app. Then Parler's "hosting company, Amazon Web Services" "blocked" it from the Amazon servers Parler was renting, taking Parler entirely offline, even though "Parler was merely refusing to forbid certain speech, much of which is constitutionally protected—thus voluntarily acting in a way close to how the post office and phone companies are required by law to act." *Id.*, at 398. Amazon's power to kick companies entirely off the internet has caused Amazon to be described as "more like a utility provider than a broadcaster." Scott Rosenberg, *Big Tech's Free Speech Showdown*, Axios (Jan. 10, 2021).[12]

This illustrates a concerning fact: the dominant internet players are so powerful that the only way startups can take off is by relying on the mercy of the companies against which they wish to compete.

The conclusion that a handful of companies dominate the social media market aligns with

---

[12] https://www.axios.com/2021/01/10/big-techs-free-speech-showdown.

AMERICAN OVERSIGHT

conclusions by States and the Federal Government. In 2020, the Federal Trade Commission initiated an ongoing antitrust suit on the theory that "Facebook holds monopoly power in the market for personal social networking services … in the United States." *FTC* v. *Facebook, Inc.*, No. 1:20-cv-03590 (D.D.C. filed Dec. 8, 2020), Am. Compl., ¶2. And nearly every State and the Department of Justice has been involved in antitrust litigation against the major social media companies in recent years. *See, e.g.*, *Antitrust Reform and Big Tech Firms*, Congressional Research Service R46875 (Nov. 21, 2023) (describing some active cases).[13]

B. Discriminatory use of power

Although described by this Court as "the modern public square," *Packingham*, 582 U.S., at 107, these platforms are in fact more important than the historic public square because they hold "unprecedented … control of so much speech in the hands of a few private parties," *Knight First Amendment Inst.*, 141 S. Ct., at 1221 (Thomas, J., concurring). True, other aspects of the internet have enormous network effects (such as email), but nobody has central control over those networks. In contrast, "control of [social media] networks is highly concentrated" in the hands of a few people. *Id.*, at 1224. The platforms' power to facilitate and restrict speech on a large scale means they wield power "far greater than that of individual broadcasters who compete with one another as well as

---

[13] https://crsreports.congress.gov/product/pdf/R/R46875.

AMERICAN OVERSIGHT

with satellite and cable networks." Prasad Krishnamurthy & Erwin Chemerinsky, *How Congress Can Prevent Big Tech from Becoming the Speech Police*, The Hill (Feb. 18, 2021).[14]

These platforms have used their unprecedented power to censor mainstream speakers on important issues of public debate. That selective censorship—the Florida and Texas legislatures concluded—threatens the marketplace of ideas and the free flow of information to the detriment of citizens and democratic governance.

These legislative judgments rest on solid ground. Companies covered by the Texas and Florida laws currently exercise unchecked power to suppress ideas. And they have shown little inclination to self-limit their "incredible influence over the content that's put out into the world." Ahiza García-Hodges, *Big Tech Has Big Power over Online Speech. Should It Be Reined In?*, NBC News (Jan. 21, 2021).[15]

1. Perhaps most famously, weeks before the 2020 general election while voters were deciding among presidential candidates, Twitter blocked users from posting links to a New York Post article about unflattering information found on the laptop of the Democratic candidate's son, and Facebook "deprecate[d]" the story by preventing users from linking to the New York Post. Kate Cox, *Twitter, Facebook Face Blowback after Stopping Circulation of*

---

[14] https://perma.cc/645W-LMLP.

[15] https://perma.cc/FN7D-BL9T.

AMERICAN OVERSIGHT

NY Post Story, Ars Technica (Oct. 14, 2020).[16] The laptop information was "authenticated" by the New York Times more than a year later, after the censorship damage was done. Katie Benner, et al., *Hunter Biden Paid Tax Bill, but Broad Federal Investigation Continues*, N.Y. Times (Mar. 16, 2022).[17]

2. Platforms restrict not only news reporting, but also speech by everyday Americans. They "have certainly been willing to restrict opinions that are well within the American political mainstream." Volokh, *supra*, at 395. This conclusion is borne out in countless examples. *Id.* at 397 (listing several).

Consider one of the most hotly contested issues today: the many controversial legal and policy questions about the increasing number of individuals who identify as transgender. These include questions about separate bathrooms, locker rooms, and sports teams; about appropriate medical care; and even about the nature of what it means to be male or female. Nobody doubts these questions are important, yet social media companies have made mainstream views on these questions off limits. For example, a clear majority (57%) of adults believe sex is determined at birth, regardless of a person's later-expressed gender identity. Ashley Kirzinger, et al., *KFF/The Washington Post Trans Survey* (Mar. 24,

---

[16] https://perma.cc/6NYG-STXX.

[17] https://perma.cc/QJ97-J26Q; https://web.archive.org/web/20240109032322/https://www.nytimes.com/2022/03/16/us/politics/hunter-biden-tax-bill-investigation.html.

AMERICAN OVERSIGHT

2023).[18] But the 57% of Americans who believe that are not allowed to say so on social media. For example, when a U.S. Representative expressed his view that a high-ranking official in the Biden administration who identifies as a woman is in fact "a man," Twitter locked the Representative's account until he deleted the post. *Indiana Congressman Deletes Post, Gets Twitter Access Back*, Associated Press (Nov. 5, 2021).[19] Similarly, Twitter suspended a commenter when she expressed opposition to a transgender individual competing in the women's division in the Olympics, stating "men shouldn't compete against women." Joseph Wulfsohn, *Allie Beth Stuckey Released from "Twitter Jail" after Referring to Transgender Olympic Athlete as a "Man,"* Fox News (Aug. 6, 2021).[20]

These questions are hotly debated today, and views on all sides of the issues are held "in good faith by reasonable and sincere people." *Obergefell* v. *Hodges*, 576 U.S. 644, 657 (2015). But it is extraordinary that dominant communications companies through which the vast majority of public speech flows can make a viewpoint held by 57% of Americans, on one of the most salient political topics of the day, off limits in the "modern public square,"

---

[18] https://perma.cc/M2Y8-CNLD.

[19] https://perma.cc/X3DX-X4EF; https://web.archive.org/web/20230401020728/https://apnews.com/article/business-media-social-media-indiana-fort-wayne-16fb83191716f3dc1e9440f2cc972b54.

[20] https://perma.cc/X5E3-JZBV.

AMERICAN OVERSIGHT

Packingham, 582 U.S., at 107. That censorship "harm[s] … society as a whole" by "depriv[ing]" society of "an uninhibited marketplace of ideas." *Virginia* v. *Hicks*, 539 U.S. 113, 119 (2003).

Much of the speech targeted by these dominant communication platforms is conservative, which is not surprising given Mark Zuckerberg's acknowledgment that tech companies reside in "an extremely left-leaning place." Morgan Chalfant, *Cruz Presses Zuckerberg on Alleged Censorship of Conservative Speech* (Apr. 10, 2018).[21] Right after Elon Musk purchased Twitter, he and journalist Bari Weiss uncovered internal evidence that at Twitter, "the rules were enforced against the right, but not against the left." Elon Musk tweet, Dec. 8, 2022.[22]

But several platforms have also received allegations about censorship of opinions commonly viewed as left wing. Currently, social media companies face accusations of reducing the visibility of posts expressing political support for a Palestinian state in the present conflict. Priyanka Shankar, et al., *Are Social Media Giants Censoring Pro-Palestine Voices Amid Israel's War?*, Al Jazeera (Oct. 24, 2023).[23] Last summer, a federal district court found that social media platforms, at the request of federal officials, blocked Robert F. Kennedy, Jr.'s efforts to communicate with the public about his campaign for

---

[21] https://perma.cc/BWB3-3SF5.

[22] https://perma.cc/7684-AB49.

[23] https://perma.cc/8V95-U3DZ.

AMERICAN OVERSIGHT

the Democratic presidential nomination. *See Missouri* v. *Biden*, 2023 WL 4335270, *5, *9, *40 (W.D. La., July 4, 2023). And in the aftermath of George Floyd's murder, Facebook allegedly flagged and removed posts calling attention to allegedly racist conduct. Craig Silverman, *Black Lives Matter Activists Say They're Being Silenced by Facebook*, Buzzfeed (June 19, 2020).[24]

3. Platforms also censor true information that is difficult to brand as left or right. Speech surrounding COVID is a prime example. When COVID first hit, "major social networks rolled out a series of policy changes to curb … claims about the virus, including theories about its roots"—like that it originated in a Chinese lab. Cristiano Lima, *New Report on Covid-19 Origin Puts Social Media in GOP's Crosshairs*, Washington Post (Feb. 27, 2023).[25] That origin theory is now the predominant theory of many agencies under the Biden administration. Both the Energy Department and the FBI have concluded that the COVID-19 "virus likely spread due to an accident at a Chinese laboratory." *Ibid.*

Similarly, in the summer of 2021, YouTube removed a video that a U.S. Senator, who is a doctor, posted opining about the relative inefficacy of masks made out of cloth. *See, e.g.*, *YouTube Suspends Rand Paul after Misleading Video on Masks,* PBS News

---

[24] https://perma.cc/6F6S-UL4V.

[25] https://perma.cc/6STJ-N8EH.

AMERICAN OVERSIGHT

Hour (Aug. 11, 2021).[26] YouTube also banned him from posting any videos—on any topic—for a week. Yet Senator Paul's view is widely accepted today. *See* Apoorva Mandavilli, *The C.D.C. Concedes that Cloth Masks Do Not Protect Against the Virus as Effectively as Other Masks.*, N.Y. Times (Jan 14, 2022).[27] And his perspective might have been immensely important at the time to individuals deciding how best to protect themselves and others.

4. These examples may only scratch the surface because of platforms' deliberate opacity about their practices. They censor by taking down content or suspending people from their accounts, but they also "shadowban" by distributing content less widely than would otherwise occur. Geoffrey Fowler, *Shadowbanning Is Real: Here's How You End up Muted by Social Media*, Washington Post (Dec. 27, 2022).[28] "[U]sers often have no way of telling for sure whether they have been shadowbanned or whether their content is simply not popular."[29] Gabriel

---

[26] https://perma.cc/U2PD-K76U.

[27] https://perma.cc/77LD-NL5K; https://web.archive.org/web/20231106050019/https://www.nytimes.com/2022/01/14/health/cloth-masks-covid-cdc.html.

[28] https://perma.cc/6AM9-XV7M.

[29] That some censorship occurs by *leaving up* content (but simply not distributing it as widely) further undermines NetChoice's contention that social media companies must censor content to avoid unwanted association with speech they dislike.

AMERICAN OVERSIGHT

Nicholas, *Shadowbanning Is Big Tech's Big Problem*, The Atlantic (April 28, 2022).[30]

If recent history is any guide, that will not change. These companies continue to resist transparency. In early 2023, for example, Facebook's parent company, Meta, declined the recommendation of its Oversight Board to disclose which public-figure Facebook pages are subject to the site's "cross-check" moderation program for high-profile users. Clare Duffy, *Facebook Revamps Controversial Content Moderation Process for VIPs*, CNN Business (Mar. 3, 2023).[31]

* * *

Whether the target is left-wing speech, right-wing speech, or centrist speech, censorship harms everyone. From the start, our constitutional order recognized that "error of opinion may be tolerated where reason is left free to combat it." Jefferson's First Inaugural Address (March 4, 1801).[32] The Constitution aims to "'preserve an uninhibited marketplace of ideas in which truth will ultimately prevail.'" *Nat'l Inst. of Fam. & Life Advocates.* v. *Becerra*, 138 S. Ct. 2361, 2374 (2018) (citation omitted). That is because the "widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." *Associated Press*, 326 U.S., at 20. "This free exchange facilitates an informed public opinion,

---

[30] https://perma.cc/MW3Y-LYDZ.

[31] https://perma.cc/W8UJ-BQPS.

[32] https://perma.cc/VX6E-FA33.

AMERICAN OVERSIGHT

which, when transmitted to lawmakers, helps produce laws that reflect the People's will." *Mahanoy*, 141 S. Ct. at 2046.

Platforms leverage their extraordinary power to threaten that constitutional project. Florida and Texas's challenged response, designed to ensure information flows freely and fairly, strengthens rather than offends the First Amendment.

C. The Court should respect legislative fact findings of market power and censorship.

In the face of this discriminatory use of market dominance, the Texas and Florida legislatures made legislative findings about the power of large platforms to impoverish the marketplace of ideas. Texas concluded that social media platforms with "more than 50 million active users in the United States in a calendar month" have "market dominance" that justifies treating them as "common carriers." Tex. Code § 120.002(b); Tex. H.B. 20 §1(4). Florida determined that platforms with 100 million monthly global users or $100 million annual gross revenue "have become as important for conveying public opinion as public utilities are for supporting modern society" and "should be treated similarly to common carriers." Fla. Stat. § 501.2041(g); Fla. S.B. 7072 § 1(5)–(6). Those legislative judgments deserve significant weight in evaluating whether the Constitution permits the States' regulations. *Cf. Munn* v. *Illinois*, 94 U.S. 113, 132 (1876); *Turner 1994*, 512 U.S., at 665 (plurality op.); *Minnesota* v. *Clover Leaf Creamery Co.*, 449 U.S. 456, 464 (1981). After all, if "it stands to reason" that "Congress may

AMERICAN OVERSIGHT

demand" that telephone and cable companies carry third-party speech, *Turner 1994*, 512 U.S., at 684 (O'Connor, J., concurring in part and dissenting in part), it equally stands to reason that the States may demand the same of digital platforms. Where the Bill of Rights polices government conduct, there is "no daylight between the federal and state conduct it prohibits or requires." *Timbs* v. *Indiana*, 139 S. Ct. 682, 687 (2019); *see also Ramos* v. *Louisiana*, 140 S. Ct. 1390, 1397 (2020); *Malloy* v. *Hogan*, 378 U.S. 1, 7 (1964).

III. State laws preventing platforms from censoring speech provide a prophylactic vanguard against government censorship.

The United States says it submits a brief because, Congress having "enacted laws governing the communications industry," the United States "has a substantial interest in the resolution of the questions presented." U.S. Br., at 1. Yet it advocates a position that threatens to *undermine* federal laws.

Why? Perhaps because the Federal Government intends to continue its well-documented practice of pressuring companies to wield their censorship discretion to remove disfavored viewpoints.

It is undisputed that the Federal Government, including the White House, has engaged in a years-long, behind-closed-doors campaign to push social media companies to suppress millions of constitutionally protected posts. This Court granted certiorari in *Murthy* v. *Missouri*, No. 23-411, and while the legal conclusions there are disputed, the fact findings are not.

AMERICAN OVERSIGHT

In its opening brief in *Murthy*, the Federal Government does not dispute any fact finding. It does not dispute that—behind closed doors—it successfully used "unrelenting pressure" to push social media companies to "suppress[] millions of protected free speech postings by American citizens." *Missouri*, 2023 WL 4335270, at *44. It does not dispute it targeted "disfavored" speech "well beyond COVID-19," including "the Hunter Biden laptop story," *Missouri* v. *Biden*, 83 F.4th 350, 368, 381 (CA5 2023), and topics related to "racial justice, the U.S. withdrawal from Afghanistan," U.S. "[s]upport of Ukraine," and content posted by an individual who was challenging President Biden for the Democratic presidential nomination, 2023 WL 4335270, at *9, *67. The Federal Government does not dispute it targeted "nearly every major American social media company," and that those companies "capitulated" into "total compliance," even removing constitutionally protected content that "did not run afoul of their policies." 83 F.4th, at 359, 362–63, 392. And the Federal Government does not dispute its "conduct has not stopped," it has even "started monitoring" the platforms for compliance with governmental demands "to remove disfavored content," and its push for censorship has been so widespread that "it impacts every social-media user." *Id.*, at 359–60, 393, 398.

Instead, the Federal Government argues it induced all these things through legal "persuasion," not illegal "coercion," and the plaintiffs lack standing to contend otherwise. U.S. Br., No. 23-411, at 14, 25, 34. The Federal Government even doubles down, all but promising to continue pressing platforms to

AMERICAN OVERSIGHT

suppress millions of posts because it believes these posts are "false information," *id.*, at 34, even though much speech it pushed to suppress turned out to be true.

The Federal Government's interest in the *NetChoice* cases is thus clear.[33] The Texas and Florida laws pose no threat to federal laws; they only threaten the ability of federal officials to continue pushing platforms to "suppress[] millions of protected free speech postings by American citizens." 2023 WL 4335270, at *44.

Pressuring platforms would become much more difficult if state law prohibited platforms from complying with federal takedown demands. One of "anti-discrimination obligations' great virtues is that it protects private entities from complying with government's censorship demands. A private company with no legal obligation to treat users in a non-discriminatory fashion readily can accede government's request to censor, block, or otherwise treat users unfairly. But, if a private firm is prohibited by law to do so, then the government cannot even ask." Adam Candeub, *Bargaining for Free Speech: Common Carriage, Network Neutrality,*

---

[33] As further evidence that the United States views the *NetChoice* cases as fundamentally related to *Murthy*, the United States repeats the same "editorial discretion" arguments in *Murthy*. U.S. Br., No. 23-411, at 3–4, 16, 36. The United States is also represented in this case by two Civil Division attorneys who represented the Federal Government in *Murthy* at the Fifth Circuit.

AMERICAN OVERSIGHT

and Section 230, 22 Yale J. L. & Tech. 391, 432–33 (2020).

The Federal Government's real interest here is that it will no longer be able to "persuade" platforms to take down millions of constitutionally protected posts if this Court affirms the Texas and Florida laws. That is a reason to support the state laws, not to strike them down. In passing these laws, Texas and Florida afforded their citizens the "double security [that] arises" when one government "guard[s] … society against the injustice of the other." The Federalist No. 51, *supra*, at 320 (Madison). The Fifth Circuit in *Murthy* said the Federal Government forced social media companies to "bend to the government's will." 83 F.4th, at 371. The laws challenged here provide the legal backbone platforms need to stand straight.

AMERICAN OVERSIGHT

CONCLUSION

The Court should affirm the longstanding authority of States to protect their citizens from censorship imposed by mass communication networks.

Respectfully submitted,

DAVE YOST
Ohio Attorney General

MICHAEL HENDERSHOT
Chief Deputy Solicitor General
NICHOLAS CORDOVA
Deputy Solicitor General
OFFICE OF THE OHIO ATTORNEY GENERAL
30 East Broad St., 17th Fl.
Columbus, Ohio 43215
(614) 644-0576

ANDREW BAILEY
Missouri Attorney General

JOSHUA M. DIVINE
Solicitor General
Counsel of Record
MARIA A. LANAHAN
Deputy Solicitor General
CALEB RUTLEDGE
BRYCE BEAL
Assistant Attorneys General
OFFICE OF THE MISSOURI ATTORNEY GENERAL
Supreme Court Building
207 West High Street
Jefferson City, MO 65102
(573) 751-8870
Josh.Divine@ago.mo.gov

January 22, 2024

AMERICAN OVERSIGHT

ADDITIONAL COUNSEL

Steve Marshall
Attorney General
State of Alabama

Treg Taylor
Attorney General
State of Alaska

Tim Griffin
Attorney General
State of Arkansas

Brenna Bird
Attorney General
State of Iowa

Russell Coleman
Attorney General
State of Kentucky

Liz Murrill
Attorney General
State of Louisiana

Lynn Fitch
Attorney General
State of Mississippi

Austin Knudsen
Attorney General
State of Montana

Michael T. Hilgers
Attorney General
State of Nebraska

John M. Formella
Attorney General
State of New Hampshire

Drew H. Wrigley
Attorney General
State of North Dakota

Gentner Drummond
Attorney General
State of Oklahoma

Alan Wilson
Attorney General
State of South Carolina

AMERICAN OVERSIGHT

Marty Jackley
Attorney General
State of South Dakota

Jonathan Skrmetti
Attorney General
State of Tennessee

Sean D. Reyes
Attorney General
State of Utah

Jason Miyares
Attorney General
State of Virginia
Warren Petersen
President of the Senate
State of Arizona

By counsel:
Rusty D. Crandell
Majority General
Counsel
Arizona State Senate
1700 W. Washington St.
Phoenix, Arizona 85007
rcrandell@azleg.gov
(602) 926-3137

Ben Toma
Speaker of the House
of Representatives
State of Arizona

By counsel:
Linley Wilson
Majority General
Counsel
Arizona House of
Representatives
1700 W. Washington St.
Phoenix, Arizona 85007
LWilson@azleg.gov
(602) 926-5418

AMERICAN OVERSIGHT

To: Brianna Herlihy[brianna.herlihy@fox.com]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Mon 1/22/2024 9:17:10 AM (UTC-06:00)
Subject: Fwd: AG Bailey Net Choice Amicus Brief
2024-01-22 - Netchoice amicus draft.pdf

See quotes from AG Bailey here, depending on where you're going with article.
Thanks!

Sent from my iPhone

Begin forwarded message:

From: "Sieren, Madeline" <Madeline.Sieren@ago.mo.gov>
Date: January 20, 2024 at 3:50:41 PM CST
To: "Herlihy, Brianna" <brianna.herlihy@fox.com>
Subject: RE: AG Bailey Net Choice Amicus Brief

Hi Brianna,
Here is the slightly updated draft amicus with all the relevant states.
It is 99% complete. Going through one last read-through for typos, etc. but nothing else is subject to change.
I'll let you know if there is any updated version before publication.
A few quotes from AG Bailey depending on where you go with the article:
"In a free society, the debate between opposing viewpoints should be played out in the marketplace of ideas. Our right to free speech is the bedrock of our great nation. I'm proud to be standing in the gap to protect our right to free speech on several fronts in the war for the soul of our country." (Re: *Missouri v. Biden*, amicus briefs in both net choice cases and *NRA v. Vullo*)
"If speaking out on public issues in opposition to the social narrative means elites can cut off our ability to speak, our country has become little more than a dictatorship. That's not the America I fought to defend on the battlefields of Iraq or swore to protect as Missouri's 44th Attorney General."
"If the Supreme Court lets social media companies silence speech, it will set a devastating anti-free speech precedent at a time when the First Amendment is under widespread attack."
"This is the most consequential term for the First Amendment in Supreme Court history." (*Missouri v. Biden*, Net Choice cases, *NRA v. Vullo*)
Thanks again for covering! You're the best!
Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

From: Herlihy, Brianna <brianna.herlihy@fox.com>
Sent: Friday, January 19, 2024 9:24 AM
To: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Subject: Re: AG Bailey Net Choice Amicus Brief
Awesome! Would love to cover. Can we talk around 3pm ET? a Monday pub or can we hold for Tuesday AM?

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Date: Thursday, January 18, 2024 at 6:53 PM
To: Herlihy, Brianna <brianna.herlihy@fox.com>
Subject: AG Bailey Net Choice Amicus Brief

Hi Brianna – let's talk about this when we call tomorrow, but here's the draft free speech amicus brief Missouri is leading in the net choice cases that I mentioned.
It's 99% finished. Deadline for other states to join is tomorrow night. We have at least ten that are joining. And we're still doing tables, etc. so I will get you the final brief tomorrow.

AMERICAN OVERSIGHT

But we plan to file on Monday, and would love for you to break the story. We can work around you.
Case has huge implications for government censorship, etc. and ties to AG Bailey's free speech case, *Missouri v. Biden,* that is also before the U.S. Supreme Court. This is going to be a huge Supreme Court term for the 1A.
Will get you a quote from the AG as well if you're interested.
Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee(s). If you are not an addressee indicated in this message (or responsible for delivery of the message to an addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of Fox Corporation, or its subsidiaries must be taken not to have been sent or endorsed by any of them. No representation is made that this email or its attachments are without defect.

AMERICAN OVERSIGHT

No. 22-277, 22-555

In the
Supreme Court of the United States

ASHLEY MOODY, Attorney General of Florida, et al.,
Petitioners,
v.
NETCHOICE, LLC, et al.,
Respondents.

NETCHOICE, LLC, et al.,
Petitioners,
v.
KEN PAXTON, Attorney General of Texas, et al.,
Respondents.

On Writs of Certiorari to the U.S. Courts of Appeals for the Fifth and Eleventh Circuits

Brief of Missouri, Ohio, 17 other States, and the Arizona Legislature in support of Texas and Florida

DAVE YOST
Ohio Attorney General
MICHAEL HENDERSHOT
Chief Deputy Solicitor General
30 East Broad St., 17th Fl.
Columbus, Ohio 43215
(614) 644-0576

ANDREW BAILEY
Missouri Attorney General
JOSHUA M. DIVINE
Solicitor General
Counsel of Record
207 West High St.
Jefferson City, MO 65101
(573) 751-8870
Josh.Divine@ago.mo.gov

Counsel for Amici States
Additional counsel in signature block and addendum

January 22, 2024

AMERICAN OVERSIGHT

TABLE OF CONTENTS

Table of Authorities iii
Interest of *Amici* States 1
Summary of Argument 6
Argument 11

I. States have authority to prohibit mass communication platforms from censoring speech. 11

A. Requiring social media companies to distribute third-party speech without viewpoint discrimination is permissible because social media better resembles telephones than newspapers. 11

B. Social media companies cannot evade accountability simply by choosing to edit some content. 21

C. In the context of facial challenges, this Court need not consider more complex questions. 23

II. The hyperconcentration of social media reinforces State authority to regulate. 24

A. Market power 26

B. Discriminatory use of power 29

C. The Court should respect legislative fact findings of market power and censorship. 37

AMERICAN OVERSIGHT

III. State laws preventing platforms from censoring speech provide a prophylactic vanguard against government censorship. 38

Conclusion .... .42

AMERICAN OVERSIGHT

TABLE OF AUTHORITIES

Cases **Page(s)**

303 Creative LLC v. *Elenis*,
600 U.S. 570 (2023) 15, 20

Associated Press v. *United States*,
326 U.S. 1 (1945) 3, 36

Biden v. *Knight First Amend. Inst.*,
141 S. Ct. 1220 (2021) 5, 7, 15, 26, 27, 29

Borough of Duryea, Pa. v. *Guarnieri*,
564 U.S. 379 (2011) 4

Boy Scouts of Am. v. *Dale*,
530 U.S. 640 (2000) 12

Comcast Cable Commc'ns, LLC v. *FCC*,
717 F.3d 982 (CADC 2013) 25

District of Columbia v. *Heller*,
554 U.S. 570 (2008) 2

Hurley v. *Irish-American Gay, Lesbian and Bisexual Group of Boston*,
515 U.S. 557 (1995) 12, 20

Mahanoy Area Sch. Dist. v. *B. L.*,
141 S. Ct. 2038 (2021) 4, 36

Malloy v. *Hogan*,
378 U.S. 1 (1964) 38

AMERICAN OVERSIGHT

Malwarebytes, Inc. v. *Enigma Software Group USA, LLC*,
141 S. Ct. 13 (2020) 19

Masterpiece Cakeshop, Ltd. v. *Colorado Civ. Rights Commn.*,
138 S. Ct. 1719 (2018) 14

Miami Herald Pub. Co. v. *Tornillo*,
418 U.S. 241 (1974) 12, 13, 17

Minnesota v. *Clover Leaf Creamery Co.*,
449 U.S. 456 (1981) 37

Missouri v. *Biden*,
83 F.4th 350 (CA5 2023) 39, 41

Missouri v. *Biden*,
2023 WL 4335270 (W.D. La., July 4, 2023) 33, 34, 39, 40

Munn v. *Illinois*,
94 U.S. 113 (1876) 37

Murthy v. *Missouri*,
144 S. Ct. 32 (2023) 26

Nat'l Broad. Co. v. *United States*,
319 U.S. 190 (1943) 25

Nat'l Inst. of Fam. & Life Advocates. v. *Becerra*,
138 S. Ct. 2361 (2018) 36

AMERICAN OVERSIGHT

NetChoice, L.L.C. v. *Paxton*,
49 F.4th 439 (CA5 2022) 5, 6, 11, 15, 16, 17, 18, 20, 21, 24, 25, 26

NetChoice, LLC v. *Moody*,
34 F.4th 1196 (CA11 2022) 21, 22

NetChoice, LLC v. *Paxton*,
142 S. Ct. 1715 (2022) 18

Obergefell v. *Hodges*,
576 U.S. 644 (2015) 32

P. Gas and Elec. Co. v. *Pub. Utilities Comm'n. of California*,
475 U.S. 1 (1986) 12

Packingham v. *North Carolina*,
582 U.S. 98 (2017) 26, 29, 32

Pleasant Grove City, Utah v. *Summum*,
555 U.S. 460 (2009) 23

Primrose v. *Western Union Telegraph Co.*,
154 U. S. 1 (1894) 11, 22

PruneYard Shopping Ctr. v. *Robins*,
447 U.S. 74 (1980) 6, 13, 14

Ramos v. *Louisiana*,
140 S. Ct. 1390 (2020) 38

AMERICAN OVERSIGHT

Rumsfeld v. *Forum for Acad. and Institutional Rights, Inc.*,
547 U.S. 47 (2006) 6, 8, 13, 14, 16, 17, 18

Shurtleff v. *City of Bos., Massachusetts*,
596 U.S. 243 (2022) 16, 23

Terminiello v. *Chicago*,
337 U.S. 1 (1949) 4

Timbs v. *Indiana*,
139 S. Ct. 682 (2019) 38

Turner Broad. Sys., Inc. v. *FCC,*
*("Tu*rner 1997"), 520 U.S. 180 (1997) 25

*Turner Broad. Sy*stem, *Inc.* v. *FCC,*
("Turner 1994"), 512 U.S. 622 (1994) ..... passim

U.S. Telecom Ass'n v. *FCC*,
855 F.3d 381 (CADC 2017) 25, 27, 28, 31

Virginia v. *Hicks*,
539 U.S. 113 (2003) 32

W. Union Tel. Co. v. *James*,
162 U.S. 650 (1895) 3, 12, 21

Walker v. *Texas Div., Sons of Confederate Veterans, Inc.*,
576 U.S. 200 (2015) 23

AMERICAN OVERSIGHT

Statutes

47 U.S.C. § 202 23

47 U.S.C. § 230 ..... 18, 19

52 U.S.C. § 30120(b) 13

Fla. Stat. § 501.2041(g) 37

Telegraph Lines Act,
ch. 772, § 2, 25 Stat. 382, 383 (1888) 12

Tex. Code § 120.002(b) 37

Other Authorities

Adam Candeub, *Bargaining for Free Speech: Common Carriage, Network Neutrality, and Section 230*,
22 Yale J. L. & Tech. 391 (2020) 40

Ahiza García-Hodges, *Big Tech Has Big Power over Online Speech. Should It Be Reined In?*,
NBC News (Jan. 21, 2021) 30

Alan Z. Rozenshtein, *Silicon Valley's Speech: Technology Giants and the Deregulatory First Amendment*,
1 J. Free Speech Law 337 (2021) 26

Apoorva Mandavilli, *The C.D.C. Concedes that Cloth Masks Do Not Protect Against the Virus as Effectively as Other Masks.*,
N.Y. Times (Jan 14, 2022) 34

AMERICAN OVERSIGHT

Ashley Kirzinger, et al., *KFF/The Washington Post Trans Survey* (Mar. 24, 2023) 31

Clare Duffy, *Facebook Revamps Controversial Content Moderation Process for VIPs*, CNN Business (Mar. 3, 2023) 36

Craig Silverman, *Black Lives Matter Activists Say They're Being Silenced by Facebook*, Buzzfeed (June 19, 2020) 34

Cristiano Lima, *New Report on Covid-19 Origin Puts Social Media in GOP's Crosshairs*, Washington Post (Feb. 27, 2023) 34

Eugene Volokh, *Treating Social Media Platforms Like Common Carriers?*, 1 J. Free Speech L. 377 (2021)..... 20

Gabriel Nicholas, *Shadowbanning Is Big Tech's Big Problem*, The Atlantic (April 28, 2022) ..... .35

Genevieve Lakier, *The Non-First Amendment Law of Freedom of Speech*, 134 Harv. L. Rev. 2299 (2021) 4, 12, 13, 21

Geoffrey Fowler, *Shadowbanning Is Real: Here's How You End up Muted by Social Media*, Washington Post (Dec. 27, 2022) 35

How We Choose the Great Read, N.Y. Times (Apr. 4, 2022) 16

AMERICAN OVERSIGHT

Jefferson's First Inaugural Address
(March 4, 1801) 36

Jud Campbell, *Natural Rights and the First Amendment*,
127 Yale L.J. 246 (2017) 2

Katie Benner, et al., *Hunter Biden Paid Tax Bill, but Broad Federal Investigation Continues*,
N.Y. Times (Mar. 16, 2022) 31

Kate Cox, *Twitter, Facebook Face Blowback after Stopping Circulation of NY Post Story*,
Ars Technica (Oct. 14, 2020) 30

Media Usage in an Internet Minute as of April 2022,
Statista (2023) 16

Morgan Chalfant, *Cruz Presses Zuckerberg on Alleged Censorship of Conservative Speech*
(Apr. 10, 2018) 33

Prasad Krishnamurthy & Erwin Chemerinsky, *How Congress Can Prevent Big Tech from Becoming the Speech Police*,
The Hill (Feb. 18, 2021) 29

Ravi Somaiya, *How Facebook Is Changing the Way Its Users Consume Journalism*,
N.Y. Times (Oct. 26, 2014) 17

Scott Rosenberg, *Big Tech's Free Speech Showdown*,
Axios (Jan. 10, 2021) 28

AMERICAN OVERSIGHT

Terms of Service,
Facebook (last updated July 26, 2022)..... 19

The Federalist No. 51,
(Clinton Rossiter ed., Signet Classic 2003)
(1788)..... 2, 41

YouTube Suspends Rand Paul after Misleading Video on Masks,
PBS News Hour (Aug. 11, 2021)..... 34

AMERICAN OVERSIGHT

INTEREST OF *AMICI* STATES

The States of Missouri, Ohio, Alaska, Alabama, Arkansas, Iowa, Kentucky, Louisiana, Mississippi, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, and Virginia, and the Arizona Legislature ("the States"), agree with many points in the amicus brief of New York, *et al.*, which focuses on social media problems *other* than censorship. The States here submit this amicus brief to focus directly on the censorship question.

The States do so for two reasons. First, it is the constitutional duty of the States to protect their citizens' inherent rights, including the right to free speech. Just as States pass criminal and civil laws to protect citizens from private abridgment of rights of life and property, States have a long history of regulating to protect citizens from abridgment of their free speech rights by dominant communication platforms. Second, the States have a vital interest in hearing the speech of their citizens, especially political speech. That is necessary for States to be democratically responsive. NetChoice's position threatens these interests because it seeks to upend the longstanding authority of States to prohibit mass communication networks from engaging in censorship and viewpoint discrimination.

1. The Founders were clear that the purpose of government is to secure liberty. The Declaration of Independence recognizes that natural rights, including "Life" and "Liberty," preexist government, and that "Governments are instituted among Men" for

AMERICAN OVERSIGHT

one principal purpose: "to secure these rights." Declaration of Independence ¶ 2.

The Founders thus recognized that governments are created to protect rights from *private* abridgment—the only abridgment that can occur before government is formed. Society must of course always resist government abuse of power (which occurs too often), but government is created in the first instance to protect against private abuse. As James Madison put it, "If men were angels, no government would be necessary." The Federalist No. 51, at 319 (Clinton Rossiter ed., Signet Classic 2003) (1788). Government must be obliged "to control itself"—through separation of powers—but it is equally true that society "must first enable the government to control the governed." *Ibid.*

One right States "are instituted among Men" to "secure" is the freedom of speech. As Madison said when proposing the draft of the First Amendment, freedom of speech is a "natural right" predating government itself. Jud Campbell, *Natural Rights and the First Amendment*, 127 Yale L.J. 246, 264 (2017) (citing Madison's notes reflecting his speech in Congress). This Court has held the same, explaining that "the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right." *District of Columbia* v. *Heller*, 554 U.S. 570, 592 (2008) (emphasis in original).

AMERICAN OVERSIGHT

So NetChoice is flat wrong to contend (at 25 in *Paxton*)[1] that *only* the government is capable of censorship. Because freedom of speech is a freedom States were created to secure, it is the duty of States to secure that freedom from private abridgment, including abridgment by extraordinarily powerful communication platforms.

The States can pass criminal laws against theft and murder—thus protecting against private interference with rights of property or life. And if dominant firearm dealers refuse to sell on account of race, States can regulate to secure for their citizens the right to bear arms. So too, if dominant communication platforms censor based on viewpoint, States can pass laws to stop that censorship—as they have done for well over 100 years.

A State of course cannot, in the name of protecting free speech, abridge the freedom of speech. But this Court has held that the First Amendment does not prohibit States from protecting the marketplace of ideas when that marketplace is threatened by private actors. "It would be strange indeed," this Court said, "if the grave concern for freedom of the press which prompted adoption of the First Amendment should be read as a command that the government was without power to protect that freedom." *Associated Press* v. *United States*, 326 U.S. 1, 20 (1945). As with freedom of the press, so too with freedom of speech. *See W. Union Tel. Co.* v. *James*, 162 U.S. 650, 651, 660 (1895)

---

[1] This amicus references briefs in the two consolidated cases as *Paxton* briefs (for No. 22-555) and *Moody* briefs (for No. 22-277).

AMERICAN OVERSIGHT

(upholding law prohibiting telegraph companies from engaging in viewpoint discrimination); *see also* Genevieve Lakier, *The Non-First Amendment Law of Freedom of Speech*, 134 Harv. L. Rev. 2299, 2316–19 (2021) (listing statutory examples protecting free speech).

2. States also have an interest in preventing censorship because censorship deprives States of the information they need to be responsive to the people. "The vitality of civil and political institutions in our society depends on free discussion." *Terminiello* v. *Chicago*, 337 U.S. 1, 4 (1949). "[I]t it is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected." *Ibid.*

Many landmark legal changes arose from government responding to the speech of everyday citizens. That includes "great matters of state," such as Magna Carta, women's suffrage, the Declaration of Independence, and antislavery legislation. *Borough of Duryea, Pa.* v. *Guarnieri*, 564 U.S. 379, 395–97 (2011). Those reforms illustrate that "representative democracy" works best when the "free exchange" of ideas "facilitates an informed public opinion, which, when transmitted to lawmakers, helps produce laws that reflect the People's will." *Mahanoy Area Sch. Dist.* v. *B. L.*, 141 S. Ct. 2038, 2046 (2021). Today, one of the most common ways individuals speak to their governments is through public posts on social media.

Top-down censorship by dominant communication platforms thus threatens the ability of States to operate. Censorship deprives local government of

AMERICAN OVERSIGHT

the information needed to "remain[] responsive to the will of the people." *Terminiello*, 337 U.S., at 4.

* * *

As Judge Oldham's opinion below recognized, States and Congress have enacted regulations like the ones enacted by Texas and Florida for well over one hundred years. *NetChoice, L.L.C.* v. *Paxton*, 49 F.4th 439, 470–71 (CA5 2022). While the earlier laws applied to telegraphs and telephones, it is no different when the companies carrying other people's speech are digital rather than analog. The States thus have a paramount interest in urging this Court to affirm that longstanding, historic authority of States to protect freedom of speech and enable representative government by prohibiting dominant communication networks from censoring.

That interest is especially weighty here in light of the unprecedented control these platforms have over speech central to political and public discourse. "[I]n the modern economy, the Platforms provide the most effective way to disseminate news, commentary, and other information." *Id.*, at 476. And never before has there been so much "concentrated control of so much speech in the hands of a few private parties." *Biden* v. *Knight First Amend. Inst.*, 141 S. Ct. 1220, 1221 (2021) (Thomas, J., concurring). Today the ability "to cut off speech lies most powerfully in the hands of private digital platforms." *Id.*, at 1227. That explains why the Federal Government has inserted itself through pressure into those content-moderation policies and practices—as shown in *Murthy* v. *Missouri*. The concentration of power in a handful of platforms can facilitate government censorship.

AMERICAN OVERSIGHT

That power creates other real concerns. A Facebook executive admitted in a 2019 internal memo—later leaked—that the company's power over speech is so immense that Facebook could unilaterally "pull any lever" to alter the outcome of a presidential election. *Andrew Bosworth Memo*, N.Y. Times (Jan. 7, 2020).[2] The States have authority to protect citizens from abuse of that immense power.

SUMMARY OF ARGUMENT

I.A. The easiest path to resolve this case is to determine whether social media is more like telephones or more like newspapers. The law has consistently permitted requiring telephones and the like to distribute third-party speech and has generally rejected requiring the same of companies like newspapers.

This Court has already unanimously rejected NetChoice's maximalist argument that companies have a categorical right not to "disseminate … speech generated by others." NetChoice *Paxton* Br., at 13; *see PruneYard Shopping Ctr.* v. *Robins*, 447 U.S. 74, 85 (1980). Instead, this Court has considered whether the regulated company "possess[es] the power to obstruct readers' access to" information, *Turner Broad. System, Inc.* v. *FCC* ("*Turner 1994*"), 512 U.S. 622, 656 (1994), and whether requiring a company to distribute third-party speech would

[2] https://perma.cc/V8NP-6K4A; https://web.archive.org/web/20200107185034/https://www.nytimes.com/2020/01/07/technology/facebook-andrew-bosworth-memo.html.

AMERICAN OVERSIGHT

materially harm the company's ability to get out its "own message," *Rumsfeld* v. *Forum for Acad. and Institutional Rights, Inc.*, 547 U.S. 47, 63 (2006).

On these critical questions, newspapers and telephones are different. Local newspapers cannot restrict access to information. Nationwide phone companies can. For newspapers, parades, and the like, space constraints and limited number of content creators means compelling a company to carry third-party speech materially harms the company's ability to express its "own message." *Ibid.* The space constraints mean material loss of the company's opportunity to speak, and the nature of the medium means listeners become confused about whether speech belongs to third parties or the company. *Id.,* at 65. But for mass communication networks like telephones, those risks are not substantial. So courts have long permitted requiring companies like telephones to distribute third-party speech free from viewpoint discrimination.

Social media companies are much more like telephone networks than newspapers. Unlike newspapers, which "do[ ] not possess the power to obstruct readers' access to" information, *Turner 1994*, 512 U.S., at 656, social media companies do—and they exercise that power. Like telephone companies, and "unlike newspapers," social media companies "hold themselves out as organizations that focus on distributing the speech of the broader public." *Knight First Amend. Inst.*, 141 S. Ct., at 1224 (Thomas, J., concurring). Unlike the space constraints for newspapers, the space on social media is nearly boundless. And like telephones, nearly all

AMERICAN OVERSIGHT

speech on social media platforms is created by third parties.

For all these reasons, NetChoice cannot meet its burden of establishing that the regulations at issue here would materially limit a social media company's speech or cause ordinary members of the public to confuse speech on Facebook, YouTube, or X (formerly Twitter) as speech of the company itself, rather than third parties using those platforms. *Rumsfeld*, 547 U.S., at 64.

I.B. NetChoice barely addresses the analogy to telephones and telegraphs, stating only that regulating those companies is permissible because they transmit speech "on an 'unedited basis' from point A to point B." *Moody* Br., at 49. That argument fails for many reasons.

First, it is demonstrably false historically. As the Fifth Circuit explained, telegraph companies engaged in the same kind of viewpoint discrimination NetChoice's members engage in today.

Second, the argument would make regulation pointless. If the only companies that can be required to carry content without discrimination are those already doing so, regulation does nothing at all. Relatedly, NetChoice's argument begs the question. If this Court permits the regulations to go into effect, social media platforms likewise will transmit speech "on an 'unedited basis' from point A to point B."

Third, NetChoice's argument creates a recipe for censorship by telephones and government. Under their logic, as soon as an actor begins "editing" content, that transforms the content into the actor's own speech. Telephones can thus evade the 100-plus

AMERICAN OVERSIGHT

years of regulation simply by starting to censor. So too, government can simply "edit" people's speech, and turn everything into government speech.

I.C. Because NetChoice has brought facial challenges against these laws, this Court need not answer the thornier questions about what to do when platforms mix their own speech with that of third parties (such as when they append "fact checks" to third-party speech).

II.A. The extraordinary market power social media platforms possess reinforces the ability of States to regulate in this area. At common law, companies with substantial market power were required to serve without discrimination. This Court has long permitted States and Congress to apply the same concept to large communication platforms.

No doubt, these platforms possess extraordinary power. This industry has monumental barriers to entry. What makes these companies valuable is their network sizes, such as Facebook's 3-billion person network. That makes it very difficult to compete, and the one time an upstart (called Parler) finally gained momentum, Apple, Google, and Amazon forcibly removed it from the internet.

These companies also aggressively engage in censorship that impoverishes free exchange of ideas. Many examples are notorious, such as the systematic censorship (at the instigation of the Federal Government) of the Hunter Biden laptop story and of the theory that COVID originated in a lab in China—now the predominant theory of the Energy Department and the FBI. Platforms censor viewpoints on the most hotly contested topics of the

AMERICAN OVERSIGHT

day, like transgender issues. And they suppress "misinformation" later proven accurate. While most censored speech is conservative, there are complaints about censorship of left-wing speech. All this censorship harms not only the marketplace of ideas, but also the ability of the States to respond to the concerns of their citizens.

III. Dominant digital platforms are not the only problem. Government systematically pressures platforms to censor. This Court granted certiorari to *Murthy* v. *Missouri*, No. 23-411, where a district court made extensive fact findings that the White House, the FBI, an agency within the Department of Homeland Security, and other federal actors systematically pressured social media companies to censor even more speech.

In its brief in *Murthy*, the Federal Government does not dispute the accuracy of these extensive, alarming findings. It does not dispute, for example, that it successfully induced removal of millions of posts—even posts that do not violate policies of social media companies—or that this removal affected everyone on social media. Instead, it argues it successfully induced these things through legal "persuasion," not illegal "coercion," and that the plaintiffs lack standing to contend otherwise. U.S. Br., No. 23-411, at 14, 25, 34.

That likely reveals why the United States backs NetChoice here, even though its position threatens the United States' own laws. The Federal Government knows it will be much more difficult for federal officials to induce social media companies to suppress speech if state law prohibits it. So the

AMERICAN OVERSIGHT

Federal Government seeks to eliminate those state laws.

That shows that the Texas and Florida laws, far from infringing the First Amendment, in fact shield social media companies from government pressure and deprive *government* of the opportunity to control expression.

ARGUMENT

I. States have authority to prohibit mass communication platforms from censoring speech.

A. Requiring social media companies to distribute third-party speech without viewpoint discrimination is permissible because social media better resembles telephones than newspapers.

1. NetChoice does not dispute that telephones and telegraphs can be compelled, consistent with the First Amendment, to distribute third-party speech. They can be compelled to behave as common carriers even though this Court has declared that "they are *not* common carriers," *Primrose* v. *Western Union Telegraph Co.*, 154 U. S. 1, 14 (1894) (emphasis added), and even though these companies have a history of exercising the very "editorial discretion" NetChoice's members seek to exercise today, *Paxton*, 49 F.4th, at 470.

In fact, it is only because telegraph companies behaved the way social media companies do today that nondiscrimination regulations were imposed. In the 1800s, "Western Union, the largest telegraph

AMERICAN OVERSIGHT

company, … discriminated against certain political speech," confirming the fear "'that the private entities that controlled this amazing new technology would use that power to manipulate the flow of information to the public when doing so served their economic or political self-interest.'" *Ibid.* (quoting Genevieve Lakier, The Non-First Amendment Law of Freedom of Speech, 134 Harv. L. Rev. 2299, 2321 (2021)). "In response, States enacted common carrier laws to limit discrimination in the transmission of telegraph messages." *Ibid.* Congress did the same. *Ibid.* (citing Telegraph Lines Act, ch. 772, § 2, 25 Stat. 382, 383 (1888)); *see also W. Union Tel. Co.* v. *James*, 162 U.S. 650, 651 (1895) (rejecting a challenge to an Iowa law requiring telegraph companies to deliver messages with "impartiality and good faith").

On the other hand, this Court has been clear that companies generally cannot be compelled to distribute third-party speech in their own "newspapers," *Miami Herald Pub. Co.* v. *Tornillo*, 418 U.S. 241, 258 (1974), or in their own "newsletters," which are "no different from a small newspaper," *P. Gas and Elec. Co.* v. *Pub. Utilities Comm'n. of California*, 475 U.S. 1, 8 (1986). The Court has applied similar analysis to parade organizers and expressive associations. *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 574–75 (1995); *Boy Scouts of Am.* v. *Dale*, 530 U.S. 640, 655 (2000).

In two seminal cases, this Court explained what makes newspapers and the like different from organizations that can be required to distribute third-party speech. First, a newspaper, unlike a cable

AMERICAN OVERSIGHT

company,[3] "does not possess the power to obstruct readers' access to" other information. *Turner Broad. System, Inc.* v. *FCC* ("*Turner 1994*"), 512 U.S. 622, 656 (1994). Second, newspapers, newsletters, and the like generally cannot be required to distribute third-party content because that requirement "sufficiently interferes with any message of [the company]."[4] *Rumsfeld* v. *Forum for Acad. and Institutional Rights, Inc.*, 547 U.S. 47, 64 (2006). Telephones and shopping centers are different because no space constraints materially impede the company from getting out its "own message," and "there [i]s little likelihood that the views of those [third parties] engaging in the expressive activities would be identified with the" company. *See id.,* at 65 (citing *PruneYard Shopping Ctr.* v. *Robins*, 447 U.S. 74, 88 (1980)).

In other words, the First Amendment tolerates compelled hosting to preserve access to information when:

---

[3] Although cable companies differ from newspapers in important ways, they resemble (or at least did in the 1990s) newspapers in others. This Court stressed, for example, that cable companies in the 1990s had meaningful space constraints. *Turner 1994*, 512 U.S., at 637.

[4] Even newspapers "are prohibited from charging more for political advertising than they charge for commercial advertising" or "receiving money or any other thing of value in exchange for their editorial endorsement of a political candidate or an idea." Lakier, *supra*, at 2330 (citing 52 U.S.C. § 30120(b) and state laws).

AMERICAN OVERSIGHT

(1) the company has power to obstruct access to information, *Turner 1994*, 512 U.S., at 656; or

(2) there is no "danger … that the statute would 'dampen the vigor and limit the variety of public debate,'" *PruneYard*, 447 U.S., at 88 (quoting *Miami Herald*, 418 U.S., at 257) (brackets omitted), because the act of hosting "lack[s] the expressive quality of a parade, a newsletter, or the editorial page of a newspaper," *Rumsfeld*, 547 U.S., at 64.

That makes sense because a law requiring a company to host the speech of third parties is more akin to a property regulation than a speech regulation: it regulates the ability of a company like Facebook to exclude people from its network. Because any effect on the company's own speech is indirect, must-carry regulations are more likely than direct regulations to survive review.

NetChoice is thus wrong to assert that companies have a categorical right not to "disseminate … speech generated by others." *Paxton* Br., at 13. This Court squarely considered and (unanimously) rejected that argument. *PruneYard*, 447 U.S., at 85 (rejecting the argument "that a private property owner has a First Amendment right not to be forced by the State to use his property as a forum for the speech of others"). Instead, what matters are the contextual questions whether NetChoice's members can obstruct access to other information and whether hosting third-party speech would materially impede the ability of NetChoice's members to get out their own message.

That means there is a much simpler way for this Court to assess the two NetChoice cases: evaluate

AMERICAN OVERSIGHT

whether companies like Facebook are more like newspapers, parade organizers, cake bakers,[5] and website designers,[6] or more like telephones, telegraphs, schools, and shopping malls.

2. Social media companies are much more like telephones, telegraphs, schools, and shopping centers than newspapers and newsletters.

Consider first "the power [of social media companies] to obstruct readers' access to … publications." *Turner 1994*, 512 U.S., at 656. As explained more fully in Part II.B, perhaps the most infamous censorship decision by social media companies was blocking access to a newspaper report containing unflattering information about the Democratic candidate for President. "A daily newspaper, no matter how secure its local monopoly, does not possess th[is] power." *Ibid.* Social media companies do, and they exercise it. "The potential for abuse of this private power over a central avenue of communication cannot be overlooked." *Id.*, at 657.

Consider also the number of people contributing content to a newspaper versus a telephone network or social media network. Unlike a newspaper, which might have at most a few hundred people contributing content, "3 billion people" contribute content on Facebook. *Knight First Amend. Inst.*, 141 S. Ct., at 1224 (2021) (Thomas, J., concurring). "[U]nlike

---

[5] *Masterpiece Cakeshop, Ltd.* v. *Colorado Civ. Rights Commn.*, 138 S. Ct. 1719 (2018).

[6] *303 Creative LLC* v. *Elenis*, 600 U.S. 570, 592 (2023).

AMERICAN OVERSIGHT

newspapers, digital platforms hold themselves out as organizations that focus on distributing the speech of the broader public," and so it is the public who creates nearly all the content on the platform. *Ibid.* Moreover, while newspapers carefully curate third-party content that they accept (such as letters to the editor), social media companies, like telephones and telegraphs, generally "hold [themselves] out to serve any member of the public without individualized bargaining." *Paxton*, 49 F.4th, at 470; *see also Shurtleff* v. *City of Bos., Massachusetts*, 596 U.S. 243, 256–57 (2022) (holding that flag raisings were not government speech because "Boston told the public that it sought 'to accommodate all applicants'").

Then there is the lack of space constraints. *Rumsfeld*, 547 U.S., at 64. While nothing in the physical universe is truly infinite, social media companies come about as close to infinity as possible. They operate with nothing like the space constraints of a newspaper. "The New York Times publishes around 150 original pieces of journalism a day, on average." *How We Choose the Great Read*, N.Y. Times (Apr. 4, 2022).[7] In contrast, the vast majority of public speech flows through social media, with 1.7 million posts made to Facebook and 500 hours of video are uploaded to YouTube every *minute*. *Media Usage in an Internet Minute as of April 2022*, Statista

[7] https://perma.cc/578R-L88S; https://web.archive.org/web/20220421090948/https://www.nytimes.com/2022/04/21/insider/how-we-choose-the-great-read.html.

AMERICAN OVERSIGHT

(2023).[8] That is 2.4 billion Facebook posts and 720,000 hours of video uploaded to YouTube every day. Unlike a newspaper, where forced hosting of third-party content meaningfully decreases space for the newspaper's own message, *Miami Herald*, 418 U.S., at 257, social media companies have plenty of space to express their own message. For social media, "accommodation does not sufficiently interfere with any message of the [social media company]." *Rumsfeld*, 547 U.S., at 64.

And unlike newspapers or parade organizers (which carefully curate all content toward a specific message or messages), nearly all content on social media companies is posted unedited by the companies. While these platforms "use algorithms to screen out" far less than even one percent of content, "virtually everything else is just posted to the Platform with *zero* editorial control or judgment." *Paxton*, 49 F.4th, at 459 (emphasis in original).

In fact, contrary to NetChoice's assertions now that its members exercise "editorial control" over everything, these companies have expressly stated, "We try to explicitly view ourselves as *not editors* .... We don't want to have editorial judgment over the content that's in your feed." *Id.*, at 460 (emphasis added) (quoting Ravi Somaiya, *How Facebook Is Changing the Way Its Users Consume Journalism*, N.Y. Times (Oct. 26, 2014)[9]). NetChoice's current

---

[8] https://perma.cc/C6XH-DBJ2 (last visited Jan. 9, 2024).

[9] https://perma.cc/YTZ9-6VVL; https://web.archive.org/web/20141027091945/https://www.nytim

AMERICAN OVERSIGHT

presentation before this Court is likewise inconsistent with the assertions of its members in other lawsuits that they merely distribute content created by others and are therefore entitled to immunity under § 230 of the Communications Decency Act. *E.g.*, Br. of Twitter, *Gonzalez* v. *Google*, No. 21-1333, at 7 (Jan. 2023) (stating that Twitter merely "disseminat[es] third-party content"); *see also NetChoice, LLC* v. *Paxton*, 142 S. Ct. 1715, 1717 n.2 (2022) (Alito, J., dissenting) (noting the argument that NetChoice's "position in this litigation is in conflict or tension with the positions of its members in cases regarding the interpretation of § 230").

Finally, it is Congress's judgment that these companies operate more like telephones than newspapers, which is why Congress shielded them from defamation liability. *See* 47 U.S.C. § 230.

For all these reasons, social media companies better resemble telephone companies than newspapers. They have power to obstruct customers from receiving speech, they are principally in the business of distributing the content of others from point A to point B, they do not deal with meaningful space constraints, and the vast majority of the speech they distribute is unedited.

NetChoice thus cannot prove that distributing third-party speech without viewpoint discrimination will materially impede social media companies from speaking for themselves or that members of the public

---

es.com/2014/10/27/business/media/how-facebook-is-changing-the-way-its-users-consume-journalism.html.

AMERICAN OVERSIGHT

will mistake third-party speech on Facebook, YouTube, or Twitter as speech *by* the platforms. *Rumsfeld*, 547 U.S., at 64. Just as "high school students can appreciate the difference between speech a school sponsors and speech the school permits because legally required to do so," *ibid.*, so too everyday Americans can distinguish between speech *on* Facebook and Facebook's own speech[10]—especially because these companies expressly disclaim third-party content as their own. *See, e.g.*, *Terms of Service*, Facebook (last updated July 26, 2022), https://www.facebook.com/legal/terms ("We do not control or direct what people and others do or say, and we are not responsible for their actions or conduct (whether online or offline) or any content they share (including offensive, inappropriate, obscene, unlawful, and other objectionable content).").

All these facts sharply distinguish social media companies not only from newspapers, but also from cake decorators, website designers, and parade

---

[10] Section 230 lawsuits ask a different question. There is usually no debate about whether the speech is third-party speech. The question instead is whether the platform helped "develop[ ]" the third-party's speech "in part," thus removing immunity. 47 U.S.C. § 230(f)(3); *see also Malwarebytes, Inc.* v. *Enigma Software Group USA, LLC*, 141 S. Ct. 13, 16 (2020) (Thomas, J., concurring). There is an active debate about whether things like algorithms help "develop[ ]" third-party speech "in part." A conclusion by this Court that individuals are unlikely to mistake third-party speech on social media companies for the speech of the companies themselves would have no effect on whether those companies could invoke § 230 as a shield with respect to the same content.

AMERICAN OVERSIGHT

organizers. While there is little to no risk that everyday observers will mistake third-party speech on Facebook for Facebook's "own message," requiring a cake artist or independent website designer to speak a third party's speech does "deny speakers the right 'to choose the content of their own messages'" because the risk of attribution is high. *303 Creative LLC*, 600 U.S., at 592 (quoting *Hurley*, 515 U.S., at 573) (brackets omitted). Indeed, the "very purpose" of Colorado's requirement to force companies to design websites supporting certain events was "the coercive elimination of dissenting ideas about marriage." *Id.*, at 588 (brackets and internal quotation marks omitted). Forcing a cake baker or newspaper to state third-party speech unlawfully compels speech. Requiring companies in the business of transmitting other peoples' speech billions of times a day to do so without viewpoint discrimination does not.

3. It makes no difference that posts on social media typically are distributed to many people rather than to one. Organizations subject to must-carry regulations are regularly used to broadcast speech to many recipients. "[S]upposedly one-to-one media have long been used to distribute material to the public at large." Eugene Volokh, *Treating Social Media Platforms Like Common Carriers?*, 1 J. Free Speech L. 377, 387 (2021). One speaker can use the U.S. Postal Service to broadcast a message to millions. *Ibid.* And hundreds or even thousands of people can join a single conference call or group text message thread.

AMERICAN OVERSIGHT

B. Social media companies cannot evade accountability simply by choosing to edit some content.

The Fifth Circuit opinion extensively discussed the historical regulation of telephones and telegraphs, yet NetChoice's brief in *Paxton* makes no attempt to address that analogy. Its brief in *Moody* is hardly better, principally arguing (at 49) that telegraph and telephone companies are different because they merely transmit speech "on an 'unedited basis' from point A to point B." The United States amicus brief repeats this argument, asserting (at 11) that "unlike [telephones and telegraphs], the platforms are not merely conduits transmitting speech from one person to another" but instead choose to edit or remove content.

Although the Eleventh Circuit adopted this argument, *NetChoice, LLC* v. *Moody*, 34 F.4th 1196, 1222 (CA11 2022), the argument overlooks basic history, is circular and begs the question, would enable phone companies to evade regulation, and would create a roadmap for government censorship.

As to history, telephone and telegraph companies transmit speech on an "unedited basis" only because they are compelled to do so by law. Those companies historically did the same thing NetChoice's members currently do until the States, Congress, and this Court stepped in. *See* Lakier, *supra*, at 2322; *Paxton*, 49 F.4th, at 470; *W. Union Tel. Co.*, 162 U.S., at 651.

History thus favors the States, not NetChoice. The Eleventh Circuit concluded social media companies could censor content because they have "historically exercised" power to refuse transmission

AMERICAN OVERSIGHT

of disfavored ideas. *Moody*, 34 F.4th, at 1222. But telegraph companies have a much longer history of censorship. Social media is less than two decades old. Congress did not impose must-carry requirements on telegraphs until 1888, 50 years after their invention. *Paxton*, 49 F.4th, at 471. Yet it is well recognized today that those must-carry regulations were constitutional—even though this Court declared that telegraph companies are "*not* common carriers." *Primrose*, 154 U. S., at 14 (emphasis added). History thus provides no basis for dismissing the striking similarities between social media companies and telegraph and telephones by dubbing social-media censorship "editorial judgment."

The attempt to avoid the telephone analogy is also circular and would wipe out traditional regulations. The Eleventh Circuit concluded Florida could not require social media companies to distribute content without viewpoint discrimination because the companies already "exercise editorial judgment." *Moody*, 34 F.4th, at 1221. In other words, the State can compel a company to refrain from censoring only if the company is already refraining. Under that rule, must-carry regulations are pointless. Telephones, telegraphs, and parcel delivery companies can become immune under the First Amendment from any must-carry regulation as soon as they chose to engage in "editorial judgment" to cut off calls and not deliver messages and products that express ideas they dislike.

Or if those traditional regulations are valid, then the Eleventh Circuit's analysis is self-refuting: the regulations here would become valid as soon as a company complies. NetChoice asserts that imposing

AMERICAN OVERSIGHT

must-carry regulations on telephones is fine because telephones transmit speech "on an 'unedited basis,'" but the same will be true of NetChoice's members if they comply with these statutes.

The argument is also a roadmap for government censorship. If NetChoice and the Eleventh Circuit are correct that the act of "discriminat[ing] among messages" converts third-party speech into the platform's first-party speech, *Moody*, 34 F.4th, at 1221, then the Federal Government could freely censor speech on its property because the censorial act would convert the speech into government speech, which "is not restricted by the Free Speech Clause," *Pleasant Grove City, Utah* v. *Summum*, 555 U.S. 460, 469 (2009); *see also Walker* v. *Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 213 (2015). Much like this Court should "prevent the government-speech doctrine from being used as a cover for censorship," *Shurtleff*, 596 U.S., at 263 (Alito, J., concurring), it should prevent the First Amendment from blocking States' efforts to stop private censorship. Like the government, social media companies may not hide behind the First Amendment when they deploy a "come-one-come-all attitude" with exceptions for select disfavored speakers. *Id.*, at 257 (majority op.).

C. In the context of facial challenges, this Court need not consider more complex questions.

Because NetChoice has asserted facial challenges, this Court need not wade into more difficult questions, such as whether a social media company can be

AMERICAN OVERSIGHT

prohibited from attaching a disclaimer or a fact check to third-party speech.

It is far from obvious how this Court's precedents would apply. On the one hand, a platform that appends a note to third-party speech undoubtedly engages in its own speech. On the other hand, communication networks often are required to serve all comers without "undue or unreasonable preference or advantage to any particular person" or "class of persons." 47 U.S.C. § 202. If a phone company appended a 30-second ad supporting one political candidate to every call originating from the campaign office of that candidate's opponent, the phone company would certainly be engaging in speech, but it would also be giving "preference or advantage" to one customer over another.

Those more difficult questions should not be resolved in the context of a facial challenge.

II. The hyperconcentration of social media reinforces State authority to regulate.

Both the common law and American courts have long recognized that protecting the marketplace of ideas involves more than keeping government from abridging speech; it sometimes means regulating dominant private actors to ensure they cannot abridge speech either.

At common law, it was well recognized that companies with substantial market power could be compelled not to discriminate. As Matthew Hale, the well-known English barrister and scholar on the history of the common law, put it, "if a wharf owner operated the 'only wharf licensed by the queen' or if

AMERICAN OVERSIGHT

'there was no other wharf in that port,' then the wharf was 'affected with a public interest,' and the owner acquired a duty to serve without discrimination." *Paxton*, 49 F.4th, at 472 (quoting Matthew Hale, *De Portibus Maris*, *in* A COLLECTION OF TRACTS RELATIVE TO THE LAW OF ENGLAND 77–78 (Francis Hargrave ed., 1787)) (brackets omitted).

American courts have long applied this principle to communications technology, assessing whether a "communications firm … play[s] a central economic and social role in society." *Paxton*, 49 F.4th, at 471. As this Court put it, because "values central to the First Amendment" include "assuring that the public has access to a multiplicity of information sources," government can take "steps to ensure that private interests not restrict, through physical control of a critical pathway of communication, the free flow of information and ideas." *E.g.*, *Turner 1994*, 512 U.S., at 657, 663; *accord U.S. Telecom Ass'n* v. *FCC*, 855 F.3d 381, 434–35 (CADC 2017) (Kavanaugh, J., dissenting from rehearing en banc) ("If the Internet service providers have market power, then the Government may impose open-access or similar carriage obligations.").

This Court has thus held that radio's "unique characteristic[s]" permit the government to restrict "specified network practices" without abridging freedom of speech. *Nat'l Broad. Co.* v. *United States*, 319 U.S. 190, 226–27 (1943). And this Court approved government regulations that prohibited cable companies from silencing "the voice of" some "speakers with a mere flick of the switch." *Turner 1994*, 512 U.S., at 656; *see also Turner Broad. Sys., Inc.* v. *FCC ("Turner 1997")*, 520 U.S. 180, 225 (1997).

AMERICAN OVERSIGHT

Applied to social media companies, these cases mean, at the least, that regulations are justified when "the service provider possesses 'bottleneck monopoly power' in the relevant geographic market" and can use it to "diminish[] the diversity and amount of content available." *U.S. Telecom Ass'n*, 855 F.3d, at 431, 433 n.12 (Kavanaugh, J., dissenting from denial of rehearing en banc) (quoting *Turner 1994*, 512 U.S., at 661); *see also Comcast Cable Commc'ns, LLC* v. *FCC*, 717 F.3d 982, 993 (CADC 2013) (Kavanaugh, J., concurring). "[I]t stands to reason that if Congress may demand that telephone companies operate as common carriers, it can ask the same of" other communication companies, including social media companies. *Turner 1994*, 512 U.S., at 684 (opinion of O'Connor, J.).

The core of the Florida and Texas laws comfortably fits that rubric. The laws address companies that possess extraordinary market power and use it to reduce diversity of ideas.

A. Market power

While these companies were much smaller and less entrenched even six or eight years ago, the extraordinary scale and scope of large social media platforms today makes it impossible to deny that they "play[] a central economic and social role in society." *Paxton*, 49 F.4th, at 471. These platforms are "the modern public square," *Packingham* v. *North Carolina*, 582 U.S. 98, 107 (2017), and "serve as the primary source of news about important public issues for many Americans," *Murthy* v. *Missouri*, 144 S. Ct. 32, 32 (2023) (Alito, J., dissenting).

AMERICAN OVERSIGHT

Consider their network effects. A fax machine is valuable only to the extent others use fax machines. The most valuable thing about Facebook is that "3 billion people use it." *Knight First Amendment Inst.*, 141 S. Ct., at 1224 (Thomas, J., concurring). While network size makes Facebook an extraordinary marketplace for ideas, network size also means these dominant platforms are the only way most speakers can avoid speaking into a void, *see, e.g.*, Alan Z. Rozenshtein, *Silicon Valley's Speech: Technology Giants and the Deregulatory First Amendment*, 1 J. Free Speech Law 337, 357 (2021). Other options for speech are not comparable. Switching from Facebook to "competitor" upstart social media companies is not like switching from AT&T to Verizon. It is like switching from flying to walking.

Network effects also mean enormous barriers to new entry—as evidenced by these companies' sky-high profit margins.[11] In a competitive market, "astronomical profit margins … would induce new entrants into the market. That these companies have no comparable competitors highlights that the industries may have substantial barriers to entry." *Knight First Amendment Inst.*, 141 S. Ct., at 1225 (Thomas, J., concurring).

In fact, three years ago, the last time a newer social media company gained serious traction, other platforms banded together to kill it. In January

---

[11] Google obtained $76 billion in profits (revenue minus expenses) in 2021. Alphabet, Inc., *Form 10-K* (Feb. 2, 2023), https://perma.cc/M4A4-DC8L.

AMERICAN OVERSIGHT

2021, Parler, which branded itself as a free-speech platform, was the most downloaded app. Then Google (YouTube's parent company) and Apple "removed" "the app for the conservative-focused Twitter competitor Parler … from their app stores." Volokh, *supra*, at 397–98 (citations omitted). That made Parler virtually inaccessible on phones for anybody who had not already downloaded the app. Then Parler's "hosting company, Amazon Web Services" "blocked" it from the Amazon servers Parler was renting, taking Parler entirely offline, even though "Parler was merely refusing to forbid certain speech, much of which is constitutionally protected—thus voluntarily acting in a way close to how the post office and phone companies are required by law to act." *Id.*, at 398. Amazon's power to kick companies entirely off the internet has caused Amazon to be described as "more like a utility provider than a broadcaster." Scott Rosenberg, *Big Tech's Free Speech Showdown*, Axios (Jan. 10, 2021).[12]

This illustrates a concerning fact: the dominant internet players are so powerful that the only way startups can take off is by relying on the mercy of the companies against which they wish to compete.

The conclusion that a handful of companies dominate the social media market aligns with conclusions by States and the Federal Government. In 2020, the Federal Trade Commission initiated an ongoing antitrust suit on the theory that "Facebook

---

[12] https://www.axios.com/2021/01/10/big-techs-free-speech-showdown.

AMERICAN OVERSIGHT

holds monopoly power in the market for personal social networking services … in the United States." *FTC* v. *Facebook, Inc.*, No. 1:20-cv-03590 (D.D.C. filed Dec. 8, 2020), Am. Compl., ¶ 2. And nearly every State and the Department of Justice has been involved in antitrust litigation against the major social media companies in recent years. *See, e.g.*, *Antitrust Reform and Big Tech Firms*, Congressional Research Service R46875 (Nov. 21, 2023) (describing some active cases).[13]

B. Discriminatory use of power

Although described by this Court as "the modern public square," *Packingham*, 582 U.S., at 107, these platforms are in fact more important than the historic public square because they hold "unprecedented … control of so much speech in the hands of a few private parties," *Knight First Amendment Inst.*, 141 S. Ct., at 1221 (Thomas, J., concurring). True, other aspects of the internet have enormous network effects (such as email), but nobody has central control over those networks. In contrast, "control of [social media] networks is highly concentrated" in the hands of a few people. *Id.*, at 1224. The platforms' power to facilitate and restrict speech on a large scale means they wield power "far greater than that of individual broadcasters who compete with one another as well as with satellite and cable networks." Prasad Krishnamurthy & Erwin Chemerinsky, *How Congress*

---

[13] https://crsreports.congress.gov/product/pdf/R/R46875.

AMERICAN OVERSIGHT

Can Prevent Big Tech from Becoming the Speech Police, The Hill (Feb. 18, 2021).[14]

These platforms have used their unprecedented power to censor mainstream speakers on important issues of public debate. That selective censorship—the Florida and Texas legislatures concluded—threatens the marketplace of ideas and the free flow of information to the detriment of citizens and democratic governance.

These legislative judgments rest on solid ground. Companies covered by the Texas and Florida laws currently exercise unchecked power to suppress ideas. And they have shown little inclination to self-limit their "incredible influence over the content that's put out into the world." Ahiza García-Hodges, *Big Tech Has Big Power over Online Speech. Should It Be Reined In?*, NBC News (Jan. 21, 2021).[15]

1. Perhaps most famously, weeks before the 2020 general election while voters were deciding among presidential candidates, Twitter blocked users from posting links to a New York Post article about unflattering information found on the laptop of the Democratic candidate's son, and Facebook "deprecate[d]" the story by preventing users from linking to the New York Post. Kate Cox, *Twitter, Facebook Face Blowback after Stopping Circulation of NY Post Story*, Ars Technica (Oct. 14, 2020).[16] The

---

[14] https://perma.cc/645W-LMLP.

[15] https://perma.cc/FN7D-BL9T.

[16] https://perma.cc/6NYG-STXX.

AMERICAN OVERSIGHT

laptop information was "authenticated" by the New York Times more than a year later, after the censorship damage was done. Katie Benner, et al., *Hunter Biden Paid Tax Bill, but Broad Federal Investigation Continues*, N.Y. Times (Mar. 16, 2022).[17]

2. Platforms restrict not only news reporting, but also speech by everyday Americans. They "have certainly been willing to restrict opinions that are well within the American political mainstream." Volokh, *supra*, at 395. This conclusion is borne out in countless examples. *Id.*, at 397 (listing several).

Consider one of the most hotly contested issues today: the many controversial legal and policy questions related to the increasing number of individuals who identify as transgender. These include questions about separate bathrooms, locker rooms, and sports teams; about appropriate medical care; and even about the nature of what it means to be male or female. Nobody doubts these questions are important, yet social media companies have made mainstream views on these questions off limits. For example, a clear majority (57%) of adults believe sex is determined at birth, regardless of a person's later-expressed gender identity. Ashley Kirzinger, et al., *KFF/The Washington Post Trans Survey* (Mar. 24, 2023).[18] But the 57% of Americans who believe that

---

[17] https://perma.cc/QJ97-J26Q; https://web.archive.org/web/20240109032322/https://www.nytimes.com/2022/03/16/us/politics/hunter-biden-tax-bill-investigation.html.

[18] https://perma.cc/M2Y8-CNLD.

AMERICAN OVERSIGHT

are not allowed to say so on social media. For example, when a U.S. Representative expressed his view that a high-ranking official in the Biden administration who identifies as a woman is in fact "a man," Twitter locked the Representative's account until he deleted the post. *Indiana Congressman Deletes Post, Gets Twitter Access Back*, Associated Press (Nov. 5, 2021).[19] Similarly, Twitter suspended a commenter when she expressed opposition to a transgender individual competing in the women's division in the Olympics, stating "men shouldn't compete against women." Joseph Wulfsohn, *Allie Beth Stuckey Released from "Twitter Jail" after Referring to Transgender Olympic Athlete as a "Man,"* Fox News (Aug. 6, 2021).[20]

These questions are hotly debated today, and views on all sides of the issues are held "in good faith by reasonable and sincere people." *Obergefell* v. *Hodges*, 576 U.S. 644, 657 (2015). But it is extraordinary that dominant communications companies through which the vast majority of public speech flows can make a viewpoint held by 57% of Americans, on one of the most salient political topics of the day, off limits in the "modern public square," *Packingham*, 582 U.S., at 107. That censorship "harm[s] … society as a whole" by "depriv[ing]" society

---

[19] https://perma.cc/X3DX-X4EF; https://web.archive.org/web/20230401020728/https://apnews.com/article/business-media-social-media-indiana-fort-wayne-16fb83191716f3dc1e9440f2cc972b54.

[20] https://perma.cc/X5E3-JZBV.

AMERICAN OVERSIGHT

of "an uninhibited marketplace of ideas." *Virginia* v. *Hicks*, 539 U.S. 113, 119 (2003).

Much of the speech targeted by these dominant communication platforms is conservative, which is not surprising given Mark Zuckerberg's acknowledgment that tech companies reside in "an extremely left-leaning place." Morgan Chalfant, *Cruz Presses Zuckerberg on Alleged Censorship of Conservative Speech* (Apr. 10, 2018).[21] Right after Elon Musk purchased Twitter, he and journalist Bari Weiss uncovered internal evidence that at Twitter, "the rules were enforced against the right, but not against the left." Elon Musk tweet, Dec. 8, 2022.[22]

But several platforms have also received allegations about censorship of opinions commonly viewed as left wing. Currently, social media companies face accusations of reducing the visibility of posts expressing political support for a Palestinian state in the present conflict. Priyanka Shankar, et al., *Are Social Media Giants Censoring Pro-Palestine Voices Amid Israel's War?*, Al Jazeera (Oct. 24, 2023).[23] Last summer, a federal district court found that social media platforms, at the request of federal officials, blocked Robert F. Kennedy, Jr.'s efforts to communicate with the public about his campaign for the Democratic presidential nomination. *See Missouri* v. *Biden*, 2023 WL 4335270, *5, *9, *40 (W.D.

---

[21] https://perma.cc/BWB3-3SF5.

[22] https://perma.cc/7684-AB49.

[23] https://perma.cc/8V95-U3DZ.

AMERICAN OVERSIGHT

La., July 4, 2023). And in the aftermath of George Floyd's murder, Facebook allegedly flagged and removed posts calling attention to allegedly racist conduct. Craig Silverman, *Black Lives Matter Activists Say They're Being Silenced by Facebook*, Buzzfeed (June 19, 2020).[24]

3. Platforms also censor true information that is difficult to brand as left or right. Speech surrounding COVID is a prime example. When COVID first hit, "major social networks rolled out a series of policy changes to curb … claims about the virus, including theories about its roots"—like that it originated in a Chinese lab. Cristiano Lima, *New Report on Covid-19 Origin Puts Social Media in GOP's Crosshairs*, Washington Post (Feb. 27, 2023).[25] That origin theory is now the predominant theory of many agencies under the Biden administration. Both the Energy Department and the FBI have concluded that the COVID-19 "virus likely spread due to an accident at a Chinese laboratory." *Ibid.*

Similarly, in the summer of 2021, YouTube removed a video that a U.S. Senator, who is a doctor, posted opining about the relative inefficacy of masks made out of cloth. *See, e.g.*, *YouTube Suspends Rand Paul after Misleading Video on Masks,* PBS News Hour (Aug. 11, 2021).[26] YouTube also banned him from posting any videos—on any topic—for a week.

---

[24] https://perma.cc/6F6S-UL4V.

[25] https://perma.cc/6STJ-N8EH.

[26] https://perma.cc/U2PD-K76U.

AMERICAN OVERSIGHT

Yet Senator Paul's view is widely accepted today. *See* Apoorva Mandavilli, *The C.D.C. Concedes that Cloth Masks Do Not Protect Against the Virus as Effectively as Other Masks.*, N.Y. Times (Jan 14, 2022).[27] And his perspective might have been immensely important at the time to individuals deciding how best to protect themselves and others.

4. These examples may only scratch the surface because of platforms' deliberate opacity about their practices. They censor by taking down content or suspending people from their accounts, but they also "shadowban" by distributing content less widely than would otherwise occur. Geoffrey Fowler, *Shadowbanning Is Real: Here's How You End up Muted by Social Media*, Washington Post (Dec. 27, 2022).[28] "[U]sers often have no way of telling for sure whether they have been shadowbanned or whether their content is simply not popular."[29] Gabriel Nicholas, *Shadowbanning Is Big Tech's Big Problem*, The Atlantic (April 28, 2022).[30]

If recent history is any guide, that will not change. These companies continue to resist transparency. In

---

[27] https://perma.cc/77LD-NL5K; https://web.archive.org/web/20231106050019/https://www.nytimes.com/2022/01/14/health/cloth-masks-covid-cdc.html.

[28] https://perma.cc/6AM9-XV7M.

[29] That some censorship occurs by *leaving up* content (but simply not distributing it as widely) further undermines NetChoice's contention that social media companies must censor content to avoid unwanted association with speech they dislike.

[30] https://perma.cc/MW3Y-LYDZ.

AMERICAN OVERSIGHT

early 2023, for example, Facebook's parent company, Meta, declined the recommendation of its Oversight Board to disclose which public-figure Facebook pages are subject to the site's "cross-check" moderation program for high-profile users. Clare Duffy, *Facebook Revamps Controversial Content Moderation Process for VIPs*, CNN Business (Mar. 3, 2023).[31]

* * *

Whether the target is left-wing speech, right-wing speech, or centrist speech, censorship harms everyone. From the start, our constitutional order recognized that "error of opinion may be tolerated where reason is left free to combat it." Jefferson's First Inaugural Address (March 4, 1801).[32] The Constitution aims to "'preserve an uninhibited marketplace of ideas in which truth will ultimately prevail.'" *Nat'l Inst. of Fam. & Life Advocates.* v. *Becerra*, 138 S. Ct. 2361, 2374 (2018) (citation omitted). That is because the "widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." *Associated Press*, 326 U.S., at 20. "This free exchange facilitates an informed public opinion, which, when transmitted to lawmakers, helps produce laws that reflect the People's will." *Mahanoy*, 141 S. Ct., at 2046.

Platforms leverage their extraordinary power to threaten that constitutional project. Florida and

---

[31] https://perma.cc/W8UJ-BQPS.

[32] https://perma.cc/VX6E-FA33.

AMERICAN OVERSIGHT

Texas's challenged response, designed to ensure information flows freely and fairly, strengthens rather than offends the First Amendment.

C. The Court should respect legislative fact findings of market power and censorship.

In the face of this discriminatory use of market dominance, the Texas and Florida legislatures made legislative findings about the power of large platforms to impoverish the marketplace of ideas. Texas concluded that social media platforms with "more than 50 million active users in the United States in a calendar month" have "market dominance" that justifies treating them as "common carriers." Tex. Code § 120.002(b); Tex. H.B. 20 §1(4). Florida determined that platforms with 100 million monthly global users or $100 million annual gross revenue "have become as important for conveying public opinion as public utilities are for supporting modern society" and "should be treated similarly to common carriers." Fla. Stat. § 501.2041(g); Fla. S.B. 7072 § 1(5)–(6). Those legislative judgments deserve significant weight in evaluating whether the Constitution permits the States' regulations. *Cf. Munn* v. *Illinois*, 94 U.S. 113, 132 (1876); *Turner 1994*, 512 U.S., at 665 (plurality op.); *Minnesota* v. *Clover Leaf Creamery Co.*, 449 U.S. 456, 464 (1981). After all, if "it stands to reason" that "Congress may demand" that telephone and cable companies carry third-party speech, *Turner 1994*, 512 U.S., at 684 (O'Connor, J., concurring in part and dissenting in part), it equally stands to reason that the States may demand the same of digital platforms. Where the

AMERICAN OVERSIGHT

Bill of Rights polices government conduct, there is "no daylight between the federal and state conduct it prohibits or requires." *Timbs* v. *Indiana*, 139 S. Ct. 682, 687 (2019); *see also Ramos* v. *Louisiana*, 140 S. Ct. 1390, 1397 (2020); *Malloy* v. *Hogan*, 378 U.S. 1, 7 (1964).

III. State laws preventing platforms from censoring speech provide a prophylactic vanguard against government censorship.

The United States says it submits a brief because, Congress having "enacted laws governing the communications industry," the United States "has a substantial interest in the resolution of the questions presented." U.S. Br., at 1. Yet it advocates a position that threatens to *undermine* federal laws.

Why? Perhaps because the Federal Government intends to continue its well-documented practice of pressuring companies to wield their censorship discretion to remove disfavored viewpoints.

It is undisputed that the Federal Government, including the White House, has engaged in a years-long, behind-closed-doors campaign to push social media companies to suppress millions of constitutionally protected posts. This Court granted certiorari in *Murthy* v. *Missouri*, No. 23-411, and while the legal conclusions there are disputed, the fact findings are not.

In its opening brief in *Murthy*, the Federal Government does not dispute any fact finding. It does not dispute that—behind closed doors—it successfully used "unrelenting pressure" to push social media companies to "suppress[] millions of protected free speech postings by American citizens."

AMERICAN OVERSIGHT

Missouri, 2023 WL 4335270, at *44. It does not dispute it targeted "disfavored" speech "well beyond COVID-19," including "the Hunter Biden laptop story," *Missouri* v. *Biden*, 83 F.4th 350, 368, 381 (CA5 2023), and topics related to "racial justice, the U.S. withdrawal from Afghanistan," U.S. "[s]upport of Ukraine," and content posted by an individual who was challenging President Biden for the Democratic presidential nomination, 2023 WL 4335270, at *9, *67. The Federal Government does not dispute it targeted "nearly every major American social media company," and that those companies "capitulated" into "total compliance," even removing constitutionally protected content that "did not run afoul of their policies." 83 F.4th, at 359, 362–63, 392. And the Federal Government does not dispute its "conduct has not stopped," it has even "started monitoring" the platforms for compliance with governmental demands "to remove disfavored content," and its push for censorship has been so widespread that "it impacts every social-media user." *Id.*, at 359–60, 393, 398.

Instead, the Federal Government argues it induced all these things through legal "persuasion," not illegal "coercion," and the plaintiffs lack standing to contend otherwise. U.S. Br., No. 23-411, at 14, 25, 34. The Federal Government even doubles down, all but promising to continue pressing platforms to suppress millions of posts because it believes these posts are "false information," *id.*, at 34, even though much speech it pushed to suppress turned out to be true.

AMERICAN OVERSIGHT

The Federal Government's interest in the *NetChoice* cases is thus clear.[33] The Texas and Florida laws pose no threat to federal laws; they only threaten the ability of federal officials to continue pushing platforms to "suppress[] millions of protected free speech postings by American citizens." 2023 WL 4335270, at *44.

Pressuring platforms would become much more difficult if state law prohibited platforms from complying with federal takedown demands. One of "anti-discrimination obligations' great virtues is that it protects private entities from complying with government's censorship demands. A private company with no legal obligation to treat users in a non-discriminatory fashion readily can accede government's request to censor, block, or otherwise treat users unfairly. But, if a private firm is prohibited by law to do so, then the government cannot even ask." Adam Candeub, *Bargaining for Free Speech: Common Carriage, Network Neutrality, and Section 230*, 22 Yale J. L. & Tech. 391, 432–33 (2020).

The Federal Government's real interest here is that it will no longer be able to "persuade" platforms to take down millions of constitutionally protected

---

[33] As further evidence that the United States views the *NetChoice* cases as fundamentally related to *Murthy*, the United States repeats the same "editorial discretion" arguments in *Murthy*. U.S. Br., No. 23-411, at 3–4, 16, 36. The United States is also represented in this case by two Civil Division attorneys who represented the Federal Government in *Murthy* at the Fifth Circuit.

AMERICAN OVERSIGHT

posts if this Court affirms the Texas and Florida laws. That is a reason to support the state laws, not to strike them down. In passing these laws, Texas and Florida afforded their citizens the "double security [that] arises" when one government "guard[s] … society against the injustice of the other." The Federalist No. 51, *supra*, at 320 (Madison). The Fifth Circuit in *Murthy* said the Federal Government forced social media companies to "bend to the government's will." 83 F.4th, at 371. The laws challenged here provide the legal backbone platforms need to stand straight.

AMERICAN OVERSIGHT

CONCLUSION

The Court should affirm the longstanding authority of States to protect their citizens from censorship imposed by mass communication networks.

Respectfully submitted,

DAVE YOST
Ohio Attorney General

MICHAEL HENDERSHOT
Chief Deputy Solicitor General
NICHOLAS CORDOVA
Deputy Solicitor General
OFFICE OF THE OHIO ATTORNEY GENERAL
30 East Broad St., 17th Fl.
Columbus, Ohio 43215
(614) 644-0576

ANDREW BAILEY
Missouri Attorney General

JOSHUA M. DIVINE
Solicitor General
Counsel of Record
MARIA A. LANAHAN
Deputy Solicitor General
CALEB RUTLEDGE
BRYCE BEAL
Assistant Attorneys General
OFFICE OF THE MISSOURI ATTORNEY GENERAL
Supreme Court Building
207 West High Street
Jefferson City, MO 65102
(573) 751-8870
Josh.Divine@ago.mo.gov

January 22, 2024

AMERICAN OVERSIGHT

ADDITIONAL COUNSEL

Steve Marshall
Attorney General
State of Alabama

Treg Taylor
Attorney General
State of Alaska

Tim Griffin
Attorney General
State of Arkansas

Brenna Bird
Attorney General
State of Iowa

Russell Coleman
Attorney General
State of Kentucky

Liz Murrill
Attorney General
State of Louisiana

Lynn Fitch
Attorney General
State of Mississippi

Austin Knudsen
Attorney General
State of Montana

Michael T. Hilgers
Attorney General
State of Nebraska

John M. Formella
Attorney General
State of New Hampshire

Drew H. Wrigley
Attorney General
State of North Dakota

Gentner Drummond
Attorney General
State of Oklahoma

Alan Wilson
Attorney General
State of South Carolina

AMERICAN OVERSIGHT

Marty Jackley
Attorney General
State of South Dakota

Jonathan Skrmetti
Attorney General
State of Tennessee

Sean D. Reyes
Attorney General
State of Utah

Jason Miyares
Attorney General
State of Virginia
Warren Petersen
President of the Senate
State of Arizona

By counsel:
Rusty D. Crandell
Majority General
Counsel
Arizona State Senate
1700 W. Washington St.
Phoenix, Arizona 85007
rcrandell@azleg.gov
(602) 926-3137

Ben Toma
Speaker of the House
of Representatives
State of Arizona

By counsel:
Linley Wilson
Majority General
Counsel
Arizona House of
Representatives
1700 W. Washington St.
Phoenix, Arizona 85007
LWilson@azleg.gov
(602) 926-5418

AMERICAN OVERSIGHT

To: Brianna Herlihy[brianna.herlihy@fox.com]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Sun 1/21/2024 10:28:22 AM (UTC-06:00)
Subject: Fw: NetChoice final
2024-01-22 - Missouri, Ohio, et al. - Netchoice amicus.pdf

Final final version!

Let me know if you need anything else!

From: Divine, Josh
Sent: Saturday, January 20, 2024 8:23:55 PM
To: Sieren, Madeline
Subject: NetChoice final

Filing Monday morning

Josh Divine | Solicitor General
Missouri Attorney General's Office
207 West High St.
Jefferson City, MO 65101
(573) 751-8870
Josh.Divine@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: 'alexei@athospr.com'[alexei@athospr.com]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Tue 2/6/2024 2:11:05 PM (UTC-06:00)
Subject: Fox Piece

Hey Alexei,
Thanks so much for being willing to connect me with Peter.
If you want to connect us on this chain, I can set up a time for him to interview AG Bailey. Happy to connect him with Riley and her team as well.
Some helpful info on our Media Matters work so far:
AG Bailey's initial confirmation of investigation the day before Musk launched his suit:
https://twitter.com/AGAndrewBailey/status/1726356260088426894
AG Bailey's document hold notice to Media Matters: https://ago.mo.gov/attorney-general-bailey-notifies-media-matters-of-pending-investigation/
AG Bailey's notice to affected advertisers of pending investigation of Media Matters: https://ago.mo.gov/attorney-general-bailey-directs-letter-to-advertisers-amidst-media-matters-investigation/
Some commentary from others on AG Bailey's work on Media Matters:
Elon Musk: https://twitter.com/elonmusk/status/1736872970105311563
Stephen Miller: https://twitter.com/StephenM/status/1734288075499413882
Let me know what else you need from me on this,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: brian@athospr.com[brian@athospr.com]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Tue 2/20/2024 2:53:32 PM (UTC-06:00)
Subject: AG Bailey Fox Interview

Hey Brian,
Here's the info you requested. It's a lot - I apologize in advance. Let me know what else need from us!

First Amendment

Attorney General Bailey Notifies Media Matters of Pending Investigation
Missouri Attorney General Andrew Bailey put Media Matters for America on notice that his office has launched an investigation into its allegedly fraudulent solicitation of donations from Missourians amidst its efforts to target X, formerly known as Twitter.
https://ago.mo.gov/attorney-general-bailey-notifies-media-matters-of-pending-investigation/

Attorney General Bailey Directs Letter to AdvertisersAmidstMatters Investigation
Missouri Attorney General Andrew Bailey, in partnership with Louisiana Attorney General Jeff Landry, directed a letter to major companies who pulled their advertisements from X, formerly known as Twitter. The two attorneys general, who have partnered together on the landmark free speech case,*Missouri v. Biden*, to combat government censorship on social media platforms wanted to let the corporations know that Missouri has opened an investigation into Media Matters for allegedly fraudulent behavior.
https://ago.mo.gov/attorney-general-bailey-directs-letter-to-advertisers-amidst-media-matters-investigation/

Missouri Attorney General Andrew Bailey Obtains Court Order Blocking the Biden Administration from Violating First Amendment
Missouri Attorney General Andrew Bailey announcedthe United States District Court for the Western District of Louisiana granted his motion to block top officials in the federal government from continuing to violate the First Amendment rights of millions of Americans. The judge's ruling is 155 pages long and includes 721 footnotes.
https://ago.mo.gov/missouri-attorney-general-andrew-bailey-obtains-court-order-blocking-the-biden-administration-from-violating-first-amendment/

Missouri Attorney General Andrew Bailey Asks CourtToBlock Biden From Violating Americans' 1st Amendment Rights, Citing 1,400 Facts
In order to protect the constitutional liberties of all Americans, Missouri Attorney General Andrew Bailey and Louisiana Attorney General Jeff Landry filed their motion for a preliminary injunction in their landmark free speech lawsuit, Missouri v. Biden. After receiving thousands of internal federal documents, the attorneys general ask the court to block top officials in the federal government from coercing and colluding withBigsocial media companies to violate Americans' right to free speech under the First Amendment. The motion for preliminary injunction highlights 1,432 facts showing that top officials in the federal government are coercing and colluding with big tech social media companies to censor free speech.
https://ago.mo.gov/missouri-attorney-general-andrew-bailey-asks-court-to-block-biden-from-violating-americans-1st-amendment-rights-citing-1400-facts/

Attorney General Bailey Files Brief Opposing Unconstitutional Gag Order on President Donald Trump
Missouri Attorney General Andrew Bailey announcedthat he has filed an amicus brief calling on the courts to reverse the unconstitutional gag order against President Donald J. Trump. a blatant violation of the First Amendment, the gag order stifles President Trump's ability to speak freely ahead of the approaching presidential election and denies Americans the right to hear free, fair and open debate from all presidential candidates.
https://ago.mo.gov/attorney-general-bailey-files-brief-opposing-unconstitutional-gag-order-on-president-donald-trump/

Fifth Circuit Sides with Missouri Attorney General Andrew Bailey, Blocks White House and FBIFromSpeech

AMERICAN OVERSIGHT

Missouri Attorney General Andrew Bailey announced today that the United States Fifth Circuit Court of Appeals has upheld his free speech case, Missouri v. Biden, by enjoining the White House, Surgeon General, FBI, and CDC from continuing to violate the First Amendment rights of millions of Americans.
https://ago.mo.gov/fifth-circuit-sides-with-missouri-attorney-general-andrew-bailey-blocks-white-house-and-fbi-from-censoring-speech/

Missouri Attorney General Releases More Documents Exposing White House's Social Media Censorship Scheme

order to protect the constitutional liberties of all Americans, Missouri Attorney General Andrew Bailey continues to pursue litigation in Missouri v. Biden, a civil case demonstrating that top officials in the federal government colluded withBigsocial media companies to violate Americans' right to free speech under the First Amendment. Today's documents display White House Digital Director Robert Flaherty and his team's efforts to censor opposing viewpoints on major social media platforms, such as Twitter, Facebook, and Instagram.
https://ago.mo.gov/missouri-attorney-general-releases-more-documents-exposing-white-house-s-social-media-censorship-scheme/

Attorney General Bailey Leads 20 States in Filing Supreme Court BriefAgainston Social Media Platforms

Missouri Attorney General Andrew Bailey led a 20-state coalition in filing a brief at the United States Supreme Court to combat censorship on social media platforms.In the brief, the attorneys general support Texas and Florida laws barring social media companies from silencing speech on their platforms.

FOX-Left-wing group 'defrauding' consumers with 'pro-Nazi' smear of Elon Musk: Republican state AG
https://www.foxnews.com/politics/left-wing-group-defrauding-consumers-pro-nazi-smear-elon-musk-republican-state-ag

FOX -Missouri will expose 'lies, fraud' from Media Matters: AG Andrew Bailey
https://www.foxbusiness.com/video/6342778270112

FOX- GOP AG hopeful Supreme Court will block Biden admin from 'worst First Amendment' breaches in history
https://www.foxnews.com/politics/gop-ag-hopeful-supreme-court-will-block-biden-admin-worst-first-amendment-breaches-history

FOX- Biden agency 'likely' violated free speech by working with Big Tech to censor election content: court
https://www.foxnews.com/us/biden-agency-likely-violated-free-speech-by-working-with-big-tech-to-censor-election-content-court

FOX- GOP AGs ask Supreme Court to peel back content moderation from Big Tech in landmark First Amendment cases
https://www.foxnews.com/politics/gop-ags-asks-supreme-court-to-peel-back-content-moderation-from-big-tech-in-landmark-first-amendment-case

HEARTLANDER - War for Soul of America has three fronts says Missouri AG
https://heartlandernews.com/2024/01/02/war-for-soul-of-america-has-three-fronts-says-missouri-attorney-general-who-has-helped-make-the-state-ground-zero-on-this-one/

HEARTLANDER - Missouri's landmark injunction halting Biden Administration Censorship Clears Path for 2024 Electionhttps://heartlandernews.com/2023/09/11/ag-missouris-landmark-injunction-halting-biden-administration-censorship-of-conservatives-clears-the-path-for-free-speech-in-2024-election/

Criminal

Attorney General Bailey Releases Kim Gardner Report

Missouri Attorney General Andrew Bailey released the*Kim GardnerReport*, which details his successful petition in quo warranto that ousted Kimberly Gardner from office in May after she failed to prosecute violent crime in the City of St. Louis for several years.
https://ago.mo.gov/attorney-general-bailey-releases-kim-gardner-report/

Missouri Attorney General Andrew Bailey Files Amended Petition in Quo WarrantoAgainstAttorney Kim Gardner

AMERICAN OVERSIGHT

In an effort to protect the people of the City of St. Louis, Missouri Attorney General Andrew Bailey today filed his amended petition in quo warranto against Circuit Attorney Kim Gardner after additional evidence has come to light. Over the past three weeks, his office has interviewed multiple witnesses who had the courage to come forward, reviewed countless court files, and analyzed over 30,000 documents and data from the St Louis City Circuit Court and the Comptroller's Office.
https://ago.mo.gov/missouri-attorney-general-andrew-bailey-files-amended-petition-in-quo-warranto-against-circuit-attorney-kim-gardner/

Attorney General Andrew Bailey Moves For Removal of St. Louis Circuit Attorney Kim Gardner
an effort to protect the people of St. Louis, Missouri Attorney General Andrew Bailey filed a suit (quo warranto) to remove St. Louis Circuit Attorney Kimberly M. Gardner from office.
https://ago.mo.gov/attorney-general-andrew-bailey-moves-for-removal-of-st-louis-circuit-attorney-kim-gardner/

Attorney General Andrew Bailey Demands St. Louis Circuit Attorney Kim Gardner ResignOrRemoval
In an effort to protect the people of St. Louis, Missouri Attorney General Andrew Bailey is demanding the resignation of St. Louis Circuit Attorney Kimberly Gardner by noon on February 23, or face immediate removal proceedings in the form of a writ of quo warranto brought by his office.
https://ago.mo.gov/attorney-general-andrew-bailey-demands-st-louis-circuit-attorney-kim-gardner-resign-or-face-removal/

Attorney General Bailey Files Amicus Brief Supporting States' Ability to Remove Prosecutors Who Fail to Enforce Laws
In an effort to enforce the laws as written, Missouri Attorney General Andrew Bailey joined a coalition of 15 attorneys general in urging the U.S. Court of Appeals for the Eleventh Circuit to affirm states' authority to remove local prosecutors who refuse to put the law ahead of their personal politics. In an amicus brief filed in Warren v DeSantis, the attorneys general maintain that states have a right to defend their constitutions against local prosecutors who, by pledging not to enforce laws they dislike, essentially wield a veto power over lawfully enacted legislation.
https://ago.mo.gov/attorney-general-bailey-files-amicus-brief-supporting-states-ability-to-remove-prosecutors-who-fail-to-enforce-laws/

FOX -Missouri AG rejects Kim Gardner's 'ridiculous' attempt to inject race into legal fight to fire her
https://www.foxnews.com/politics/missouri-ag-rejects-kim-gardners-ridiculous-attempt-inject-race-legal-fight-fire-her

FOX -Republican attorney general exposes DOJ funding to Soros-backed group that trains left-wing prosecutors
https://www.foxnews.com/politics/gop-ag-exposes-doj-funding-soros-backed-group-that-trains-left-wing-prosecutors

FOX -Missouri AG moves to fire Dem attorney Kim Gardner after she refuses to resign over public safety outcry
https://www.foxnews.com/politics/missouri-ag-moves-fire-dem-attorney-kim-gardner-refuses-resign-public-safety-outcry

FOX -Missouri AG claims liberal St. Louis prosecutor ignoring 'rule of law' as he seeks to oust her
https://www.foxnews.com/media/missouri-ag-claims-liberal-st-louis-prosecutor-ignoring-rule-of-law-as-he-seeks-to-oust-her

Children

Attorney General Bailey Files Suit Over St. Louis Pediatric Transgender Center's Refusal to TurnOver
Missouri Attorney General Andrew Bailey filed suit against Washington University in St. Louis for failing to hand over documents they had previously agreed to provide to his office amidst his investigation into their pediatric transgender clinic. General Bailey launched the investigation in February after a whistleblower came forward with allegations that the center used experimental drugs on children,distributed puberty blockers and cross-sex hormones without individualized assessment, and bullied parents into "consenting" to giving their children life-altering drugs.

AMERICAN OVERSIGHT

https://ago.mo.gov/attorney-general-bailey-files-suit-over-st-louis-pediatric-transgender-centers-refusal-to-turn-over-records/

Missouri Attorney General Andrew Bailey Calls for Moratorium on Puberty Blockers for Children Pending Investigation of Whistleblower Accusations

Missouri Attorney General Andrew Bailey directed a letter to TrishLollo, President of St. Louis Children's Hospital, and Dr. Andrew Martin, Chancellor of Washington University in St. Louis, urging the institutions to halt prescribing puberty blockers or cross-sex hormones to new patients at the Transgender Center at St. Louis Children's Hospital pending resolution of existing investigations. The Attorney General's Office launched an investigation into the Center two weeks ago after receiving credible testimony and corresponding documentation from a whistleblower who used to be employed there.

https://ago.mo.gov/missouri-attorney-general-andrew-bailey-calls-for-moratorium-on-puberty-blockers-for-children-pending-investigation-of-whistleblower-accusations/

Missouri Attorney General Andrew Bailey Confirms Launch of Multi-Agency Investigation into St. Louis Transgender Center for Harming Hundreds of Children

Now that the whistleblower has gone public with her allegations about the Pediatric Transgender Center at St. Louis Children's Hospital, Missouri Attorney General Andrew Bailey confirms that two weeks ago the Attorney General's Office began a full investigation into these shocking allegations. The Office has already received a sworn affidavit from the whistleblower and documents that support her allegations. The Missouri Department of Social Services and Division of Professional Registration are assisting the investigation.

https://ago.mo.gov/missouri-attorney-general-andrew-bailey-confirms-launch-of-multi-agency-investigation-into-st/

Missouri Attorney General Andrew Bailey Announces Emergency Regulation on Gender Transition Interventions for Minors

Missouri Attorney General Andrew Bailey announced today that his office is issuing an emergency regulation clarifying that, because gender transition interventions are experimental, they are covered by existing Missouri law governing unfair, deceptive, and unconscionable business practices, including in administering healthcare services. The regulation is necessary due to the skyrocketing number of gender transition interventions, despite rising concerns in the medical community that these procedures are experimental and lack clinical evidence of safety or success.

https://ago.mo.gov/missouri-attorney-general-andrew-bailey-announces-emergency-regulation-on-gender-transition-interventions-for-minors/

Missouri Attorney General Andrew Bailey Promulgates Emergency Regulation Targeting Gender Transition Procedures for Minors

In an effort to protect children, Missouri Attorney General Andrew Bailey promulgated an emergency regulation clarifying that, because gender transition interventions are experimental and have significantside effects, state law already prohibits performing those procedures in the absence of substantial guardrails that ensure informed consent and adequate access to mental health care.

https://ago.mo.gov/missouri-attorney-general-andrew-bailey-promulgates-emergency-regulation-targeting-gender-transition-procedures-for-minors/

Attorney General Bailey Sues Wentzville School Board for Unlawfully Concealing Transgender Bathroom Policy in Closed Meetings

Missouri Attorney General Andrew Bailey filed suit against Wentzville School District's Board of Education for concealing a transgender student bathroom usage policy in direct violation of Missouri's Open Meetings Law. After one Wentzville school board member stated that "quite frankly, it's not the parents' business" to know about the bathroom policy, two other members of the school board emerged as whistleblowers. Over forty community members followed suit, filing formal complaints with the Attorney General's Office.

https://ago.mo.gov/attorney-general-bailey-sues-wentzville-school-board-for-unlawfully-concealing-transgender-bathroom-policy-in-closed-meetings/

AMERICAN OVERSIGHT

Attorney General Bailey Leads Multistate Coalition Protecting Children from Gender Mutilation

Missouri Attorney General Andrew Bailey led a multistate coalition in filing an amicus brief supporting Arkansas' law banning irreversible gender transition procedures for minors. The brief asks the Eighth Circuit to hold anenhearing on the constitutionality of the law after a panel of judges on the Eighth Circuit struck it down.
https://ago.mo.gov/attorney-general-bailey-leads-multistate-coalition-protecting-children-from-gender-mutilation/

FOX- Missouri ban on gender-changing treatment goes into effect: 'We're protecting kids'
https://www.foxnews.com/video/6335740181112

FOX- Missouri AG sues health provider for allegedly not giving mental evaluations before sex reassignments
https://www.foxnews.com/politics/missouri-ag-sues-health-provider-allegedly-giving-mental-evaluations-sex-reassignments

FOX- Missouri attorney general seeks to end gender transition procedures for minors, calling them 'dangerous'
https://www.foxnews.com/media/missouri-attorney-general-seeks-end-gender-transition-procedures-minors-calling-dangerous

HEARTLANDER-Judge allows Missouri ban on gender-altering treatments for minors to take effect on Monday
https://heartlandernews.com/2023/08/25/judge-allows-missouri-ban-on-gender-altering-treatments-for-minors-to-take-effect-on-monday/

HEARTLANDER-Missouri law banningtranson kids is 'about protecting children,' says AG after defending it in key court hearing
https://heartlandernews.com/2023/08/24/missouri-law-banning-trans-procedures-on-kids-is-about-protecting-children-says-ag-after-defending-it-in-key-court-hearing/

Border

Attorney General Bailey Demands Biden Fix Unlawful Immigration Policies and Secure the Border
Missouri Attorney General Andrew Bailey joined a coalition of 27 states in calling on the Biden administration to fix a catch-and-release "loophole" — calling for urgency in the wake of the terror attack in Israel. The attorneys general submitted a Petition for Rulemaking to Department of Homeland Security (DHS) Secretary Alejandro Mayorkas, urging the agency to make regulatory changes that "close the catch-and-release loophole that [DHS] is currently exploiting to implement its mass release policy at the Southwest border."
https://ago.mo.gov/attorney-general-bailey-demands-biden-fix-unlawful-immigration-policies-and-secure-the-border/

Attorney General Bailey Files SuitAgainstAdministration's Unlawful Open-Border Policies
Missouri Attorney General Andrew Bailey joined an 18 state coalition in filing suit against the Biden Administration for its proposed new "Circumvention of Lawful Pathways" rule which fails to mitigate theenillegal immigration occurring at the southern border.
https://ago.mo.gov/attorney-general-bailey-files-suit-against-biden-administrations-unlawful-open-border-policies/

Attorney General Bailey Moves for Emergency Relief at Southern Border
In an effort to enforce the laws as written, Missouri Attorney General Andrew Bailey and 12 other states moved for emergency relief from the Biden Administration's unlawful attempt to further open the southern border. This week, not only did President Biden allow Title 42 to expire, but he followed up with a new program to release potentially thousands of illegal immigrants into the United States each day.
https://ago.mo.gov/attorney-general-bailey-moves-for-emergency-relief-at-southern-border/

Attorney General Bailey Joins 27-State Coalition Supporting Texas' Right to Defend Itself
Missouri Attorney General Andrew Bailey joined 26 other states in a letter to the Biden Administration, supporting Texas' right to defend itself against the unchecked illegal immigration at the southern border.
https://ago.mo.gov/attorney-general-bailey-joins-27-state-coalition-supporting-texas-right-to-defend-itself/

AMERICAN OVERSIGHT

Attorney General Bailey Urges U.S. SenateToLegislation To Crack Down On Fentanyl Crisis
Missouri Attorney General Andrew Bailey joined 22 other states in urging U.S. Senate leadership to pass the

HALT Fentanyl Act. The legislation would permanently schedule all current and future fentanyl analogues as Schedule I drugs, giving law enforcement the tools they need to crack down on the epidemic by stopping the flow of the dangerous drugs developed to imitate fentanyl.
https://ago.mo.gov/attorney-general-bailey-urges-u-s-senate-to-pass-legislation-to-crack-down-on-fentanyl-crisis/

Attorney General Bailey Sues Biden Administration to Halt Unlawful New Immigration Program
In an effort to enforce the laws as written, Missouri Attorney General Andrew Bailey and 19 other state attorneys general filed suit against the Biden Administration over a new Department of Homeland Security ("DHS") program that unlawfully creates a de facto pathway to citizenship for hundreds of thousands of illegal immigrants.
https://ago.mo.gov/attorney-general-bailey-sues-biden-administration-to-halt-unlawful-new-immigration-program/

FOX- Lawsuits in Congress are going to hold the Biden admin 'accountable' for the border: Andrew Bailey
https://www.foxbusiness.com/video/6345491882112

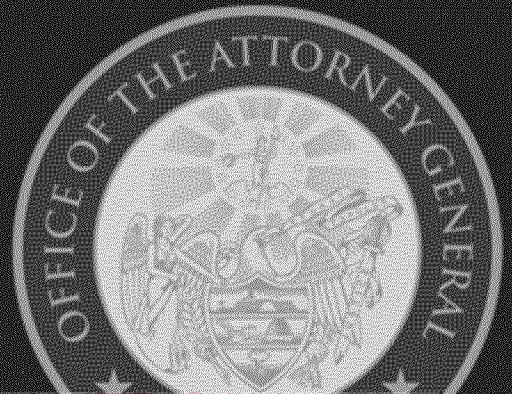
HEARTLANDER: Missouri taking a lead role in lawsuits to secure border, as Biden administration actively recruits illegals to enter U.S.
https://heartlandernews.com/2024/01/25/missouri-taking-a-lead-role-in-lawsuits-to-secure-border-as-biden-administration-actively-recruits-illegals-to-enter-u-s/

HEARTLANDER: Attorneys general testify to impacts of border crisis on Missouri, other states
https://heartlandernews.com/2024/01/10/attorneys-general-testify-to-impacts-of-border-crisis-on-missouri-other-states/

Sent from my iPhone

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT



TIM GRIFFIN

ATTORNEY GENERAL OF ARKANSAS

AMERICAN OVERSIGHT

No. 23-13396

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

AMERICAN SECURITIES ASSOCIATION and CITADEL SECURITIES LLC,
Petitioners,

v.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,
Respondent,

THE NASDAQ STOCK MARKET, LLC, et al.,
Intervenors.

On Petition for Review of an Agency Action
of the United States Securities and Exchange Commission

BRIEF OF ARKANSAS AND 22 OTHER STATES AS *AMICI CURIAE* SUPPORTING PETITIONERS

Tim Griffin
Attorney General
Nicholas J. Bronni
Solicitor General
Dylan L. Jacobs
Deputy Solicitor General
OFFICE OF THE ARKANSAS
ATTORNEY GENERAL
323 Center Street, Suite 200
Little Rock, AR 72201
(501) 682-6302
Nicholas.Bronni@Arkan-
sasAG.gov

Additional Counsel Listed on Signature Page

AMERICAN OVERSIGHT

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1(a)(1) and 26.1-2(b), the undersigned counsel certifies that, in addition to the persons and entities listed in the Petitioners' Opening Brief and other previously filed *amicus curiae* briefs, the following listed persons and parties may have an interest in the outcome of this case:

1. Bailey, Andrew – *Counsel for Amicus Curiae*;
2. Bird, Brenna – *Counsel for Amicus Curiae*;
3. Bronni, Nicholas J. – *Counsel for Amicus Curiae*;
4. Carr, Chris – *Counsel for Amicus Curiae*;
5. Coleman, Russell – *Counsel for Amicus Curiae*;
6. Commonwealth of Kentucky – *Amicus Curiae*;
7. Commonwealth of Virginia – *Amicus Curiae*;
8. Fitch, Lynn – *Counsel for Amicus Curiae*;
9. Formella, John M. – *Counsel for Amicus Curiae*;
10. Griffin, Tim – *Counsel for Amicus Curiae*;
11. Hilgers, Michael T. – *Counsel for Amicus Curiae*;
12. Jackley, Marty – *Counsel for Amicus Curiae*;
13. Jacobs, Dylan L. – *Counsel for Amicus Curiae*;
14. Kobach, Kris W. – *Counsel for Amicus Curiae*;
15. Knudsen, Austin – *Counsel for Amicus Curiae*;
16. Labrador, Raúl R. – *Counsel for Amicus Curiae*;
17. Marshall, Steve – *Counsel for Amicus Curiae*;
18. Miyares, Jason – *Counsel for Amicus Curiae*;
19. Moody, Ashley – *Counsel for Amicus Curiae*;

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000287

20. Morrisey, Patrick – *Counsel for Amicus Curiae*;
21. Murrill, Liz – *Counsel for Amicus Curiae*;
22. Paxton, Ken – *Counsel for Amicus Curiae*;
23. Reyes, Sean – *Counsel for Amicus Curiae*;
24. Rokita, Theodore E. – *Counsel for Amicus Curiae*;
25. State of Alabama – *Amicus Curiae*;
26. State of Arkansas – *Amicus Curiae*;
27. State of Florida – *Amicus Curiae*;
28. State of Georgia – *Amicus Curiae*;
29. State of Idaho – *Amicus Curiae*;
30. State of Indiana – *Amicus Curiae*;
31. State of Iowa – *Amicus Curiae*;
32. State of Kansas – *Amicus Curiae*;
33. State of Louisiana – *Amicus Curiae*;
34. State of Mississippi – *Amicus Curiae*;
35. State of Missouri – *Amicus Curiae*;
36. State of Montana – *Amicus Curiae*;
37. State of Nebraska – *Amicus Curiae*;
38. State of New Hampshire – *Amicus Curiae*;
39. State of North Dakota – *Amicus Curiae*;
40. State of Ohio – *Amicus Curiae*;
41. State of South Carolina – *Amicus Curiae*;
42. State of South Dakota – *Amicus Curiae*;
43. State of Texas – *Amicus Curiae*;
44. State of Utah – *Amicus Curiae*;
45. State of West Virginia – *Amicus Curiae*;
46. Wilson, Alan – *Counsel for Amicus Curiae*;

AMERICAN OVERSIGHT
MO-AG-24-0028-A-000288

47. Wrigley, Drew H. – *Counsel for Amicus Curiae*;

48. Yost, Dave – *Counsel for Amicus Curiae*;

Respectfully submitted this 15th day of February, 2024.

s/ Nicholas J. Bronni
Nicholas J. Bronni
Counsel for Amici Curiae

AMERICAN OVERSIGHT

TABLE OF CONTENTS

Certificate of Interested Persons 1
Table of Authorities iii
Interests of Amici Curiae and Summary of Argument 1
Argument 4
I. The Commission's massive surveillance program poses grave and unnecessary risks to American investors 4
A. Massive repositories of personal information—like the CAT—are massive targets for hackers. 4
B. The Commission's own history of security breaches does not inspire confidence that it can keep the CAT secure. 6
C. Citizens remain vulnerable to being targeted by rogue federal officials and contractors 7
II. The Commission's massive surveillance program is contrary to law. 10
A. The Commission has never identified any specific statutory authority for its massive surveillance of retail investors. 10
B. The Commission's decision to require investors to ultimately bear the cost of its surveillance program further underscores the program's shaky foundation. 14
C. The Supreme Court's major-questions doctrine requires courts to cast a skeptical eye on new assertions of previously unexercised authority like the Commission's massive repository of retail-investors' personal information 20
D. The Commission failed to consider whether storing retail-investor information is necessary to further the CAT's goal of providing the

AMERICAN OVERSIGHT

Commission with access to real-time market information.....24

Conclusion 28
Additional Counsel 29
Certificate of Compliance 31
Certificate of Service 32

AMERICAN OVERSIGHT

TABLE OF AUTHORITIES

Cases

Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs.,
141 S. Ct. 2485 (2021) 22, 24

Biden v. Nebraska,
143 S. Ct. 2355 (2023) 21

Geier v. Am. Honda Motor Co.,
529 U.S. 861 (2000) 19

Laird v. Tatum,
408 U.S. 1 (1972) 18

OPM v. Richmond,
496 U.S. 414 (1990) 17

Spirit Airlines, Inc. v. FAA,
997 F.3d 1247 (D.C. Cir. 2021) 25

United States Forest Serv. v. Cowpasture River Pres. Ass'n,
140 S. Ct. 1837 (2020) 23

United States Telecom Ass'n v. FCC,
855 F.3d 381 (D.C. Cir. 2017) 21

West Virginia v. EPA,
142 S. Ct. 2587 (2022) 20, 23-24

Whitman v. Am. Trucking Ass'ns, Inc.,
531 U.S. 457 (2001) 14

Statutes

15 U.S.C 78k-1(a)(3) 10

15 U.S.C. 78k-1(a)(1)(C) 10, 14

15 U.S.C. 78k-1(a)(2) 10

Personal Information Protection Act
Ark. Code Ann. 4-110-101 *et seq* 1

Regulations

17 C.F.R. 240.17a-25 12

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000292

17 C.F.R. 264.613(c)(7)(viii).....11

17 C.F.R. 264.613(j)(4).....11

Amends. to the Nat'l Mkt. Sys. Plan Governing the Consol. Audit Trail to Enhance Data Sec., 85 Fed. Reg. 65990, (Aug. 21, 2020).....13

Consolidated Audit Trail, 77 Fed. Reg. 45722 (Aug. 1, 2012).....11

Joint Indus. Plan; Ord. Approving an Amend. to the Nat'l Mkt. Sys. Plan Governing the Consol. Audit Trail, 88 Fed. Reg. 62628, (Sept. 6, 2023).... 14-15

Joint Indus. Plan; Ord. Approving the Nat'l Mkt. Sys. Plan Governing the Consol. Audit Trail, 81 Fed. Reg. 84696, (Nov. 15, 2016)..... 12, 25

Ord. Granting Conditional Exemptive Relief, Pursuant to Section 36 & Rule 608(e) of the Sec. Exch. Act of 1934, from Section 6.4(d)(II)(c) & Appendix D Sections 4.1.6, 6.2, 8.1.1, 8.2, 9.1, 9.2, 9.4, 10.1, & 10.3 of the Nat'l Mkt. Sys. Plan Governing the Consol. Audit Trail, 85 Fed. Reg. 16152, (Mar. 17, 2020)..... 12, 26

Other Authorities

Abner J. Mikva, *Congress: The Purse, the Purpose, and the Power*, 21 Ga. L. Rev. 1 (1986).....17

Amended CAT NMS Plan for Consolidated Audit Trail, LLC, FINRA CAT (Aug. 29, 2019) https://perma.cc/C9KC-FFEX.....12

C. Boyden Gray, *Extra Icing on an Unconstitutional Cake Already Frosted? A Constitutional Recipe for the CFPB*, 24 Geo. Mason L. Rev. 1213 (2017)...17

Caitlin Reilly, *CFPB Employee Sent Data of 250,000 Customers to Pers. Email*, Roll Call (April 19, 2023), https://perma.cc/M6NY-P2E9.....5

CAT NMS Plan, https://perma.cc/UH3G-9ZFH.....11

Christopher Wray, *Director Wray's Opening Statement to the House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party*, FBI (Jan. 31, 2024), https://perma.cc/JBS8-Z9MB.....6

Comm'r Hester M. Peirce, *Statement of Hester M. Peirce in Response to Release No. 34-88890; File No. S7-13-19*, SEC (May 15, 2020), https://perma.cc/G4HL-M7EU.....27

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000293

Comm'r Hester M. Peirce, *Statement of Hester M. Peirce in Response to Release No. 34-88890*; File No. S7-13-19, SEC (May 15, 2020), https://perma.cc/R32N-3JDM 8

Comm'r Hester M. Peirce, *This CAT is a Dangerous Dog*, RealClearPolicy (Oct. 9, 2019), https://perma.cc/558J-ZWB8 26-27

Comm'r Hester M. Peirce, *Who's Paying?: Statement on the CAT's Funding Model*, SEC (Sept. 6, 2023), https://perma.cc/UJV5-J65D 21

Comm'r Mark T. Uyeda, *Statement on Consolidated Audit Trail Revised Funding Model*, SEC (Sept. 26, 2023), https://perma.cc/78RY-KN5Q 21

David A. Herrman, *To Delegate or Not to Delegate—That Is the Preemption: The Lack of Political Accountability in Administrative Preemption Defies Federalism Constraints on Government Power*, 28 Pac. L.J. 1157 (1997) 19

Devlin Barrett, *FBI misused surveillance tool on Jan. 6 suspects, BLM arrestees and others*, Wash. Post. (May 19, 2023), https://perma.cc/QRA4-XDD2 22

Eileen Sullivan, *Former Contractor Who Leaked Trump's Tax Returns Sentenced to 5 Years in Prison*, N.Y. Times (Jan. 29, 2024), https://perma.cc/VYF2-CHQY 8

Eloise Pasachoff, *The President's Budget as a Source of Agency Policy Control*, 125 Yale L.J. 2182 (2016) 18

Emily Cochrane, *Justice Department Settles With Tea Party Groups After I.R.S. Scrutiny* N.Y. Times (Oct. 26, 2017), https://perma.cc/SYV8-HH6L 9

Findings Regarding the Market Events of May 6, 2010, Joint Advisory Comm. on Emerging Regul. Issues (Sep. 30, 2010), https://perma.cc/F2BJ-85B3 25

Gallup, *What Percentage of Americans Own Stock?* (May 24, 2023), https://perma.cc/3XKX-X62N 21

Gillian E. Metzger, *Agencies, Polarization, and the States*, 115 Colum. L. Rev. 1739 (2015) 18, 20

Jack M. Beermann, *Congressional Administration*, 43 San Diego L. Rev. 61 (2006) 20

James B. Stewart, *As A Watchdog Starves, Wall Street Is Tossed a Bone*, N.Y. Times (July 15, 2011), https://perma.cc/75SJ-UAJM 19

AMERICAN OVERSIGHT

Joseph Story, Commentaries on the Constitution of the United States § 1348 (3d ed. 1858) 18

Kyle Chin, *Top 23 Breaches in U.S. History*, UpGuard (July 18, 2023), https://perma.cc/5LDPLCG7 6

Laura E. Dolbow, *Agency Adherence to Legislative History*, 70 Admin. L. Rev. 569 (2018) 18

Letter from Christopher A. Iacovella, CEO, American Securities Association to Vanessa A. Countryman, Sec'y Commission (Nov. 30, 2020) https://perma.cc/7BQW-K7KH 13

Letter from Jim Jordan and Mike Johnson to Hon. Merrick B. Garland (May 11, 2022), https://perma.cc/R9UG-69LD 9

Letter from Lawrence Harris, USC Marshall Sch. of Bus. to Vanessa Countryman, Sec'y Commission, (June 21, 2022), https://perma.cc/3WG7-3J69 16

Letter from Virginia and 19 other States to Hon. Merrick B. Garland and Hon. Christopher Wray (Feb. 10, 2023), https://perma.cc/7NXQ-U3H3 9

Matthew Goldstein & David Gelles, *A Phantom Offer Sends Avon's Shares Surging*, N.Y. Times (May 14, 2015), https://perma.cc/S5VF-ZEJZ 7

Matthew Goldstein, *S.E.C. Social Media Hack That Sent Bitcoin Soaring Prompts Investigation*, N.Y. Times (Jan. 10, 2024), https://perma.cc/39MP-WJCX 7

Matthew Goldstein, *U.S. Charges 2 With Hacking Into S.E.C. System in Stock-Trading Scheme*, N.Y. Times (Jan. 15, 2019), https://perma.cc/R49B-KP33 6

Paul Larkin, Jr. & Zack Smith, *"Brother, Can You Spare A Million Dollars?": Resurrecting the Justice Department's "Slush Fund,"* 19 Geo. J. L. & Pub. Pol'y 447 (2021) 17

Rep. Barry Loudermilk, *Rep. Loudermilk, House Republicans Introduce Legislation to Protect Investors' Personally Identifiable Information* (July 12, 2023), https://perma.cc/V799-5X5K 23

Robert C. Byrd, *The Control of the Purse and the Line Item Veto Act*, 35 Harv. J. On Legis. 297 (1998) 17

Robert E. Cushman, The Independent Regulatory Commissions (1972) 19

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000295

Sam LaGrone, *Navy: Pers. Data of 134K Sailors 'Compromised'*, U.S. Naval Inst. News (Nov. 24, 2016), https://perma.cc/D82R-4A33 5

Sen. John Kennedy, *Kennedy, Colleagues Introduce Bill to Protect Investor Privacy by Prohibiting Vulnerable SEC Database* (July 11, 2023), https://perma.cc/FT2M-5445 23

Sen. Mike Lee, *Congress, don't pass the defense bill without FISA reform* (Dec. 11, 2023), https://perma.cc/3PG6-JSKV 22

Steve Marshall, *ESG Defenders Pose as 'Free Market' Disciples* (Wall St. J. Op. May 23, 2023), https://perma.cc/5BLM-VGUA 8

The Equifax Data Breach, U.S. H.R. Comm. on Oversight and Gov't Reform, 115th Cong. (Dec. 2018), https://perma.cc/DT2W-GWN8 5

The Federalist, No. 58.....18

The OPM Data Breach: How the Gov't Jeopardized Our Nat'l Sec. for More than a Generation, U.S. H.R. Comm. on Oversight and Gov't Reform, 114th Cong. (Sep. 7, 2016), https://perma.cc/CAX3-B867 4-5

AMERICAN OVERSIGHT

INTERESTS OF AMICI CURIAE AND SUMMARY OF ARGUMENT

Amici curiae are the States of Arkansas, Alabama, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, South Carolina, South Dakota, Texas, Utah, Virginia, and West Virginia. *Amici* States submit this brief in support of Petitioners because the consolidated audit trail, or CAT, system would represent a massive, unprecedented threat to the liberty, privacy, and security of millions of *Amici* States' citizens, as well as *Amici* States' own investment interests. States are the first line of defense protecting consumers from harm due to data breaches and have a keen interest in preventing such breaches. *See, e.g.*, Personal Information Protection Act, Ark. Code Ann. 4-110-101 *et seq* (requiring prompt disclosure of information regarding data breaches to consumers).

In May 2010, algorithmic trading decisions caused a "flash crash." That crash sent the markets into an uproar, and in response, the Securities and Exchange Commission began a decade-long push to create the CAT. As ultimately adopted, the CAT would house personal information about every single retail investor and contain real-time information about their investment decisions. The Commission says the CAT will better enable it to reconstruct and analyze events like the flash crash. But its reach isn't so limited.

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000297

Rather, the CAT will give thousands of authorized users—and given the Commission's cybersecurity track record who knows how many unauthorized users—access to real-time information about every investor and investment decision. That's a monumental shift from the way things used to work. Before the CAT, if the Commission suspected an individual of wrongdoing, it could request information from the broker-dealers associated with suspicious trades. But no more. Instead, with the CAT, thousands of government employees (and hackers) are free to comb through bulk data on every American investor with a just few clicks of the keyboard—no individual suspicion needed. That system threatens the security and privacy of the *Amici* States' citizens, and Congress never authorized it. So this Court should set aside the Commission's 2023 order funding and operationalizing the CAT.

I. Not only will the Commission be capable of spying on Americans' trading activity, so will anyone who manages to hack into the CAT database. Given the increasing number of government databases being targeted by hackers, including agents of the Chinese Communist Party, the CAT will be as tempting a target as has ever existed. Ensuring the security of this data would be a tall order for any agency or organization. The Commission—which just this past month suffered an embarrassing (and economically damaging) hack of its X (formerly Twitter) account—has little hope of doing so. The CAT repository will also be a target of

AMERICAN OVERSIGHT

attacks from within. Americans have increasingly been targeted by rogue federal officials seeking to advance ideological agendas through the weaponization of confidential information, and the investment information contained in the CAT may well be their next opportunity.

II. Because the CAT endangers personal privacy, one might wonder why Congress gave the Commission the power to create it. The answer is that Congress never gave the Commission the authority to construct this unprecedented surveillance database. Congress never even appropriated funds for it because the Commission chose to fund the CAT through user fees that will ultimately be passed along to the very investors whose information is being put at risk. In the absence of clear language from Congress authorizing such an unprecedented program, the Commission cannot exercise that power.

And even if it could, its decision to do so was arbitrary and capricious. Indeed, the Commission's decision to collect retail investors' personal information makes no sense since individual retail investors don't cause events like the 2010 flash crash. The Commission could have limited such collection to those investors. But the Commission didn't do that because, along the way, it decided it'd be marginally more convenient for its enforcement division to have this information without needing to explain why it needed information about any specific investor.

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000299

ARGUMENT

I. The Commission's massive surveillance program poses grave and unnecessary risks to American investors.

In continuing to insist that the CAT must contain personally identifiable information of every American investor who buys or sells stock, the Commission has given insufficient consideration to the likelihood of a hack. The CAT will be targeted for its economic value, as well as its strategic value to America's foreign adversaries. There is no reason to believe the Commission can ensure the security of the CAT given its own high-profile data-security failures. And investors have every reason to fear being targeted by rogue federal officials pursuing an agenda.

A. Massive repositories of personal information—like the CAT—are massive targets for hackers.

Recent years have shown that the greater the amount of potentially valuable, sensitive data that is stored in a single location, the greater a target it becomes. Numerous large government databases have suffered attacks and data breaches affecting millions of Americans. For example, the Office of Personnel Management's database containing security-clearance background information on 21.5 million people was breached by Chinese state-sponsored hackers in 2015. *See* The OPM Data Breach: How the Gov't Jeopardized Our Nat'l Sec. for More than a Generation, U.S. H.R. Comm. on Oversight and Gov't Reform, 114th Cong. (Sep. 7, 2016), https://perma.cc/CAX3-B867 . This disastrous hack allowed the Chinese

AMERICAN OVERSIGHT

Communist Party to obtain highly sensitive "information about everybody who has worked for, tried to work for, or works for the United States government," including disclosures regarding "some of the most intimate and potentially embarrassing aspects" of their lives. *Id.* It also dealt a "significant blow" to American intelligence efforts. *Id.*

The U.S. Navy has been the target of multiple attacks, including the hacking of the names and Social Security numbers of over 134,000 sailors from a Navy contractor. Sam LaGrone, *Navy: Pers. Data of 134K Sailors 'Compromised'*, U.S. Naval Inst. News (Nov. 24, 2016), https://perma.cc/D82R-4A33. And just this year, Congress learned that the Consumer Financial Protection Bureau exposed personally identifiable information of 256,000 customers through an unauthorized transfer of data to an employee's email address. Caitlin Reilly, *CFPB Employee Sent Data of 250,000 Customers to Pers. Email*, Roll Call (April 19, 2023), https://perma.cc/M6NY-P2E9 .

Large private-sector data repositories have been similarly targeted. In another attack by state-sponsored Chinese hackers, Equifax's database was breached, and the names, Social Security numbers, birth dates, and driver's license numbers for 148 million Americans were stolen. The Equifax Data Breach, U.S. H.R. Comm. on Oversight and Gov't Reform, 115th Cong. (Dec. 2018), https://perma.cc/DT2W-GWN8 . Where any large amount of sensitive information

AMERICAN OVERSIGHT

is stored, hackers are sure to follow. *See* Kyle Chin, *Top 23 Breaches in U.S. History*, UpGuard (July 18, 2023), https://perma.cc/5LDPLCG7 (reporting on data breaches at technology companies impacting hundreds of millions of people).

Finally, the databases underlying critical American infrastructure are continuously targeted by foreign actors, the Chinese Communist Party chief among them. As FBI Director Christopher Wray recently remarked, Chinese state-sponsored "hackers are targeting our critical infrastructure—our water treatment plants, our electrical grid, our oil and natural gas pipelines, our transportation systems." Director Wray's Opening Statement to the House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party (Jan. 31, 2024), https://perma.cc/JBS8-Z9MB. "Low blows against civilians are part of China's plan," as is "target[ing] our businesses" and "engaging in corporate deception." *Id.* The CAT won't be overlooked.

B. The Commission's own history of security breaches does not inspire confidence that it can keep the CAT secure.

The Commission has hardly been immune from hacking. And if history is any indication, the Commission cannot be trusted to keep its important data secure. For example, starting in 2016, hackers compromised the Commission's "Edgar" system for corporate filings, allowing them to steal non-public reports for over a year. *See* Matthew Goldstein, *U.S. Charges 2 With Hacking Into S.E.C. System in Stock-Trading Scheme*, N.Y. Times (Jan. 15, 2019), https://perma.cc/R49B-KP33.

AMERICAN OVERSIGHT

And just a few years prior, Edgar was used to submit a fake bid that spurred tens of millions of dollars in trading. *See* Matthew Goldstein & David Gelles, *A Phantom Offer Sends Avon's Shares Surging*, N.Y. Times (May 14, 2015), https://perma.cc/S5VF-ZEJZ.

And more recent events underscore the Commission's security problems are not limited to Edgar. Indeed, just this past month the Commission's X (formerly Twitter) account was successfully hacked in an apparent effort to manipulate cryptocurrency markets. *See* Matthew Goldstein, *S.E.C. Social Media Hack That Sent Bitcoin Soaring Prompts Investigation*, N.Y. Times (Jan. 10, 2024), https://perma.cc/39MP-WJCX. As one of the Commission's former enforcement officials noted, the attack was "a glaring failure of basic cyber-hygiene." *Id.* If the Commission cannot secure its own social media accounts, it cannot be trusted with Americans' personal data and valuable, real-time information about who is trading what.

C. Citizens remain vulnerable to being targeted by rogue federal officials and contractors.

Even if the Commission could secure the CAT data from profit-seeking hackers and foreign adversaries, the federal government has a poor track record of policing its own employees and contractors. As Commissioner Peirce noted, "[o]ne can imagine a future in which a delectably large database of trades becomes a tool for the government to single people out for making trading decisions that

AMERICAN OVERSIGHT

reflect—or are interpreted to reflect—opinions deemed unacceptable in the reigning gestalt." Comm'r Hester M. Peirce, *Statement of Hester M. Peirce in Response to Release No. 34-88890*; File No. S7-13-19, SEC (May 15, 2020), https://perma.cc/R32N-3JDM. It's easy to imagine because it wouldn't be novel.

Take the IRS, for example. One of its contractors was just sentenced to prison for stealing and leaking tax records for thousands of wealthy individuals, including former President Donald Trump, Jeff Bezos, and Elon Musk to pursue an ideological agenda. *See* Eileen Sullivan, *Former Contractor Who Leaked Trump's Tax Returns Sentenced to 5 Years in Prison*, N.Y. Times Jan 29, 2024), https://perma.cc/VYF2-CHQY. Investment records are no less susceptible to ideologically driven attacks than tax records. Indeed, groups like "Climate Action 100+, the Net-Zero Banking Alliance and the Venture Climate Alliance" and other ESG ideologues "have plotted to pressure blacklisted companies into making a priority of decarbonization and other social goals at the behest of the United Nations." Steve Marshall, *ESG Defenders Pose as 'Free Market' Disciples* (Wall St. J. Op. May 23, 2023), https://perma.cc/5BLM-VGUA. With the CAT housing data on every American's investment decisions, it will be a prime target for ideologically driven leaks. And with thousands of individuals having access to that data, the risk cannot be understated.

AMERICAN OVERSIGHT

Investors are additionally at risk of being targeted by malicious government action. Investors' trading decisions, which provide a window into their values and beliefs, could also be weaponized against them by those with access to the data. After all, the IRS did just that to hundreds of conservative tax-exempt organizations. Emily Cochrane, *Justice Department Settles With Tea Party Groups After I.R.S. Scrutiny* N.Y. Times (Oct. 26, 2017), https://perma.cc/SYV8-HH6L. More recently, whistleblowers revealed that the Department of Justice was using the FBI's Counterterrorism Division to target parents protesting actions by their local school boards. *See* Letter from Jim Jordan and Mike Johnson to Hon. Merrick B. Garland (May 11, 2022), https://perma.cc/R9UG-69LD. And even more recently the FBI was caught targeting Catholic congregations for treatment as "violent extremists" for their religious beliefs. *See* Letter from Virginia and 19 other States to Hon. Merrick B. Garland and Hon. Christopher Wray (Feb. 10, 2023), https://perma.cc/7NXQ-U3H3.

Suffice it to say that Americans have little reason to trust that their personal information is safe with the federal government. The CAT contains more than enough personally identifiable information to help rogue government actors pick their next targets.

AMERICAN OVERSIGHT

II. The Commission's massive surveillance program is contrary to law.

The Supreme Court has made clear that skeptical scrutiny is warranted where an agency relies on decades-old statutory language to claim authority for massive new programs. The CAT bears all the hallmarks of an instance where the major-questions doctrine counsels against an expansive reading of agency authority. And even if the Commission had the authority it claims here, its exercise of it was arbitrary and capricious.

A. The Commission has never identified any specific statutory authority for its massive surveillance of retail investors.

The Securities and Exchange Act of 1934 provides the Commission authority to regulate the securities markets for "the protection of investors and the maintenance of fair and orderly markets." 15 U.S.C. 78k-1(a)(1)(C). Section 11A of the Act, added in 1975, directs the Commission "to use its authority . . . to facilitate the establishment of a national market system for securities." *Id.* 78k-1(a)(2). In furtherance of that directive, Section 11A authorizes the Commission to "authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority . . . in planning, developing, operating, or regulating a national market system." *Id.* 78k-1(a)(3).

In 2012, the Commission sought for the first time to utilize its authority over the national market system to require national securities exchanges and associations (self-regulatory organizations or "SROs") to create a single consolidated

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000306

audit trail. With the adoption of Rule 613, "each SRO and its members" would be required "to capture and report specified trade, quote, and order activity in all [national market system] securities to the central repository in real time, across all markets, from order inception through routing, cancellation, modification, and execution." *Consolidated audit trail*, 77 Fed. Reg. 45722, 45723 (Aug. 1, 2012). The SROs previously established various separate audit trails, but the Commission believed that a single, centralized one would lead to "(1) improved market surveillance and investigations; (2) improved analysis and reconstruction of broad-based market events; and (3) improved market analysis." *Id.* at 45730.

But the devil was in the details. For Rule 613 required SROs to record and report to the CAT for each order: (1) "information of sufficient detail to identify the customer"; and (2) "customer account information," which included "account number, account type, customer type, date account opened, and large trader identifier (if applicable)." *Id.*at 45749, 45813. 17 C.F.R. 264.613(c)(7)(viii), (j)(4). When the SROs in 2015 submitted their CAT proposal, it spelled out the information that would be collected and stored within the CAT for every retail investor trading on the market: every customer's name, address, date of birth, Social Security number, and account number. *See CAT NMS Plan*, at sec. 1.1, https://perma.cc/UH3G -9ZFH; *Joint Industry Plan; Order Approving the National Market System Plan Governing the Consolidated Audit Trail*, 81 Fed. Reg. 84696,

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000307

Rel. No. 34-79318, File No. 4-698 (Nov. 15, 2016). The Commission eventually narrowed the information to the investor's name, address, and birth year. *See Ord. Granting Conditional Exemptive Relief, Pursuant to Section 36 & Rule 608(e) of the Sec. Exch. Act of 1934, from Section 6.4(d)(II)(c) & Appendix D Sections 4.1.6, 6.2, 8.1.1, 8.2, 9.1, 9.2, 9.4, 10.1, & 10.3 of the Nat'l Mkt. Sys. Plan Governing the Consol. Audit Trail*, 85 Fed. Reg. 16152, Release No. 88393 (Mar. 17, 2020) ("Exemption Order").

This was an enormous shift from how retail-investor data was handled. Investors' broker-dealers kept this type of information previously and were required to report it to the Commission when requested. *See* 17 CFR 240.17a-25. This electronic "blue sheet" process at least ensured that the Commission had a particularized suspicion about a transaction or customer, otherwise it would not expend the effort to request the information. But the CAT allows the Commission access in real-time to a centralized database containing information submitted by every broker-dealer in the country. And at least 3,000 users will have access at any given time, between the Commission and the CAT Participants. *See Amended CAT NMS Plan for Consolidated Audit Trail*, LLC, FINRA CAT 106 n.61 (Aug. 29, 2019) (stating that although the request for proposals "required support for a minimum of 3,000 users, . . . the actual number of users may be higher based upon regulator and Participant usage of the system"), https://perma.cc/C9K C-FFEX.

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000308

Thus, no longer can an average investor expect that their personal information will generally be kept private unless they are suspected of wrongdoing. The Commission has always had the ability to obtain the information it needs for investigations and enforcement actions, but the CAT provides it with the unprecedented capability to engage in massive surveillance of retail investors. And that significant change hasn't been authorized by Congress, but has come by administrative fiat.

Congress never authorized the Commission to create this type of centralized repository containing personally identifiable retail-investor information. The Commission has never claimed this authority as arising under any specific portion of the Exchange Act. *See, e.g.*, *Amends. to the Nat'l Mkt. Sys. Plan Governing the Consol. Audit Trail to Enhance Data Sec.*, 85 Fed. Reg. 65990, Release No. 89632 (Aug. 21, 2020), at 66096 (claiming authority generally "[p]ursuant to the Exchange Act and, particularly, Sections 2, 3(b), 5, 6, 1A(a)(3)(B), 15, 15A, 17(a) and (b), 19 and 23(a) thereof"). Nor has it engaged with arguments by commenters that it lacks this authority. *See, e.g.*, Letter from Christopher A. Iacovella, CEO, American Securities Association to Vanessa A. Countryman, Sec'y Commission (Nov. 30, 2020), at 17, https://perma.cc/7BQW-K7KH.

The Commission claims that Section 11A's authorization to establish a national market system and to direct joint action by SROs impliedly provides the

AMERICAN OVERSIGHT

Commission with the power to order the creation of the CAT. But nowhere in Section 11A's objectives for the creation of a national market system did Congress mention enforcement efforts or any need for the Commission to have easier access to investors' personal information. *See* 15 U.S.C. 78k-1(a)(1)(C). That section's silence cannot authorize the CAT; after all, "Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001).

Absent clear statutory language, the Court should be skeptical of the Commission's authority to enact such an unprecedented surveillance effort of Americans' personal information.

B. The Commission's decision to require investors to ultimately bear the cost of its surveillance program further underscores the program's shaky foundation.

The CAT's funding mechanism casts further doubt on the notion that Congress ever authorized it. Over a decade after the Commission's initial move to establish the CAT, the Commission has only now determined how to pay for it. *Joint Indus. Plan; Ord. Approving an Amend. To the Nat'l Mkt. Sys. Plan Governing the Consol. Audit Trail*, 88 Fed. Reg. 62628, Release No. 98290 (Sept. 6, 2023). The Commission's consideration of the funding mechanism for the CAT centered more on how the CAT participants and industry members would split the costs and less

AMERICAN OVERSIGHT

on the fact that investors will ultimately pay the price. And just as significant as who *is* paying for the CAT is who is not—the Commission. One would expect the cost for a government surveillance program of this magnitude to be part of the budget of the agency overseeing it, funded by appropriations and subject to ongoing Congressional oversight. That it is instead funded by fees that will ultimately be passed through to investors should give the Court pause.

1. Investors will ultimately bear the costs of the CAT yet have no role in overseeing its spending.

Whatever the ultimate allocation of costs between industry members and CAT participants, both the Commission and the CAT LLC that will run the database acknowledged that they believe these fees can and will be passed through to investors, including retail investors. *Joint Indus. Plan; Ord. Approving an Amend. To the Nat'l Mkt. Sys. Plan Governing the Consol. Audit Trail*, 88 Fed. Reg. 62628, Release No. 98290 (Sept. 6, 2023) ("Funding Order"). CAT LLC tacitly acknowledged this could occur, noting that industry members would "not hav[e] any funding burden" for the CAT "if they decide to entirely pass-through their allocation to investors." *Id.* at 62635; *see also id.* (stating that CAT "Participants are permitted by the Exchange Act to charge their member fees to fund the Participants' share of CAT fees"). The Commission too recognized that CAT participants and industry members "may each elect to pass on . . . operational costs as

AMERICAN OVERSIGHT

fees to customers indirectly," and this "would be true regardless of how" the initial costs are allocated. *Id.* at 62636.

The Commission's former Chief Economist, Dr. Lawrence Harris, was not so equivocal and explained to the Commission that "[i]n the short run, who must pay these fees matters because prices often take a while to adjust. But eventually, the retail and institutional traders who use the markets *will* bear these fees." Letter from Lawrence Harris, USC Marshall Sch. of Bus. to Vanessa Countryman, Sec'y Commission, (June 21, 2022), https://perma.cc/3WG7-3J69 (emphasis added). Neither the Commission nor CAT LLC offered any refutation of that prediction.

Despite being saddled with millions—and, eventually, billions—in fees to support the CAT, investors have no method to control those costs. CAT user fees are adopted by its operating committee members, who are not accountable to retail investors. And while the Commission is perhaps capable of influencing CAT's overall budget through oversight of the fees CAT members may charge, the Commission has little incentive to closely scrutinize or constrain costs. After all, the CAT will be a tool to support the Commission's regulatory and enforcement efforts. No one should reasonably expect the Commission to push back when the CAT participants offer the Commission an increasingly expensive tool for which the Commission does not have to pay. Thus, investors will not only be subject to

AMERICAN OVERSIGHT

the Commission's unprecedented surveillance but forced to pay for it—all without having any say in the process.

2. The Commission's decision to fund the CAT through user fees sidesteps Congress's important role in controlling agency spending.

Courts should be skeptical when agencies enact significant, controversial policy measures that are funded outside the congressional appropriations process, thus removing a key oversight tool on spending and executive-branch overreach.

The Appropriations Clause is one way the Constitution ensures that, among our three branches of government, Congress reaches the "difficult judgments" of government. *OPM v. Richmond*, 496 U.S. 414, 428 (1990). Congress is "uniquely qualified to make spending decisions," Robert C. Byrd, *The Control of the Purse and the Line Item Veto Act*, 35 Harv. J. On Legis. 297, 315-16 (1998), because it is "our most representative of institutions," Paul Larkin, Jr. & Zack Smith, *"Brother, Can You Spare A Million Dollars?": Resurrecting the Justice Department's "Slush Fund,"* 19 Geo. J. L. & Pub. Pol'y 447, 457 (2021). Congressionally led spending is thus the surest way to produce "the most desirable, balanced, and responsive" results. Abner J. Mikva, *Congress: The Purse, the Purpose, and the Power*, 21 Ga. L. Rev. 1, 3 (1986). It also "force[s] Congress to take ownership of the government's spending choices, in order to promote accountability and fiscal restraint." C. Boyden Gray, *Extra Icing on an Unconstitutional Cake Already*

AMERICAN OVERSIGHT

Frosted? A Constitutional Recipe for the CFPB, 24 Geo. Mason L. Rev. 1213, 1226 (2017).

The Founders knew that the Appropriations Clause would serve as an important check against overreach by the executive branch. James Madison explained that "[t]his power over the purse may [be] the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people." The Federalist, No. 58. Without it, "the executive would possess an unbounded power." Joseph Story, Commentaries on the Constitution of the United States § 1348 (3d ed. 1858); *see also, e.g., Laird v. Tatum*, 408 U.S. 1, 15 (1972) (noting that the "power of the purse" allows Congress to effectively monitor the "wisdom and soundness of Executive action").

That is all the more true when it comes to the modern administrative state in general, and independent agencies in particular. "The budget . . . is a key tool for controlling agencies." Eloise Pasachoff, *The President's Budget as a Source of Agency Policy Control*, 125 Yale L.J. 2182, 2186 (2016); *see also* Laura E. Dolbow, *Agency Adherence to Legislative History*, 70 Admin. L. Rev. 569, 579-80 (2018) (explaining how the appropriations process provides an "effective oversight technique" for agencies). Appropriations legislation is often a more readily available tool than substantive legislation due to legislative deadlock. *See* Gillian E. Metzger, *Agencies, Polarization, and the States*, 115 Colum. L. Rev. 1739, 1749

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000314

(2015) (explaining that the "great advantage of appropriations legislation from Congress's perspective is its must-pass status"). It is perhaps Congress's best way to rein in the independent agencies. *See* Robert E. Cushman, The Independent Regulatory Commissions 674-75 (1972) (explaining that congressional oversight of an independent agency's finances is Congress's "most constant and effective control"). Indeed, Congress not so long ago slashed the Commission's budget by hundreds of millions of dollars because it was dissatisfied with the Commission's enforcement efforts. *See* James B. Stewart, *As A Watchdog Starves, Wall Street Is Tossed a Bone*, N.Y. Times (July 15, 2011), https://perma.cc/75SJ-UAJM.

The ability to hold independent agencies accountable through appropriations is especially important to States. That is because "unlike Congress, administrative agencies are clearly not designed to represent the interests of States." *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 908 (2000) (Stevens, J., dissenting). Independent agencies especially are "virtually insulated from political forces" through which States might otherwise influence executive agency policy. David A. Herrman, *To Delegate or Not to Delegate—That Is the Preemption: The Lack of Political Accountability in Administrative Preemption Defies Federalism Constraints on Government Power*, 28 Pac. L.J. 1157, 1181-82 (1997). But States do wield influence in Congress and may use that influence to convince Congress to police specific agency actions, such as attaching an appropriations rider to "single out a specific

AMERICAN OVERSIGHT

regulatory activity and prohibit the expenditure of funds for carrying [it] out." Jack M. Beermann, *Congressional Administration*, 43 San Diego L. Rev. 61, 85 (2006). States can also lobby Congress not to act on an agency's request to fund a program that the States oppose. *See* Metzger, *supra* at 1750 (explaining that "congressional influence through appropriations is often felt more through budgetary inaction than actual appropriations legislation").

By funding its surveillance efforts through CAT user fees, the Commission has taken from States an important tool for voicing their opposition to intrusion into their citizens' private affairs.

C. The Supreme Court's major-questions doctrine requires courts to cast a skeptical eye on new assertions of previously unexercised authority like the Commission's massive repository of retail-investors' personal information.

The Commission has existed for nearly a century without having real-time access to the personally identifiable information of every retail investor in America. If Congress had authorized the Commission to build this sort of data repository, whether in the digital age or before, it would have spoken clearly. The major-questions doctrine counsels against allowing agencies to discover new sweeping authority in ambiguous language in longstanding statutes.

In "extraordinary cases," when "the history and the breadth of the authority that [the Commission] has asserted, and the economic and political significance of that assertion" compel it, courts should "hesitate before concluding that Congress

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000316

meant to confer such authority." *West Virginia v. EPA*, 142 S. Ct. 2587, 2608 (2022) (cleaned up). "This expectation of clarity is rooted in the basic premise that Congress normally intends to make major policy decisions itself, not leave those decisions to agencies." *Biden v. Nebraska*, 143 S. Ct. 2355, 2380 (2023) (Barrett, J., concurring) (quoting *United States Telecom Ass'n v. FCC*, 855 F.3d 381, 419 (D.C. Cir. 2017) (Kavanaugh, J., dissenting from denial of reh'g en banc)). The Commission's unprecedented and sweeping collection and retention of Americans' private information bears the hallmarks of such an extraordinary case.

The Commission's surveillance program is economically significant enough to invoke the major-questions doctrine. As Commissioner Uyeda noted, "cumulative costs for CAT may soon be approaching a billion dollars." Comm'r Mark T. Uyeda, *Statement on Consolidated Audit Trail Revised Funding Model*, SEC (Sept. 26, 2023), https://perma.cc/78RY-KN5Q; *see also* Comm'r Hester M. Peirce, *Who's Paying?: Statement on the CAT's Funding Model*, SEC (Sept. 6, 2023), https://perma.cc/UJV5-J65D (noting the CAT's "price tag of more than $500 million to date and billions to come").

And the economic impact of the CAT is not limited to its price tag. According to polling, approximately 61% of American adults own stock. *See* Gallup, *What Percentage of Americans Own Stock?* (May 24, 2023), https://perma.cc/3XKX-X62N. If left intact, the CAT will contain the personal

AMERICAN OVERSIGHT

information of well over a hundred million Americans, stored along with the granular details of their investment activity. *Cf. Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 141 S. Ct. 2485, 2489 (2021) (applying major-questions doctrine where the "sheer scope" of the CDC eviction moratorium would affect "between 6 and 17 million tenants at risk of eviction"). The economic value of such centralized detailed information, both commercially and to foreign interests and hackers, cannot be overstated.

The Commission's collection of the personal information of retail investors is also politically significant. After all, one cannot put a price on peace of mind, nor calculate the dollar value of the loss of privacy. Section 702 of the Foreign Intelligence Surveillance Act is a helpful comparison. Section 702 has generated significant controversy due to the FBI's admitted misuse of the tool, including targeting American citizens' communications without a warrant. *See* Devlin Barrett, *FBI misused surveillance tool on Jan. 6 suspects, BLM arrestees and others*, Wash. Post. (May 19, 2023), https://perma.cc/QRA4-XDD2 (noting evidence that the "FBI has misused a powerful digital surveillance tool more than 278,000 times"). The question of whether Section 702 surveillance should be reformed or even reauthorized at all has generated significant debate in Congress. *See, e.g.*, Sen. Mike Lee, *Congress, don't pass the defense bill without FISA reform* (Dec. 11, 2023), https://perma.cc/3PG6-JSKV .

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000318

Notwithstanding the controversy Section 702 surveillance has generated in recent years, the program *was* authorized by Congress (and reauthorized multiple times). Yet the Commission's collection of personally identifiable investor information will reach many more American citizens than the FBI's use of Section 702 ever could. And—in addition to the myriad opposing comments the Commission's data-collection requirements has generated since their announcement—Congress has now begun to weigh in. *See* Sen. John Kennedy, *Kennedy, Colleagues Introduce Bill to Protect Investor Privacy by Prohibiting Vulnerable SEC Database* (July 11, 2023), https://perma.cc/FT2M-5445; *See* Rep. Barry Loudermilk, *Rep. Loudermilk, House Republicans Introduce Legislation to Protect Investors' Personally Identifiable Information* (July 12, 2023), https://perma.cc/V799-5X5K. So the Commission's repository of investor information is sure to become even more politically significant in the future.

Finally, the Commission's actions bring about a "radical or fundamental change" to the privacy and security expectations of American investors. *West Virginia*, 142 S. Ct. at 2609 (cleaned up). The Commission has not in its history had the sort of detailed information collected in the CAT for retail investors. The change from disclosures being driven by electronic "blue sheets" to the CAT repository is momentous. But "when Congress wishes to alter the fundamental details of a regulatory scheme, . . . we would expect it to speak with the requisite

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000319

clarity to place that intent beyond dispute." *United States Forest Serv. v. Cowpasture River Pres. Ass'n*, 140 S. Ct. 1837, 1849 (2020) (cleaned up).

Indeed, shifting the Commission's regulatory scheme from one where an investor's sensitive personal information must be requested on the basis of individualized suspicion related to an investigation or enforcement action, to the Commission's ability with the CAT to view the details of individuals not suspected of any wrongdoing, requires grounding in more than "modest words," "vague terms," or "subtle device[s]." *West Virginia*, 142 S. Ct. at 2609. Allowing the Commission, along with thousands of other users, instant access to records of Americans' market activity coupled with their personally identifiable information would upend investor expectations where the statutory regime hasn't changed. *See Ala. Ass'n of Realtors*, 141 S. Ct. at 2489 (requiring "Congress to enact exceedingly clear language" where it shifts traditional balances of power, such as "between federal and state power and the power of Government over private property").

The Commission's effort to significantly expand its surveillance abilities by relying on newly found authority under the Exchange Act should be rejected.

D. The Commission failed to consider whether storing retail-investor information is necessary to further the CAT's goal of providing the Commission with access to real-time market information.

Even if the Commission had the authority to require the collection of personally identifiable investor information within the CAT, its decision to do so was

AMERICAN OVERSIGHT

arbitrary and capricious. The Commission's inclusion of sensitive personal information within the CAT is risky and offers little, if any, regulatory benefit. And by failing to consider whether it actually needed retail investors' personal information, the Commission entirely failed to consider "an important aspect of the problem." *Spirit Airlines, Inc. v. FAA*, 997 F.3d 1247, 1255 (D.C. Cir. 2021).

Recall that the original impetus for creating a centralized database of real-time market information was the 2010 "flash crash"; retail investors did not cause that crash. Findings Regarding the Market Events of May 6, 2010, Joint Advisory Comm. on Emerging Regul. Issues (Sep. 30, 2010), https://perma.cc/F2BJ-85B3. The Commission found it difficult to reconstruct the events of the crash after the fact because there was "no single data source that covers all market activities." 81 Fed. Reg. 84696, 84811 (Nov. 15, 2016), at 205. Instead, the Commission needed to combine different data sources such as blue-sheets data and individual SRO audit trail data. *See id.*

The CAT provides the single comprehensive data source that the Commission said was necessary for that purpose. But the inclusion of sensitive personal information, especially that of retail investors, was never something the Commission said it needed in order to effectively reconstruct disruptive market events like the 2010 "flash crash." Nor would that have been plausible given the unlikelihood that retail investors could ever be responsible for a sudden market event of such

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000321

significance. To its credit, the Commission did—after significant pushback—trim down the personal information that would be collected, including nixing the collection of Social Security numbers. *See* Exemption Order. But the Commission has never defended the collection of customer names, addresses, and birth year as necessary—or even helpful—to further the CAT's original purpose of reconstructing large-scale market disruptive events.

Instead, the Commission has attempted to justify its collection of personal information based on mere convenience. *See* Comm'r Hester M. Peirce, *This CAT is a Dangerous Dog*, RealClearPolicy (Oct. 9, 2019), https://perma.cc/558J-ZWB8 (noting that the Commission's "purpose and rationale [for the CAT] have morphed over time"). For instance, the Commission argued customer information will "allow regulators to identify bad actors who are using retail trading accounts to perform illegal activity" and to identify fraudulent activity targeting senior citizens. Exemption Order at 16156. But as Commissioner Peirce explained, the Commission "already has sufficient tools to get the information it needs to pursue credible leads about market misconduct and to do so quickly." *Id.* And that is without personally identifiable retail-investor information being available at the fingertips of its enforcement division.

Indeed, the Commission has never claimed—nor could it credibly do so—that omitting this information from the CAT would pose any significant barrier to

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000322

its enforcement efforts. Rather, at most "the CAT may make it a bit easier to investigate certain types of market misconduct" and may allow the Commission's enforcement efforts to "avoid the[] occasional problem[]" of broker-dealers responding less than promptly to "blue sheets" requesting customer account information. Comm'r Hester M. Peirce, *Statement of Hester M. Peirce in Response to Release No. 34-88890; File No. S7-13-19*, SEC (May 15, 2020), https://perma.cc/G4HL -M7EU.

Mere convenience cannot justify the sweeping collection and retention of personal information from investors who no one suspects of wrongdoing—let alone one that puts that information in the hands of an agency with a record of failing to secure its computer systems. As Commissioner Peirce aptly put it, "[t]he risk that a bus driver placing a trade for her daughter's college fund will cause market turbulence is outweighed by the invasion of privacy and the attendant risk that cybercriminals will deplete the college education fund." Peirce, *This CAT is a Dangerous Dog*. The Commission's failure to analyze that important problem was arbitrary and capricious.

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000323

CONCLUSION

The Court should set aside the Commission's 2023 Order Approving an Amendment to the National Market System Plan Governing the Consolidated Audit Trail.

Dated: February 15, 2024

Respectfully submitted,

Tim Griffin
Attorney General
s/ Nicholas J. Bronni
Nicholas J. Bronni
Solicitor General
Dylan L. Jacobs
Deputy Solicitor General
OFFICE OF THE ARKANSAS ATTORNEY GENERAL
323 Center Street, Suite 200
Little Rock, AR 72201
(501) 682-6302
Nicholas.Bronni@ArkansasAG.gov

Counsel for Amici Curiae

AMERICAN OVERSIGHT

ADDITIONAL COUNSEL

STEVE MARSHALL
Alabama Attorney General

ASHLEY MOODY
Florida Attorney General

CHRIS CARR
Georgia Attorney General

RAÚL R. LABRADOR
Idaho Attorney General

THEODORE E. ROKITA
Indiana Attorney General

BRENNA BIRD
Iowa Attorney General

KRIS W. KOBACH
Kansas Attorney General

RUSSELL COLEMAN
Kentucky Attorney General

LIZ MURRILL
Louisiana Attorney General

LYNN FITCH
Mississippi Attorney General

ANDREW BAILEY
Missouri Attorney General

AUSTIN KNUDSEN
Montana Attorney General

MICHAEL T. HILGERS
Nebraska Attorney General

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000325

JOHN M. FORMELLA
New Hampshire Attorney General

DREW H. WRIGLEY
North Dakota Attorney General

DAVE YOST
Ohio Attorney General

ALAN WILSON
South Carolina Attorney General

MARTY JACKLEY
South Dakota Attorney General

KEN PAXTON
Texas Attorney General

SEAN REYES
Utah Attorney General

JASON MIYARES
Virginia Attorney General

PATRICK MORRISEY
West Virginia Attorney General

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000326

CERTIFICATE OF COMPLIANCE

1. I certify that this brief complies with the type-volume limitations set forth in Fed. R. App. P. 29(a)(5). This brief contains 6,050 words, including all headings, footnotes, and quotations, and excluding the parts of the response exempted under Fed. R. App. P. 32(f).

2. In addition, this response complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

Dated: February 15, 2024

/s/ *Nicholas J. Bronni*
Nicholas J. Bronni
Counsel for Amici Curiae

AMERICAN OVERSIGHT

CERTIFICATE OF SERVICE

I certify that on February 15, 2024, I electronically filed this document using the Court's CM/ECF system, which will serve all counsel of record.

s/ Nicholas J. Bronni
Nicholas J. Bronni
Counsel for Amici Curiae

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000328

To: Rathert, Branden[Branden.Rathert@ago.mo.gov]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Fri 2/16/2024 9:52:58 AM (UTC-06:00)
Subject: FW: File-marked Securities Amicus
image001.jpg
CAT Amicus - Filemarked.pdf

See attached.

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

From: Divine, Josh <Josh.Divine@ago.mo.gov>
Sent: Thursday, February 15, 2024 4:28 PM
To: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>; Haines, Diana <Diana.Haines@ago.mo.gov>
Subject: Fwd: File-marked Securities Amicus
Copy of amicus we joined against sec rule that would create a database of all securities holders
Sent from my iPhone
Begin forwarded message:

From: Brittany Garcia <brittany.garcia@arkansasag.gov>
Date: February 15, 2024 at 4:25:11 PM CST
To: "LaCour, Edmund" <Edmund.LaCour@alabamaag.gov>, "Robertson, Katherine" <Katherine.Robertson@alabamaag.gov>, Barrett.Bowdre@alabamaag.gov, Guard <John.Guard@myfloridalegal.com>, James Percival <James.Percival@myfloridalegal.com>, Christopher Baum <Christopher.Baum@myfloridalegal.com>, Allen Huang <Allen.Huang@myfloridalegal.com>, Stephen Petrany <SPetrany@law.ga.gov>, Promise Choice <PChoice@law.ga.gov>, Alan Hurst <Alan.Hurst@ag.idaho.gov>, Josh Turner <josh.turner@ag.idaho.gov>, Isaac Considine <Isaac.Considine@ag.idaho.gov>, Michael Zarian <Michael.Zarian@ag.idaho.gov>, Jack Corkery <Jack.Corkery@ag.idaho.gov>, "Lorence, Jenna M" <Jenna.Lorence@atg.in.gov>, "Barta, James A" <James.Barta@atg.in.gov>, "Wessan, Eric" <Eric.Wessan@ag.iowa.gov>, Leif Olson <leif.olson@ag.iowa.gov>, "Powell, Anthony J." <Anthony.Powell@ag.ks.gov>, "Carswell, Dwight" <Dwight.Carswell@ag.ks.gov>, "Desch, Nikki" <Nikki.Desch@ag.ks.gov>, "Kuhn, Matt F (KYOAG" <Matt.Kuhn@ky.gov>, "Duncan, Robert M (KYOAG" <robertm.duncan@ky.gov>, "Short, Tracy" <ShortT@ag.louisiana.gov>, "Aguinaga, Ben" <AguinagaJ@ag.louisiana.gov>, "Brungard, Morgan" <BrungardM@ag.louisiana.gov>, "Nelson, Erin" <NelsonE@ag.louisiana.gov>, "Higgins, Haley" <HigginsH@ag.louisiana.gov>, "Duhe, Lester" <DuheL@ag.louisiana.gov>, "Roussel, Ellis" <RousselE@ag.louisiana.gov>, "Hargroder, Amber" <HargroderA@ag.louisiana.gov>, Justin Matheny <Justin.Matheny@ago.ms.gov>, Scott Stewart <Scott.Stewart@ago.ms.gov>, Anthony Shults <Anthony.Shults@ago.ms.gov>, "Divine, Josh" <Josh.Divine@ago.mo.gov>, "Corrigan, Christian" <Christian.Corrigan@mt.gov>, "Strobl, Grant" <Grant.Strobl@nebraska.gov>, "Strobl, Grant" <Grant.Strobl@nebraska.gov>, "Chase, Brandon" <Brandon.F.Chase@doj.nh.gov>, "Axt, Philip J." <pjaxt@nd.gov>, "Carpenter, Katie L." <katcarpenter@nd.gov>, Elliot Gaiser <Thomas.Gaiser@ohioago.gov>, Michael Hendershot <Michael.Hendershot@ohioago.gov>, Joshua Richardson <Joshua.Richardson@ohioago.gov>, Thomas Hydrick <ThomasHydrick@scag.gov>, "Swedlund, Paul" <Paul.Swedlund@state.sd.us>, Ralph Molina <Ralph.Molina@oag.texas.gov>, Aaron Nielson <Aaron.Nielson@oag.texas.gov>, Lanora Pettit <Lanora.Pettit@oag.texas.gov>, Christopher Bates <chrisbates@agutah.gov>, Melissa Holyoak <melissaholyoak@agutah.gov>, "Ferguson, Andrew N." <AFerguson@oag.state.va.us>, "Gallagher, Kevin M." <KGallagher@oag.state.va.us>, "Michael R. Williams" <Michael.R.Williams@wvago.gov>, "Lindsay S. See" <Lindsay.S.See@wvago.gov>
Cc: Nicholas Bronni <nicholas.bronni@arkansasag.gov>, Dylan Jacobs <dylan.jacobs@arkansasag.gov>
Subject: File-marked Securities Amicus

Good Afternoon,
Thank you all for joining the Eleventh Circuit amicus brief supporting the American Securities Association's petition, which challenged the SEC's consolidated audit trail (CAT) database. A file-marked copy is attached.
Best,

AMERICAN OVERSIGHT

Brittany

Brittany Garcia, Paralegal
Office of the Solicitor General
Office of Arkansas Attorney General Tim Griffin
323 Center Street, Suite 200
Little Rock, AR72201
Office:501.682.3634
brittany.garcia@arkansasag.gov | ArkansasAG.gov

CONFIDENTIALITY NOTICE:The information contained in this e-mail message and any attachment is the property of the State of Arkansas and may be protected by state and federal laws governing disclosure of private information.It may contain information that is privileged, confidential, or otherwise protected from disclosure.It is intended solely for the use of the addressee.If you are not the intended recipient, you are hereby notified that reading, copying or distributing this e-mail or the information herein by anyone other than the intended recipient is STRICTLY PROHIBITED.The sender has not waived any applicable privilege by sending the accompanying transmission.If you have received this transmission in error, please notify the sender by reply e-mail immediately, and delete this message and attachments from your computer.

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Goodwin, Gregory[Gregory.Goodwin@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; Hammond, Wyatt[Wyatt.Hammond@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Lewis, Jason[Jason.Lewis@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Woodard, Winderlyn[winderlyn.woodard@ago.mo.gov]
From: Rathert, Branden[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6862523A4FCB4692B7523E7B2723AB70-RATHERT, BRANDEN]
Sent: Mon 3/4/2024 4:06:54 PM (UTC-06:00)
Subject: Daily News Media Roundup-Monday March 4th, 2024

AGO News:

Driver in Janae Edmondson crash set to face trial this week in St. Louis

St. Louis Post-Dispatch l Katie Kull

https://www.stltoday.com/news/local/crime-courts/driver-in-janae-edmondson-crash-set-to-face-trial-this-week-in-st-louis/article_e9559520-d7fc-11ee-878c-c364b5315c5c.html#tracking-source=home-top-story

-A trial is slated to begin this week for the man accused of causing a downtown crash last year that severed a young girl's legs and jump-started an effort to remove the city's top prosecutor. Jury selection in the case of Daniel Riley began Friday when hundreds of people were summoned to the courthouse to fill out a questionnaire about their knowledge of the incident to weed out those who had already formed an opinion about Riley's guilt. Riley, 22, was charged last February with assault, armed criminal action and driving without a valid license after police said he was speeding in downtown St. Louis and caused a crash that pinned 16-year-old Tennessee resident Janae Edmondson between two cars. Both her legs were amputated as a result. Riley was out on bond at the time of the crash on a pending robbery case despite violating the conditions of his release multiple times. The news generated outrage in Missouri and across the country, as critics pointed to it as an example of the failures of former St. Louis Circuit Attorney Kimberly M. Gardner. Riley's original robbery 2020 case, in which he is accused of stealing a gun from the son of a retired St. Louis police sergeant, had been dropped and refiled because the prosecutor was not ready for trial and a judge denied a request to delay it. Gardner's spokeswoman falsely claimed the case was dropped because the victim had died. That turned out to be a mix-up, though, and the office later learned they had confused the victim in the robbery case with another person, from a different case, with the same first name. The backlash was severe. Former allies like Mayor Tishaura O. Jones said Gardner had "lost the trust of the people." The Legislature ramped up an effort seeking to strip Gardner of most of her power. Missouri Attorney General Andrew Bailey filed a lawsuit seeking to remove her from office. Gardner eventually resigned in May and was replaced by current Circuit Attorney Gabe Gore. But Riley's attorney, Dan Diemer, argued last month in a hearing that the damage had already been done, and he asked to move his client's trial out of St. Louis. ;He shouldn't be tried in the press, but he was," Diemer said.

REPOST: BLOX Digital

'This is about the future of this town' | Law professor outlines what's at stake in case of volleyball player who lost legs in crash

KSDK l Christine Byers

https://www.ksdk.com/article/news/crime/case-trial-daniel-riley-st-louis/63-d346aa4c-9500-4306-9146-86dbcdb1cfb8

-The upcoming trial of a man accused of striking a Tennessee teen, severing both of her legs, is so high-profile that St. Louis court officials had to summon three times as many residents as usual to ensure a fair and impartial jury. Daniel Riley, 21, is charged with second-degree assault, armed criminal action and driving without a license. Feb. 18, 2023, police said Riley sped through the intersection of North 11th and St. Charles streets in downtown St. Louis and clipped another car before pinning Janae Edmondson, then 17, against another car. Edmondson was walking with both of her parents to their hotel after playing in a volleyball tournament at the nearby Dome at America's Center. Riley was supposed to be on house arrest at the time for an alleged armed robbery that happened two years before the crash.The story got national attention and also spotlighted mounting criticism of the office of former St. Louis Circuit Attorney Kim Gardner, ending with her resignation in May 2023. Riley's attorneys tried to ask for a change of venue for the case, but Judge Michael Noble denied that request. Jury summonses were sent to about 435 St. Louisans for this case. About 140 residents are summoned in a typical case. St. Louis University law professor Anders Walker isn't surprised. "This needs to be tried in St. Louis City," Walker said. "This is about the future of the town." "I mean, if we're going to attract people to our soccer stadium and these games and Union Station, we've got to have safe streets," he said. "We can't have tourists getting killed and losing legs when they're visiting town. "Jurors can be told, 'You have to be objective. And if you can't, you can't sit on the jury,' so they can get instructions to be fair, but it needs to be tried in this town," he said. Walker said a recent spate of serious and

AMERICAN OVERSIGHT

fatal pedestrian and traffic crashes in the St. Louis area could influence jurors too, beyond just the publicity Riley's case got when it first happened. Just eight days after Edmondson lost her legs, four young adults were killed when Cedric Dixon ran a red light and struck a Chevrolet Tahoe. The SUV careened over a guardrail and landed upside-down on Forest Park Avenue, which runs below North Grand Boulevard. Four others were injured.

Daniel Riley jury selection continuing today

FOX 2 St. Louis l Reggie Lee

https://fox2now.com/news/missouri/daniel-riley-jury-selection-continuing-today/

-Jury selection continues Monday in the trial of Daniel Riley. He is accused of the crash lastyear that cost visiting volleyball player Janae Edmondson both her legs. Riley is charged with second-degree assault, armed criminal action, and driving without a license. He pleaded not guilty. By Monday, the judge hopes to have a jury in place, with opening arguments scheduled for Tuesday. Cameras will be allowed in the courtroom.

REPOST: Yahoo News

Trial Looms: Middle Tennessee Volleyball Player's Tragic Accident Prompts Call for Justice

WGNS (Murfreesboro, TN.) l Chandelar Williams

https://www.wgnsradio.com/article/86037/trial-looms-middle-tennessee-volleyball-players-tragic-accident-prompts-call-for-justice

-Murfreesboro, TN - A heart-wrenching incident involving Middle Tennessee State University's volleyball team has captured the attention of the Midstate community. Janae Edmondson, a standout volleyball player and student manager for the team, found herself at the center of a tragic turn of events during a competition in Missouri. Just a year ago, Edmondson was in Missouri for a volleyball tournament, enjoying a walk back to her hotel with her family when tragedy struck. According to police reports, 21-year-old Daniel Riley was allegedly speeding down the road when he struck Edmondson, causing her to lose both of her legs in the horrific accident. Riley, who did not possess a valid license at the time of the incident, now faces multiple charges, including three counts of assault and armed criminal action. Adding to the gravity of the situation, it was revealed that Riley had been in court for trial on armed robbery charges just seven months prior to the accident involving Edmondson. As the community awaits justice, the trial for Daniel Riley is set to commence on Monday, March 4. This trial holds significant weight for not only Edmondson and her family but also for the broader Middle Tennessee community as they rally behind one of their own in the pursuit of accountability and closure.

Missouri AG Files Lawsuit Against Planned Parenthood Over Allegedly 'Trafficking' Minors To Obtain Abortions

Conservative Daily News l Harold Hutchison

https://www.conservativedailynews.com/2024/03/missouri-ag-files-lawsuit-against-planned-parenthood-over-allegedly-trafficking-minors-to-obtain-abortions/

-Republican Attorney General Andrew Bailey of Missouri announced a lawsuit against a Planned Parenthood chapter on Thursday, accusing it of "trafficking children" across state lines to get abortions without parental consent. The lawsuit accused Planned Parenthood Great Plains of violating state law by aiding minors in obtaining out of state abortions without parental consent. Bailey is asking for the court to issue an injunctive relief and bar the defendant from providing financial or transportation assistance for minors to receive the procedure, according to the court document. "Missouri law forbids any person to assist a minor in obtaining an abortion without parental consent, even if the abortion occurs across state lines and is legal in that other State," the filing reads. The 18-page complaint cited undercover video from an investigation by Project Veritas, during which employees allegedly told the undercover reporter they could "help" take a 13-year-old to Kansas for an abortion without the child's parents learning about the procedure. The filing also cited a second video from Project Veritas, in which employees at a Planned Parenthood in Kansas confirmed that minors came from out of state "all the time." "This is the beginning of the end for Planned Parenthood in the State of Missouri. What they conceal and conspire to do in the dark of night has now been uncovered. I am filing suit to ensure it never happens again," Bailey said in a press release. "As a father who held my daughter in my arms for the single hour of her life before she died, I know firsthand how important it is to protect life. Our children are the future. It is time to eradicate Planned Parenthood once and for all to end this pattern of abhorrent, unethical, and illegal behavior." Planned Parenthood Great Plains did not immediately respond to a request for comment from the Daily Caller News Foundation.

Missouri urges court to uphold act declaring federal gun laws 'invalid' after Kansas City shooting

KC Star l Jonathan Shorman

https://www.kansascity.com/news/politics-government/article286038476.html

-Missouri officials recently defended in court a far-reaching state law that declares some federal firearms laws "invalid," a stark demonstration of how far the state has gone to thwart restrictions on guns. Missouri Attorney General Andrew Bailey's Office urged the federal Eighth Circuit Court of Appeals to uphold the state's Second Amendment Preservation Act or SAPA during oral arguments last Friday. The 2021 law, signed by Gov. Mike Parson, spurred confusion among law enforcement when it went into effect. The U.S. Department of Justice has sued to overturn the measure. U.S. District Court Judge Brian Wimes in March 2023 ruled the law unconstitutional, but Missouri appealed. The courtroom showdown between Missouri and the DOJ had long been scheduled for February, but came a little over a week after at least two people exchanged gunfire, according to prosecutors, following the Kansas City Chiefs Super Bowl rally, killing one bystander and injuring more

AMERICAN OVERSIGHT

than 20 others. The mass shooting has led to renewed calls for action on gun violence and focused fresh attention on Missouri's loose firearms laws. Republicans, with few exceptions, have resisted demands to consider new restrictions – and since the shooting Bailey has promoted his role in defending the Second Amendment Preservation Act. The DOJ has argued SAPA "severely impairs federal criminal law enforcement operations" to fight gun crime in Missouri. Some local law enforcement have questioned whether the law allows them to cooperate with federal officials. As state attorney general, Bailey is tasked with defending state law in court. Bailey, a Republican facing a competitive primary contest, has publicly framed his defense of the state law as a defense of the Second Amendment.

Repost Gazette Extra AOL American Military News

Attorney General Levels More Accusations At Webster Groves School District

Webster-Kirkwood Times l Melissa Wilkinson

https://www.timesnewspapers.com/webster-kirkwoodtimes/attorney-general-levels-more-accusations-at-webster-groves-school-district/article_8cdc1524-d70e-11ee-afeb-c7dd1fcbd209.html

-For the second time this year, Missouri Attorney General Andrew Bailey has issued a warning to the Webster Groves School District. A Feb. 21 letter from Bailey directed to Superintendent John Simpson accuses the district of racial discrimination. The district has called the accusations "ridiculous." "It has come to my attention that Webster Groves School District has instituted race-based criteria for its employees and applicants," Bailey's letter said. "According to the reports my office has received, the district adopted the goal to 'attract, support and retain ... staff who at a minimum reflect the diversity of our student population.'" Bailey goes on to state that, under Title VII of the Civil Rights Act of 1964, an employer may not refuse to hire, or otherwise discriminate, against employees or candidates because of their race. "Webster Groves School District must immediately cease and desist using all unlawful race-based preferences and quotas it has adopted for hiring and retention," Bailey's letter concludes. In an official district response, Director of Communications Derek Duncan called the letter "ridiculous." "There is nothing wrong with the stated goal, and it is certainly not unlawful race-based hiring," wrote Duncan. "The Webster Groves School District has not, and will not, discriminate against anyone in hiring based upon the person's race. However, the district is interested in having a diverse faculty to serve as educators to our diverse student population and is willing to take the effort to attract, support and retain that staff."

Judge temporarily blocks Texas AG's demand for transgender minors' records

The Spokesman-Review l Colbi EdmondsRepost from NY Times

https://www.spokesman.com/stories/2024/mar/03/judge-temporarily-blocks-texas-ags-demand-for-tran/

-A judge on Friday temporarily blocked the Texas attorney general from forcing an LGBTQ+ organization to turn over documents on transgender minors and the gender-affirming care they may be receiving. In Texas, medical care for gender transition is prohibited for minors under a law passed last year. As part of an investigation into violations of the ban, the office of Attorney General Ken Paxton demanded early last month that the nonprofit PFLAG National, which supports families in accessing gender-affirming care for children, provide information on minors in the state who may have received such treatments. But on Friday, Judge Maria Cantú Hexsel of Travis County District Court issued an injunction against Paxton, just days after PFLAG sued to block the request, saying turning over the documents would cause "irreparable injury, loss or damage" to the group. The judge added that such an ask would infringe on the group's constitutional rights and that its members would be subject to "gross invasions" of privacy. The important context here is that liberals have seen major success in shoring up various rights, particularly reproductive rights, via ballot initiatives in recent years. And, in response, Republicans, just as experts predicted, appear to be trying to make it harder to place similar proposals before the people. As examples, the Bolts article noted Arkansas Republican Attorney General Tim Griffin's efforts to undercut a ballot initiative that would require more transparency from government officials by guaranteeing Arkansans a right to public information. The magazine also mentioned Missouri AG Andrew Bailey and Montana AG Austin Knudsen, who've both tried to block ballot measures that could potentially shore up abortion rights in those two states. Both AGs have succeeded in their delays so far, although activists in both states are hoping to beat the clock and garner enough signatures in time to place abortion rights initiatives on the ballot this November.

How Republican attorneys general are taking aim at democracy

MSNBC l Ja'han Jones

https://www.msnbc.com/the-reidout/reidout-blog/republican-attorneys-general-ballot-measures-rcna141464

-If you're reading this, you've undoubtedly heard about the "MAGA" movement. But how about the "RAGA" movement? While it is not as well known as Donald Trump, the Republican Attorneys General Association is right there with him in its attacks on decency, common sense and, lately, the democratic process. As an example, last month, the group sent a letter to the Federal Aviation Administration suggesting that diversity, equity and inclusion measures were putting American passengers at risk. And in January, several members of the group also sent the Biden administration a letter accusing him of enabling a migrant-led "invasion" through the U.S.-Mexico border. But Bolts Magazine has a new report on a troubling trend, as the ultraconservative attorneys general have been putting their thumbs on the scale to impose a conservative agenda on their states. Specifically, the report notes how right-wing AGs have stalled or stifled liberal ballot measures, preventing voters from having their say on a number of proposals.

McClellan: Missouri's politicians aren't dumb. They just act that way

AMERICAN OVERSIGHT

St. Louis Post-Dispatch | Bill McClellan
https://www.stltoday.com/news/local/column/bill-mcclellan/mcclellan-missouri-s-politicians-aren-t-dumb-they-just-act-that-way/article_515e6510-d713-11ee-a00a-ff9c4c1d820e.html#tracking-source=home-the-latest

-Not since state Sen. Bill Eigel jump-started his gubernatorial campaign by promising, if elected, to use a flamethrower to incinerate books on the front lawn of the governor's mansion has a Missouri politician put truth to power the way Attorney General Andrew Bailey did recently when he called his primary opponent a coward, a liar and Harvard-educated. Bailey is a proud Mizzou alum. "M-I-Z, Z-O-U!"He first came to prominence a couple of years ago when he supported Gov. Mike Parson's notion to criminally charge Post-Dispatch reporter Josh Renaud for notifying the state board of education that one of its websites could be manipulated to show Social Security numbers of the state's teachers. Our governor is a former sheriff and sees things through an investigative lens. If a reporter is so sure of this, ain't that akin to a confession? He musta done it hisself! If you think so, sir, I think so, said Bailey, who was then Parson's general counsel. Grown-ups prevailed, and Renaud was not charged. But when my friend Roy "RINO" Blunt retired from the Senate and was replaced by Attorney General Eric "MAGA" Schmitt, whose singular accomplishment had been suing China for inflicting COVID on Missouri — no court date in sight for that trial — the governor appointed Bailey as A.G. Bailey hit the ground running and went right after schools and medical clinics. That's good politics in these strange times. It's especially wise to target schools, which are always trying to indoctrinate our children and make them think they're smarter than we are.

Missouri News:

Trump Easily Wins Missouri's Republican Caucuses
Missourinet | Alisa Nelson
https://www.missourinet.com/2024/03/04/trump-easily-wins-missouris-republican-caucuses/

Community gathered Sunday evening to remember Independence fallen officer
KC Star | Noelle Alviz-Gransee
https://www.kansascity.com/news/local/article286213786.html

Missouri authorities jail owners of Christian boarding school on kidnapping charges
KC Star | Laura Bauer and Judy L. Thomas
https://www.kansascity.com/news/local/crime/article286162626.html

Missouri Supreme Court Justice Mary R. Russell….. Missouri Supreme Court Justice Mary R. Russell was selected as one of USA Today's Women of the Year
Springfield News-Leader | No author
https://www.news-leader.com/videos/news/2024/02/29/missouri-supreme-court-justice-mary-r-russell/72284381007/

Proposal to Increase Jury Duty Pay in Missouri
Missourinet | Anthony Morabith
https://www.missourinet.com/2024/03/04/proposal-to-increase-jury-duty-pay-in-missouri/

Missouri Bill Would criminalize Teachers, Counselors If They Help With 'Social Transitions'
Missourinet | Alisa Nelson
https://www.missourinet.com/2024/03/04/missouri-bill-would-criminalize-teachers-counselors-if-they-help-with-social-transitions/

Burlison opposes Biden Administration's proposed overtime pay changes
KZRG | Steve Scott
https://newstalkkzrg.com/2024/02/29/burlison-opposes-biden-administrations-proposed-overtime-pay-changes/

Hearing on recall of 60,000 Missouri marijuana products set to begin
Missouri Independent | Rebecca Rivas
https://missouriindependent.com/2024/03/04/hearing-on-recall-of-60000-missouri-marijuana-products-set-to-begin/

Gov. Mike Parson faces bipartisan scorn for reducing DWI sentence of ex-Chiefs coach
Missouri Independent | Jason Hancock
https://missouriindependent.com/2024/03/04/gov-mike-parson-faces-bipartisan-scorn-for-reducing-dwi-sentence-of-ex-chiefs-coach/

Missouri regulators pan proposed change in state water laws
St. Louis Post-Dispatch | Kurt Erickson
https://www.stltoday.com/news/local/government-politics/missouri-regulators-pan-proposed-change-in-state-water-laws/article_8528b7b0-d7ea-11ee-8443-0fb1146a0369.html

Preparations Underway for Public Meetings on First Segment of I-70 Improvement
https://www.missourinet.com/2024/03/01/preparations-underway-for-public-meetings-on-first-segment-of-i-70-improvement/

'Never miss leg day': State trooper moves large hay bale out of road
KY3 | Amanda Alvarado
https://www.ky3.com/2024/03/03/never-miss-leg-day-state-trooper-moves-large-hay-bale-out-road/

AMERICAN OVERSIGHT

National News:

Supreme Court rules Trump cannot be kicked off ballot
NBC | Lawrence Hurley
https://www.nbcnews.com/politics/supreme-court/supreme-court-rules-trump-cannot-kicked-colorado-ballot-rcna132291
Super Tuesday: Supreme Court's 14th Amendment decision looms large over elections
Washington Examiner | Naomi Lim
https://www.washingtonexaminer.com/news/2860021/super-tuesday-supreme-court-14th-amendment-decision-looms-elections/
Judge to Rule on Fani Willis Disqualification Within 2 Weeks
The Epoch Times | Catherine Yang
https://www.theepochtimes.com/us/judge-to-rule-on-fani-willis-disqualification-within-2-weeks-5598755
New York AG Letitia James Demands Reversal of Nassau County Ban on Men in Women's Sports
The Epoch Times | Kos Temenes
https://www.theepochtimes.com/us/new-york-ag-letitia-james-demands-reversal-of-nassau-county-ban-on-men-in-womens-sports-5599475
'Breakdown In The System': CBS Host Presses Mayorkas On Illegal Immigrant Charged In Laken Riley's Death
Daily Caller | Haily Gomez
https://dailycaller.com/2024/03/03/margaret-brennan-alejandro-mayorkas-illegal-immigrant-jose-ibarra-charged-laken-riley-death/
Judge temporarily blocks Texas AG's demand for transgender minors' records
The Spokesman-Review | Colbi EdmondsRepost from NY Times
https://www.spokesman.com/stories/2024/mar/03/judge-temporarily-blocks-texas-ags-demand-for-tran/
Arizona's new voting laws that require proof of citizenship are not discriminatory, a US judge rules
AP | No Author Listed
https://apnews.com/article/arizona-voting-laws-citizenship-proof-50dafd68f8dd4af5cf669afa62efdf19
Oregon Senate passes bill to recriminalize certain drug possession crimes
Jurist | Lou Kettering
https://www.jurist.org/news/2024/03/oregon-senate-passes-bill-to-recriminalize-certain-drug-possession-crimes/
Jewish student sues Columbia, says faculty pushed her to violate Sabbath, bullied her out of program
Campus Reform | Ben Mincey
https://www.campusreform.org/article/jewish-student-sues-columbia-says-faculty-pushed-her-to-violate-sabbath-bullied-her-out-of-program/24935
Chinese Critical Mineral Investment Has Exploded Since Biden Signed Landmark Climate Bill
Daily Caller | Nick Pope
https://dailycaller.com/2024/03/03/china-critical-minerals-investment-surge-biden-inflation-reduction-act/
Passengers File $1 Billion Lawsuit Against Alaska Airlines Following Door Plug Blowout
Daily Caller Hailey Gomez
https://dailycaller.com/2024/03/04/passengers-kyle-rinker-amanda-strickland-kevin-kwok-1-billion-lawsuit-alaska-airlines-boeing-door-plug-blowout/
Elon Musk's X Quietly Changes Pronoun Rules, Reigniting Free Speech Concerns
mrcTV | Brittany M. Hughes
https://www.mrctv.org/blog/brittany-m-hughes/elon-musks-x-quietly-changes-pronoun-rules-reigniting-free-speech-concerns
ATF Director Steven Dettelbach Details Procedures Agency Takes In Absence Of Federal Gun Owner Registry
Daily Caller | Mariane Angela
https://dailycaller.com/2024/03/03/atf-bureau-alcohol-tobacco-firearms-explosives-director-steven-dettelbach-procedures-federal-agency-gun-owner-registry/
Menendez Co-Defendant Pleads Guilty to Bribery, Fraud Charges
The Epoch Times | Ryan Morgan
https://www.theepochtimes.com/us/menendez-co-defendant-pleads-guilty-to-bribery-fraud-charges-5598718
Weekend Media Wrap, Vol. 33: What You Missed If You Weren't Glued To The Sunday Shows
Daily Wire | Virginia Kruta
https://www.dailywire.com/news/weekend-media-wrap-vol-33-what-you-missed-if-you-werent-glued-to-the-sunday-shows

Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355
Branden.Rathert@ago.mo.gov

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: Walters, Taylor[Taylor.Walters@FOX.COM]
Sent: Thur 3/14/2024 2:08:50 PM (UTC-05:00)
Subject: RE: AG Bailey - Media Matters

Hi madeline! Wondering if you have a press kit w/ photo assets of AG Bailey?
I want to use his photo in a segment about the MO teen beating this week.
Let me know – thanks!

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Sunday, December 10, 2023 2:09 PM
Subject: [EXTERNAL] AG Bailey - Media Matters
Importance: High

Hi,

Attached is the final version of the EMBARGOED letter that AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.

AG Bailey views it as such:

DRAFT DO NOT RELEASE

- -Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.
- -Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.
- -Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.
- -Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:
  1. Social media platforms
     - We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS
  2. President Trump
     - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
  3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
     - Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**
- -The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.
  1. We will never back down in the **fight** for free speech.

He is available this week if you have interest in an interview.
Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee(s). If you are not an addressee indicated in this message (or responsible for delivery of the message to an addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete

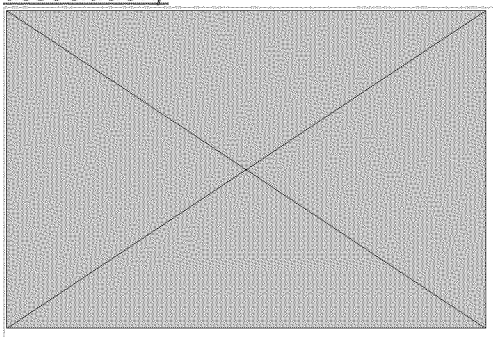
this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of Fox Corporation, or its subsidiaries must be taken not to have been sent or endorsed by any of them. No representation is made that this email or its attachments are without defect.

AMERICAN OVERSIGHT

To: Mark Hyman[MHyman@sbgtv.com]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Tue 3/12/2024 9:27:21 PM (UTC-05:00)
Subject: Re: [EXT] RE: Media Request - AG comments

Wonderful, Mark! Thanks!

Sent from my iPhone

> On Mar 8, 2024, at 6:59 AM, Mark Hyman <MHyman@sbgtv.com> wrote:
>
> Good morning.
>
> The American Spectator published this column this morning:
> https://spectator.org/jen-psaki-model-of-first-amendment-hostility-to-be-honored-by-news-association/
>
> 
>
> Jen Psaki, Model of First Amendment Hostility, Honored by News Association - The American Spectator | USA News and PoliticsThe American Spectator | USA News and Politics
> Jen Psaki fired a warning shot at Elon Musk in April 2022 following reports that Musk was considering buying Twitter.
> spectator.org

Best,

Mark Hyman
Sinclair Broadcast Group, Inc.
10706 Beaver Dam Rd
Hunt Valley, MD 21030
410.925.7089 - Mobile



Be Bold. Be decisive. Accountability starts with me.

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Friday, March 1, 2024 3:23 PM
To: Mark Hyman <MHyman@sbgtv.com>
Subject: [EXT] RE: Media Request - AG comments

AMERICAN OVERSIGHT
CAUTION: This email originated from outside of Sinclair. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Mark,
A statement from the AG: “Jen Psaki was instrumental to the censorship of everyday Americans during her time in the Biden Administration. She used her position of power to threaten social media companies into censoring free speech. It’s a slap in the face to every American that she be named as master of ceremonies at any event involving the First Amendment. I look forward to holding the entire White House’s censorship enterprise accountable at the nation’s highest court in a few weeks.”
Thanks,
Madeline Sieren | Communications Director
Missouri Attorney General’s Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

From: Mark Hyman <MHyman@sbgtv.com>
Sent: Friday, March 1, 2024 12:14 PM
To: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>; madelinesieren@ago.mo.gov
Cc: Mark Hyman <MHyman@sbgtv.com>
Subject: Media Request - AG comments

Ms Sieren:
Good afternoon.
Request.am an investigative television journalist working on a story that addresses a matter that was before Missouri attorney-general. AGO was a plaintiff in *Murthy v Missouri* (originally filed as *Missouri v Biden*) regarding the Biden Administration pressure on social media platforms to silence disfavored narratives.
As cited in court documents, among those administration officials who threatened social media platforms was then-Press Secretary Jen Psaki.
Does the AG have a comment regarding the decision to honor Jen Psaki at a First Amendment awards gala?
The Radio-Television Digital News Association, which is the largest organization representing radio and television news journalists, namedas the master of ceremonies at its grandest annual event, its First Amendment gala.
When I questioned the RTDNA president & CEO about naming Psaki, he dismissed her behavior in the White House as immaterial. He further stated it was important "we" stop disinformation and silencing certain voices was not incompatible with supporting the First Amendment. I am now a former member of the RTDNA.
Background.am the correspondent for **Inside Your World Investigates**, the national investigative unit for Sinclairstations nationwide. Our reports focus on public safety, consumer protection, and government accountability, as well as human interest stories, and are broadcast in local newscasts of more than 120 TV news stations (including Jefferson City and St Louis), as well as on our national headline news, The National Desk, which is broadcast on more than 125 television stations. The stories areinto Spanish for our Spanish-language newscasts.
Thank you in advance for your consideration.
Best,

Mark Hyman
Sinclair Broadcast Group, Inc.
10706 Beaver Dam Rd
Hunt Valley, MD 21030
410.925.7089 - Mobile



Be Bold. Be decisive. Accountability starts with me.
This email message, including the attachments, is from the Missouri Attorney General’s Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are

AMERICAN OVERSIGHT

not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: Walters, Taylor[Taylor.Walters@fox.com]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Thur 3/14/2024 2:45:31 PM (UTC-05:00)
Subject: Re: AG Bailey - Media Matters

Hey Taylor,
Here is our Flickr with several hundred photos to choose from:https://www.flickr.com/photos/146566231@N08/

My favorite portrait is attached.

Let me know if you need anything else - happy to narrow the search down if you don't love the portrait.



Thanks!

Maddie

Sent from my iPhone

On Mar 14, 2024, at 3:08 PM, Walters, Taylor <Taylor.Walters@fox.com> wrote:

AMERICAN OVERSIGHT

Hi madeline! Wondering if you have a press kit w/ photo assets of AG Bailey?
I want to use his photo in a segment about the MO teen beating this week.
Let me know – thanks!

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Sunday, December 10, 2023 2:09 PM
Subject: [EXTERNAL] AG Bailey - Media Matters
Importance: High

Hi,

Attached is the final version of the EMBARGOED letter that AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.

AG Bailey views it as such:

DRAFT DO NOT RELEASE

- -Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.
- -Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.
- -Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.
- -Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:
  1. Social media platforms
     - We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS
  2. President Trump
     - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
  3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
     - Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**
- -The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.
  1. We will never back down in the **fight** for free speech.

He is available this week if you have interest in an interview.
Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee(s). If you are not an addressee indicated in this message (or responsible for delivery of the message to an addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of

AMERICAN OVERSIGHT

Fox Corporation, or its subsidiaries must be taken not to have been sent or endorsed by any of them. No representation is made that this email or its attachments are without defect.

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: Walters, Taylor[Taylor.Walters@FOX.COM]
Sent: Thur 3/14/2024 3:11:45 PM (UTC-05:00)
Subject: RE: AG Bailey - Media Matters

Thank you!

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Thursday, March 14, 2024 3:46 PM
To: Walters, Taylor <Taylor.Walters@FOX.COM>
Subject: [EXTERNAL] Re: AG Bailey - Media Matters

Hey Taylor,

Here is our Flickr with several hundred photos to choose from:https://www.flickr.com/photos/146566231@N08/

My favorite portrait is attached.

Let me know if you need anything else - happy to narrow the search down if you don't love the portrait.



Thanks!
Maddie

Sent from my iPhone

On Mar 14, 2024, at 3:08 PM, Walters, Taylor <Taylor.Walters@fox.com> wrote:

AMERICAN OVERSIGHT

Hi madeline! Wondering if you have a press kit w/ photo assets of AG Bailey?

I want to use his photo in a segment about the MO teen beating this week.
Let me know – thanks!

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Sunday, December 10, 2023 2:09 PM
Subject: [EXTERNAL] AG Bailey - Media Matters
Importance: High

Hi,

Attached is the final version of the EMBARGOED letter that AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.

AG Bailey views it as such:

DRAFT DO NOT RELEASE

-Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.

-Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.

-Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.

-Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:

1. Social media platforms
    - We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS
2. President Trump
    - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
    - Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

-The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.

1. We will never back down in the **fight** for free speech.

He is available this week if you have interest in an interview.
Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee(s). If you are not an addressee indicated in this message (or responsible for delivery of the message to an addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of Fox Corporation, or its subsidiaries must be taken not to have been sent or endorsed by any of them. No representation is made that this email or its attachments are without defect.

AMERICAN OVERSIGHT

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee(s). If you are not an addressee indicated in this message (or responsible for delivery of the message to an addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of Fox Corporation, or its subsidiaries must be taken not to have been sent or endorsed by any of them. No representation is made that this email or its attachments are without defect.

AMERICAN OVERSIGHT

To: 'John Vecchione'[john.vecchione@ncla.legal]
Cc: Mark Chenoweth[mark.chenoweth@ncla.legal]
From: Scott, Todd[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1DAF1E35615D4B2E8DBB3F318306291A-SCOTT, TODD]
Sent: Sun 3/17/2024 9:38:27 AM (UTC-05:00)
Subject: RE: Intern Assignment

Thanks John.Thought it might be good for Ben to have in his back pocket if we get lots of questions on whether there was really a credible threat by the WH since there doesn't seem to be any serious attempt to reform Sec. 230 on the immediate horizon, Biden's threats notwithstanding.The concrete actions against Musk would seem to demonstrate that the WH has lots of tools at their disposal. By the way, do you know if you can leave extra clothing in the locker at the Supreme Court?I have a heavy fleece I thought about throwing on under my suit coat if I'm going to be hanging out in a line in 40+ degree weather in the a.m.

Todd Scott | Senior Counsel
Missouri Attorney General's Office
(573) 751-8366
Todd.Scott@ago.mo.gov

From: John Vecchione <john.vecchione@ncla.legal>
Sent: Sunday, March 17, 2024 10:28 AM
To: Scott, Todd <Todd.Scott@ago.mo.gov>
Cc: Mark Chenoweth <mark.chenoweth@ncla.legal>
Subject: Fw: Intern Assignment

These were mostly private actions, Todd but I'm seeing if he did a follow up.

New Civil Liberties Alliance
John J. Vecchione
Senior Litigation Counsel
New Civil Liberties Alliance
1225 19th Street NW, Suite 450
Washington, DC 20036
(202) 918-6902
john.vecchione@ncla.legal
Follow us!
Twitter: @NCLAlegal
Website: www.nclalegal.org

NOTICE:This e-mail is from the New Civil Liberties Alliance law firm is intended solely for the use of the person(s) to whom it is addressed.If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer and do not copy or disclose it to anyone else.If you are not an existing client of the New Civil Liberties Alliance, do not construe anything in this e-mail to make you a client unless it contains a specific statement to that effect and do not disclose anything to the New Civil Liberties Alliance in reply that you expect or want it to hold in confidence.If you properly received this e-mail as a client, co-counsel or retained expert of the New Civil Liberties Alliance you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality. The sender of this email is an attorney.

From: Jackson Peter Gregory <jpg2190@columbia.edu>
Sent: Tuesday, March 12, 2024 5:28 PM
To: John Vecchione <john.vecchione@ncla.legal>
Subject: Intern Assignment

Hi John,

Please find attached and pasted below a few matters I collected on the Musk question. Happy to continue the search tomorrow.

Kindly,
Jackson

Legal Actions Against Elon Musk After Buying Twitter

Musk initiated Twitter acquisition on April 14, 2022, and concluded it on October 27, 2022.

Complaint Filed Last Month:

Compl., *Agrawal et al v. Musk et al*, (N.D. Cal. Mar. 4, 2024)
- oClaim for Benefits Pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) by Plaintiff Parag Agrawal

Dismissed:

-*In re Tesla Inc. S'holder Derivative Litig.,* No. 1:22-CV-00592-DAE, 2023 WL 6060349 (W.D. Tex. Sept. 15, 2023)
- oComplaint filed June 2022, between acquisition initiation and conclusion.

AMERICAN OVERSIGHT

-*Oklahoma Firefighters Pension & Ret. Sys. v. Musk*, No. 22-CV-03026 (ALC), 2023 WL 6393865 (S.D.N.Y. Sept. 29, 2023)

- oLead Plaintiff filed its Complaint in November 2022, after acquisition conclusion.

SCOTUS Appeal Pending:

-*Sec. & Exch. Comm'n v. Musk*, No. 22-1291, 2023 WL 3451402 (2d Cir. May 15, 2023)

- oCert petition filed in December 2023.
- oCite is Second Circuit appeal of an April 2022 SDNY order denying defendant Musk's motion to modify the consent decree he entered with the SEC to resolve the original complaint.
- oOriginal complaint brought by the SEC in 2018. *Sec. & Exch. Comm'n v. Musk*, 2018 WL 4659481 (S.D.N.Y.)

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

Legal Actions Against Elon Musk After Buying Twitter

Musk initiated Twitter acquisition on April 14, 2022, and concluded it on October 27, 2022.

Complaint Filed Last Month:

- Compl., *Agrawal et al v. Musk et al*, (N.D. Cal. Mar. 4, 2024)
  - Claim for Benefits Pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) by Plaintiff Parag Agrawal

Dismissed:

- *In re Tesla Inc. S'holder Derivative Litig.,* No. 1:22-CV-00592-DAE, 2023 WL 6060349 (W.D. Tex. Sept. 15, 2023)
  - Complaint filed June 2022, between acquisition initiation and conclusion.

- *Oklahoma Firefighters Pension & Ret. Sys. v. Musk*, No. 22-CV-03026 (ALC), 2023 WL 6393865 (S.D.N.Y. Sept. 29, 2023)
  - Lead Plaintiff filed its Complaint in November 2022, after acquisition conclusion.

SCOTUS Appeal Pending:

- *Sec. & Exch. Comm'n v. Musk*, No. 22-1291, 2023 WL 3451402 (2d Cir. May 15, 2023)
  - Cert petition filed in December 2023.
  - Cite is Second Circuit appeal of an April 2022 SDNY order denying defendant Musk's motion to modify the consent decree he entered with the SEC to resolve the original complaint.
  - Original complaint brought by the SEC in 2018. *Sec. & Exch. Comm'n v. Musk*, 2018 WL 4659481 (S.D.N.Y.)

AMERICAN OVERSIGHT

To: Scott, Todd[Todd.Scott@ago.mo.gov]
Cc: Mark Chenoweth[mark.chenoweth@ncla.legal]
From: John Vecchione[john.vecchione@ncla.legal]
Sent: Sun 3/17/2024 9:28:04 AM (UTC-05:00)
Subject: Fw: Intern Assignment
Musk Legal Trouble Post-Twitter Buy.docx

These were mostly private actions, Todd but I'm seeing if he did a follow up.

New Civil Liberties Alliance

John J. Vecchione

Senior Litigation Counsel

New Civil Liberties Alliance

1225 19th Street NW, Suite 450

Washington, DC 20036

(202) 918-6902

john.vecchione@ncla.legal

Follow us!

Twitter: @NCLAlegal

Website: www.nclalegal.org

NOTICE:This e-mail is from the New Civil Liberties Alliance law firm is intended solely for the use of the person(s) to whom it is addressed.If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer and do not copy or disclose it to anyone else.If you are not an existing client of the New Civil Liberties Alliance, do not construe anything in this e-mail to make you a client unless it contains a specific statement to that effect and do not disclose anything to the New Civil Liberties Alliance in reply that you expect or want it to hold in confidence.If you properly received this e-mail as a client, co-counsel or retained expert of the New Civil Liberties Alliance you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality. The sender of this email is an attorney.

From: Jackson Peter Gregory <jpg2190@columbia.edu>
Sent: Tuesday, March 12, 2024 5:28 PM
To: John Vecchione <john.vecchione@ncla.legal>
Subject: Intern Assignment
Hi John,
Please find attached and pasted below a few matters I collected on the Musk question. Happy to continue the search tomorrow.

Kindly,
Jackson

Legal Actions Against Elon Musk After Buying Twitter

Musk initiated Twitter acquisition on April 14, 2022, and concluded it on October 27, 2022.

Complaint Filed Last Month:

AMERICAN OVERSIGHT

Compl., *Agrawal et al v. Musk et al*, (N.D. Cal. Mar. 4, 2024)

- oClaim for Benefits Pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) by Plaintiff Parag Agrawal

Dismissed:

In re Tesla Inc. S'holder Derivative Litig., No. 1:22-CV-00592-DAE, 2023 WL 6060349 (W.D. Tex. Sept. 15, 2023)

- oComplaint filed June 2022, between acquisition initiation and conclusion.

Oklahoma Firefighters Pension & Ret. Sys. v. Musk, No. 22-CV-03026 (ALC), 2023 WL 6393865 (S.D.N.Y. Sept. 29, 2023)

- oLead Plaintiff filed its Complaint in November 2022, after acquisition conclusion.

SCOTUS Appeal Pending:

Sec. & Exch. Comm'n v. Musk, No. 22-1291, 2023 WL 3451402 (2d Cir. May 15, 2023)

- oCert petition filed in December 2023.
- oCite is Second Circuit appeal of an April 2022 SDNY order denying defendant Musk's motion to modify the consent decree he entered with the SEC to resolve the original complaint.
- oOriginal complaint brought by the SEC in 2018. *Sec. & Exch. Comm'n v. Musk*, 2018 WL 4659481 (S.D.N.Y.)

AMERICAN OVERSIGHT

DISSENTING STATEMENT OF COMMISSIONER BRENDAN CARR

Re: *Application for Review of Starlink Services, LLC*, *Rural Digital Opportunity Fund*, *Rural Digital Opportunity Fund (Auction 904), Viasat Auction 904 Application for Review*, WC Docket No. 19-126, OEA Docket No. 20-34, GN Docket No. 21-231, Order on Review.

Last year, after Elon Musk acquired Twitter and used it to voice his own political and ideological views without a filter, President Biden gave federal agencies a greenlight to go after him. During a press conference at the White House, President Biden stood at a podium adorned with the official seal of the President of the United States, and expressed his view that Elon Musk "is worth being looked at."[1] When pressed by a reporter to explain how the government would look into Elon Musk, President Biden remarked: "There's a lot of ways."[2] There certainly are. The Department of Justice, the Federal Aviation Administration, the Federal Trade Commission, the National Labor Relations Board, the U.S. Attorney for the Southern District of New York, and the U.S. Fish and Wildlife Service have all initiated investigations into Elon Musk or his businesses.

Today, the Federal Communications Commission adds itself to the growing list of administrative agencies that are taking action against Elon Musk's businesses. I am not the first to notice a pattern here. Two months ago, *The Wall Street Journal* editorial board wrote that "the volume of government investigations into his businesses makes us wonder if the Biden Administration is targeting him for regulatory harassment."[3] After all, the editorial board added, Elon Musk has become "Progressive Enemy No. 1." Today's decision certainly fits the Biden Administration's pattern of regulatory harassment. Indeed, the Commission's decision today to revoke a 2020 award of $885 million to Elon Musk's Starlink—an award that Starlink secured after agreeing to provide high-speed Internet service to over 640,000 rural homes and businesses across 35 states—is a decision that cannot be explained by any objective application of law, facts, or policy.

First, the FCC revokes Starlink's $885 million award by making up an entirely new standard of review that no entity could ever pass and then applying that novel standard to only one entity: Starlink. In particular, FCC law provides that a winning bidder like Starlink must demonstrate that it is "reasonably capable" of fulfilling its end of the bargain that it struck with the FCC back in 2020. In this case, that means Starlink needed to show that it was more likely than not that Starlink could provide high-speed Internet service (specifically, low-latency, 100/20 Mbps service) to at least 40% of those roughly 640,000 rural premises by December 31, 2025. Starlink did exactly that in a voluminous series of submissions that it filed with the FCC throughout 2021 and 2022. Indeed, the record leaves no doubt that Starlink is reasonably capable of providing qualifying high-speed Internet service to the required number of locations by the end of 2025. The Commission's decision does not even grapple with that evidence—it simply ignores it.

Instead of applying the traditional FCC standard to the record evidence, which would have compelled the agency to confirm Starlink's $885 million award, the FCC denied it on the grounds that

[1] Press Conference, White House State Dining Room, Remarks by President Biden (Nov. 9, 2022), https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/11/09/remarks-by-president-biden-in-press-conference-8/

[2] *Id.*

[3] Editorial Board, *The Harassment of Elon Musk*, WSJ.com (Sept. 22, 2023), https://www.wsj.com/articles/elon-musk-biden-administration-justice-department-investigations-accdd84a?mod=article_inline.

AMERICAN OVERSIGHT

Starlink is not providing high-speed Internet service to all of those locations today.[4] What? FCC law does not require Starlink to provide high-speed Internet service to even a single location today. As noted above, the first FCC milestone does not kick in until the end of 2025. Indeed, the FCC did not require—and has never required—any other award winner to show that it met its service obligation years ahead of time.

To the extent the Commission is intending to say that the agency does not believe, standing here today, that Starlink is reasonably capable of meeting its year end 2025 obligation by year end 2025, the agency's position fares no better.

For one, the FCC is still holding Starlink to a standard that it has made up on the fly. I am not aware of any other circumstance in which the FCC has looked at current speed benchmarks to determine whether an awardee is reasonably capable of meeting a speed benchmark that kicks in years down the road. Indeed, if the FCC were to apply this novel Starlink speed test standard to any of the other 2020 awardees, it would show that those entities are not reasonably capable of meeting their 2025 obligations either because they have not built out to those areas yet. Applying a speed test to those providers would show speeds of 0/0 Mbps.

For another, the FCC makes a fundamental error because the speed test data it relies on is not sufficiently probative. In other words, the FCC might be saying in its decision that it *needs* to apply a novel standard to Starlink because it is the first low-earth orbit (LEO) satellite system to win an FCC award. Putting aside the admission in that case that the agency *is* applying a novel standard, the speed test evidence the agency relies on to make its prediction about how Starlink's LEO system will perform at the end of 2025 is flawed. Indeed, the FCC is not applying a standard that makes any sense for Starlink's LEO system.

This is an important point. The FCC is purporting to make a prediction about the trajectory that Starlink's LEO system is on, but it is not using any evidence that is tailored to making such a prediction. I am not saying that this is an easy task for the agency—it does involve rocket science after all. But comparing speed test snapshots from two, cherry-picked moments in time and using those to predict how Starlink would likely perform years down the road and at particular U.S. locations is not a credible methodology. That would be like watching the pace lap of a NASCAR race and then predicting that the cars will never exceed 50 MPH.

In the case of technologies like Starlink's LEO system, progress is not measured in a straight line, particularly not one that can be plotted by drawing an arrow through two speed test measures. The FCC knows this. It is more accurate to think about technological progress in this context as a saw-toothed, hockey curve—there are ups and downs, breakthroughs and setbacks, but the curve moves steadily up and to the right over any considerable period of time.

That is certainly the case with Starlink. Indeed, all of the data that has come in—the latest set of U.S. speed test measures, Starlink's actual performance in Europe, the pace and cadence of new launches and satellites in orbit, Starlink's own detailed descriptions of its plans—this much richer and more probative set of data all confirm that Starlink is on track to meets its FCC obligations.[5]

---

[4] *See, e.g.*, Order on Review at para. 30; *see also id.* at para. 24. The Agency found that Starlink's long-form application review process "required a more thorough examination of required service in 'specific areas' where [Starlink] won support" essentially requesting performance testing early-on from Starlink. *Id*. at para. 25.

[5] Notably, at the time of the FCC's initial decision in August 2022, there were 3,007 Starlink satellites in orbit. Today, that number has expanded to 5,420. Moreover, among European countries that Ookla recently surveyed, Starlink now has median download speeds greater than 100 Mbps in 14 countries.

AMERICAN OVERSIGHT

Second, the FCC's decision leaves rural communities stuck on the wrong side of the digital divide. As noted above, in exchange for awarding Starlink $885 million back in 2020, the FCC secured a commitment for the delivery of high-speed Internet service to over 642,000 unserved rural homes and businesses across 35 states. By reversing course, the FCC has chosen to vaporize that commitment and replace it with . . . nothing. That's a decision to leave families waiting on the wrong side of the digital divide when we have the technology to get them high-speed service today.

Third, the FCC's decision hits Americans in their pocketbooks. To the extent the federal government ever makes another commitment to serve these rural communities, it will cost us orders of magnitude more money to do so. Indeed, while the Commission's 2020 award secured a deal to bring high-speed service to all of these areas for $885 million in federal support, extending high-speed fiber lines to these same areas will likely cost somewhere in the neighborhood of $3 billion based on past bidding patterns and analysis—more once you start accounting for inflation. That is not a good deal for U.S. taxpayers.

The problems only compound from there. After all, there is a limited pot of federal infrastructure dollars, and we are now far more likely to exhaust those resources before getting every American connected.

* * *

Stepping back for a moment—it is clear that today's decision simply does not hang together when measured against the law, facts, or policy. Indeed, I think it's obvious to everyone that the Biden Administration itself does not believe that Elon Musk's Starlink is a risky technology. If it did, you would not have seen the Pentagon ink a multi-million-dollar agreement with SpaceX just weeks ago for a military adaptation of Starlink, known as Starshield, that leverages LEO satellites for a more secure communication network.[6] But the government continues to take regulatory action against his businesses, nonetheless.

In the end, today's decision mirrors many of the same missteps that the Biden Administration is making in its implementation of other, multi-billion-dollar infrastructure initiatives. The Biden Administration is choosing to prioritize its political and ideological goals at the expense of connecting Americans. We can and should reverse course.

But that is not what the agency chooses today. Accordingly, I dissent.

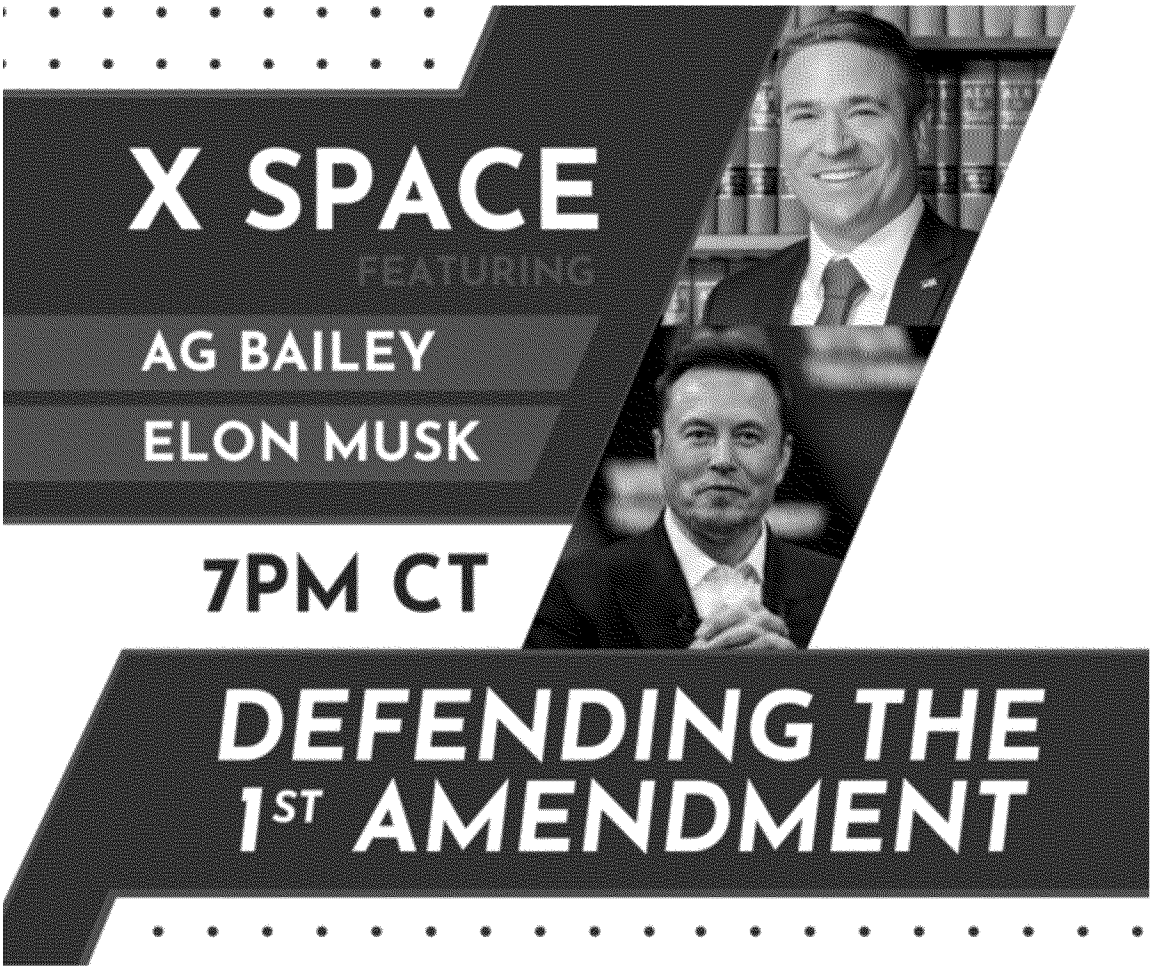
[6] David E. Sanger & Eric Lipton, *The White House May Condemn Musk, but the Government Is Addicted to Him*, nytimes.com (Nov. 19, 2023), https://www.nytimes.com/2023/11/19/us/politics/elon-musk-white-house-pentagon.html.

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: McCuien, Grace[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3070B53594504B3FB9B45CDE1131FF4D-NOTEBOOM, GRACE]
Sent: Mon 3/18/2024 7:32:58 AM (UTC-05:00)
Subject: Re: Teasers

Here ya go!

Hope today goes well and smoothly!



On Mar 18, 2024, at 7:02 AM, Grace Noteboom <Grace.Noteboom@ago.mo.gov> wrote:

<mo v biden teaser.png>

<mo v biden b.png>

<x space.png>

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: McCuien, Grace[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3070B53594504B3FB9B45CDE1131FF4D-NOTEBOOM, GRACE]
Sent: Mon 3/18/2024 7:02:36 AM (UTC-05:00)
Subject: Teasers



AMERICAN OVERSIGHT

MISSOURI v. BIDEN

AT THE SUPREME COURT OF THE UNITED STATES



9 AM CT

THE FIRST AMENDMENT IS WORTH DEFENDING

X SPACE

FEATURING



AG BAILEY



ELON MUSK

DEFENDING THE 1ST AMENDMENT

AMERICAN OVERSIGHT

To: Rathert, Branden[Branden.Rathert@ago.mo.gov]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Wed 3/20/2024 10:25:44 AM (UTC-05:00)
Subject: Re: Some Reporters Covering Media Matters

Can you check Epoch Times, Daily Caller, Daily Wire, etc?

Sent from my iPhone

On Mar 19, 2024, at 1:31 PM, Rathert, Branden <Branden.Rathert@ago.mo.gov> wrote:

Some of the reporters that have covered Media Matters/X story.
FOX News
Brianna Herlihy Fox News brianna.herlihy@fox.com
Joseph A. Wulfsohn Fox News joseph.wulfsohn@fox.com
ASSOCIATED PRESS
Barbara Ortutay bortutay@ap.org
BREITBART
Lucas Nolanlucasnolan@protonmail.com
NEWSMAX
Nick Koutsobinaseditorial.koutsobinas@newsmax.com
THE BLAZE
Carlos Garcia is a staff writer for Blaze News. You can reach him at cgarcia@blazemedia.com.
Below are reporters and their stories but we don't have direct contact on these.
WASHINGTON EXAMINER
Media Matters 'watchdog' quietly reveals its Democratic megadonor funders By Gabe Kaminsky
Why Elon Musk is right to take on Media Matters By Dennis Kneale
Texas Attorney General Ken Paxton opens investigation into Media Matters By Brady Knox
UPDATED: Media Matters and other liberal groups file for coronavirus small-business relief loans from Trump administrationBy Andrew Mark Miller
FEDERALIST
Elon Musk Should Sue Media Matters Into Oblivion By JOHN DANIEL DAVIDSON
GATEWAY PUNDIT
Attorney General Ken Paxton Launches Investigation into "Radical Anti-Free Speech Organization" Media Matters Over Fraudulent ActivityJim Hoft
RED STATE
Brandon Morse…form email

Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355
Branden.Rathert@ago.mo.gov

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Goodwin, Gregory[Gregory.Goodwin@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; Hammond, Wyatt[Wyatt.Hammond@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Lewis, Jason[Jason.Lewis@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Woodard, Winderlyn[winderlyn.woodard@ago.mo.gov]
From: Rathert, Branden[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6862523A4FCB4692B7523E7B2723AB70-RATHERT, BRANDEN]
Sent: Wed 3/20/2024 9:06:49 AM (UTC-05:00)
Subject: Daily News/Media Roundup - Wednesday March 20th, 2024

Good morning all,

Below is the relevant news relating to the AGO, Missouri, and Nation for today:

AGO News:

Missouri AG slams school's promotion of 'divisive racial ideology' over safety after teen's brutal beating
FOX News | Stepheny Price
https://www.foxnews.com/us/missouri-ag-slams-schools-promotion-divisive-racial-ideology-over-safety-after-teens-brutal-beating

- Following the brutal beating of a 16-year-old St. Louis high school student, Missouri Attorney General Andrew Bailey released a statement condemning the girl's school for not doing enough to protect its students. "I'm deeply concerned that the school where these teens were students has a history of promoting divisive racial ideology over the safety of its students," Bailey said in a statement to Fox News Digital. Bailey went on to say that the school is partially at fault for this latest act of violence involving teenagers. "By promoting DEI and excluding uniformed law enforcement from campus in 2021, this school bears some responsibility for this incident. Yet, it has not offered a substantive apology to the victim of this violent attack who is still fighting for her life. This school owes the parents of the district an explanation as to what role these radical programs and safety failures played here," Bailey said. Fox News Digital has reached out to Hazelwood East High School and the Hazelwood School District for comment on the attorney general's accusations, but has not yet heard back. During a previous interview with "Wake Up Mid-Missouri," Bailey called on the state's juvenile justice system to be reformed following the attack. "Well this is horrific, and we're seeing this happen more and more across the state where juveniles are committing violent crimes," the Republican attorney general said, noting that two juveniles were also charged in a shooting at last month's Kansas City Chiefs parade, resulting in a woman's death and nearly two dozen others injured. Bailey also added that the suspect in the violent brawl should be tried as an adult and charged with murder if the offense rose to a homicide.

REPOST: Yahoo News, 1010 WCSI, Millennial Press

Missouri girl in critical condition after video shows teen slamming her head in 'deranged display of violence'
NBC | Minyvonne Burke
https://www.nbcnews.com/news/us-news/missouri-girl-critical-condition-video-shows-teen-slamming-head-derang-rcna144034

- A fight involving numerous people left a Missouri girl hospitalized in critical condition after what officials called a "deranged display of violence." St. Louis County police detectives are investigating the brawl on March 8, which was captured on video and posted to social media. The horrific video shows several people fighting in the middle of the street near the intersection of Norgate and Claudine drives. One person is seen repeatedly punching the victim and slamming her head to the ground. A 15-year-old girl was arrested on assault charges a day after the fight, authorities said…..Missouri Attorney General Andrew Bailey called the actions in the video a "deranged display of violence that must be punished to the full extent of the law." "This vicious attack highlights the greater issues we're facing in the juvenile justice system across the state. I will continue to fight for more resources, increased juvenile certifications, and a tougher on crime approach than our current levels of enforcement," he said on X. "This culture of violence has no place in Missouri or anywhere," Bailey said. "Children deserve to attend schools free of crime and violence." Police said the fight remains under investigation.

REPOST: AOL, Yahoo,

AMERICAN OVERSIGHT

Former Missouri sheriff charged after allegedly pushing officer making arrest, court says (NOT former Sheriff Scott Childers)

KC Star | Kendrick Calfee
https://www.kansascity.com/news/local/crime/article286881485.html

- The former sheriff of Ray County has been charged with a misdemeanor for interfering with the arrest of another man at a steakhouse in January, court records filed Tuesday show. A probable cause affidavit filed March 19 says Garry Bush stepped in front of and pushed an officer who was attempting to arrest another man acting erratically with a gun at a restaurant. Officers responded to a call shortly after 7 p.m. Jan. 25 to 708 Wollard Boulevard on a call that a man had a gun in a restaurant and was "acting erratic." The affidavit said an officer obtained the gun from the suspect. After he cleared the weapon, loaded with one round, the officer saw the suspect walk away from another officer toward Bush. The suspect lifted his left hand and the officer who had cleared the weapon rushed to assist, grabbing the man's left hand, the affidavit said. Officers said the suspect broke away and at this point Bush allegedly stepped in front of the officer. The affidavit said Bush then used his left hand to push the officer back, saying "don't do it" and "don't start." "I pushed Garry Bush away from me, telling him not to get involved," Cpl. Cody Davis with the Richmond Police wrote in the affidavit. "It should be noted it took several attempts to get Garry Bush to stop interfering." A news release from the Platte County Prosecutor's Office March 19 said prosecutor Eric Zahnd has been appointed to serve as special prosecuting attorney on the case. The charge was filed Tuesday after his office reviewed police reports, surveillance video and body camera footage from Richmond police officers. The charge against Bush — interfering with an arrest — is a class A misdemeanor. Bush served as Ray County sheriff from 2012 until 2020, when he decided not to run for re-election. In October 2023, Bush's time as sheriff was put under a spotlight when Missouri Auditor Scott Fitzpatrick gave the county the lowest possible rating from his office. The scathing review found that the sheriff's office spent county money on beer, 15 TVs and 76 hams. The audit also uncovered missing money from concealed carry weapon permit fees and sex offender registry fees under Bush's leadership from 2018-2020. Issues uncovered by the state auditor in Ray County highlight problems uncovered in a recent investigation by The Star, which showed how local governments often lack safeguards against fraud and mismanagement of taxpayer money. Scott Childers, who took over as Ray County sheriff in 2021, told The Star last fall that the audit spoke to his campaign message of poor management within the county when he was Bush's political opponent. Childers was removed from office by Missouri Attorney General Andrew Bailey in early March after he unlawfully allowed prisoners to leave jail, perform work for friends and acquaintances and smuggle in drugs, alcohol and other contraband, Bailey claimed. "Respondent has allowed these detainees to drive vehicles, make purchases at local stores, leave the State of Missouri, and generally move about Ray County without proper supervision," Bailey's petition for quo warranto said. Ray County, which includes the cities of Camden and Crystal Lakes, is located about 47 miles east of Kansas City. It has an estimated population of 23,107 people, according to the most recent census data

REPOST: Yahoo News

Former Ray County, Missouri, Sheriff, subject of questionable spending audit, charged with interfering with arrest in January incident (NOT former Sheriff Scott Childers)

KMBC | JoBeth Davis
https://www.kmbc.com/article/former-ray-county-missouri-sheriff-charged-with-interfering-with-arrest/60247020#

- The former Sheriff of Ray County, Missouri, is now facing charges of interfering with arrest related to a January incident, according to a news release from the Platte County Prosecutor's Office. Garry Bush served as Ray County Sheriff from 2012 until he opted not to run for re-election in 2020. According to the release from the prosecutor's office, Richmond Police officers were dispatched to the Branded Steakhouse restaurant on Jan. 25 to investigate reports of a man with a gun acting erratically. When officers arrived, one was able to obtain the weapon involved. Authorities said after the officer cleared the loaded weapon, he saw the suspect walk away from another officer and walk toward Bush. Tuesday's news release said the man in question raised his left hand, and the officer who had cleared the weapon grabbed his hand to assist. The man then reportedly broke away, and Bush stepped in front of the officer. The prosecutor's office said Bush then used his left hand to push the officer back saying, "don't do it" and "don't start."…. Bush's time as sheriff has recently been under a magnifying glass after investigators with Missouri State Auditor Scott Fitzpatrick's Office released a scathing audit, revealing thousands of dollars in questionable purchases as well as missing money from fees related to issues from 2018 to 2020, under Bush's leadership. Bush's predecessor and former political opponent, Scott Childers, was elected to serve in 2020. Childers was removed from office by the Missouri Attorney General earlier this month alleging an inmate work program administered by Childers was illegal and allowed detainees to leave the county jail freely.

Sen. Eric Schmitt dismisses concerns over skeptical justices in censorship Supreme Court case

FOX News | Julia Johnson
https://www.foxnews.com/politics/eric-schmitt-skeptical-justices-censorship-supreme-court

- After the Supreme Court heard oral arguments on Monday in the case of Murthy v. Missouri – which addresses the Biden administration's ability to communicate with and direct social media companies and examines what constitutes persuasion versus coercion – Sen. Eric Schmitt encouraged Americans not to be discouraged by the skepticism implied by the justices' questions. "I thought the arguments yesterday went well," the Missouri Republican told Fox News Digital in an interview on

AMERICAN OVERSIGHT

Tuesday. "The record is very clear." In 2022, when Schmitt was attorney general, he joined then-Louisiana Attorney General Jeff Landry to file a lawsuit against the Biden administration for "allegedly colluding with Social Media Giants," particularly to censor free speech surrounding the COVID-19 pandemic and the results of the 2020 election. According to published reports, a majority of the Court appeared doubtful about Schmitt and Landry's lawsuit, asking questions suggesting they may not agree with the 5th Circuit Court of Appeals in Louisiana. "I'm hopeful that the Court will see it the same way that the lower court did in their issuing an injunction prohibiting this kind of censorship," Schmitt said following the Supreme Court arguments. U.S. District Judge Terry Doughty granted an injunction in the case in 2023, citing "substantial evidence" that warranted prevention of multiple federal agencies from communicating with social media companies regarding posts containing protected speech. However, the Supreme Court removed many of the restrictions put in place by the injunction when it agreed to hear the administration's appeal. "I think it's always tricky to try to guess what a justice is really thinking about the case based on some of the questions," said Schmitt. Justices seemed largely skeptical of the Republican-led effort to curtail the executive branch's communication with the companies. One example pointed to by both Justices Brett Kavanaugh and Elena Kagan was that of White House correspondence with the news media, which is often looking to shape coverage, but isn't considered a violation of the First Amendment.

Justice Jackson ripped for worrying about the First Amendment 'hamstringing' government: 'Literally the point'

FOX News l Lindsay Kornick and Alexa Moutevelis

https://www.foxnews.com/media/justice-jackson-ripped-worrying-first-amendment-hamstringing-government-literally-point

- Social media users were shocked and slightly bemused at Supreme Court Justice Ketanji Brown Jackson's comments on the First Amendment Monday. The Supreme Court heard Murthy v. Missouri, a case challenging the Biden administration's alleged coordination with Big Tech to censor certain messages……"My biggest concern is that your view has the First Amendment hamstringing the federal government in significant ways in the most important time periods," she told the lawyer representing Louisiana, Missouri and private plaintiffs. "And so I guess some might say that the government actually has a duty to take steps to protect the citizens of this country, and you seem to be suggesting that that duty cannot manifest itself in the government encouraging or even pressuring platforms to take down harmful information," she continued. "So can you help me? Because I'm really – I'm really worried about that because you've got the First Amendment operating in an environment of threatening circumstances from the government's perspective, and you're saying that the government can't interact with the source of those problems," Jackson added…..Missouri Attorney General Andrew Bailey told Fox News Digital Jackson was "absolutely right" about the First Amendment restricting the government. "It is hamstringing, and it's supposed to. The whole purpose of the Constitution is to protect us from the government, and the government exists to protect our rights. But here, the federal government is ignoring our First Amendment protections and weaponizing the federal government to silence our voices," Bailey said.

REPOST: Baltimore Post, American Talk

Missouri's social media case had its day in the U.S. Supreme Court — and later on X

Springfield News-Leader l Kelly Dereuck

https://www.news-leader.com/story/news/politics/2024/03/19/u-s-supreme-court-hears-mo-case-involving-social-media-censorship/73034117007/

- The U.S. Supreme Court heard arguments Monday in a case that could determine the level of communication that the federal government can have with social media platforms. Murthy v. Missouri, originally filed as Missouri v. Biden in 2022, was brought by former Missouri Attorney General Eric Schmitt, who is now a U.S. Senator, and former Louisiana Attorney General Jeff Landry, who now serves as the state's governor, as well as five individual plaintiffs. Current Missouri Attorney General Andrew Bailey and Louisiana Attorney General Liz Murrill have taken up the case, which alleges that the federal government worked with social media sites to censor posts, especially those with conservative content, infringing on the First Amendment right to freedom of speech. Bailey has previously called this "the most important First Amendment suit in this nation's history." He contends that statements made by the federal government to social media sites could be seen as threatening punitive action if certain posts were not removed. Attorneys from both states' legal teams argued their case in the Monroe Division of the United States Western District Court of Louisiana in July….Following the nearly two-hour oral argument, Attorney General Bailey issued a statement again touting the importance of this case in terms of defending the First Amendment. "My office brought this lawsuit to halt the disgusting silencing of millions of Americans by the Biden Administration," Bailey said. "We feel confident after today's arguments, and look forward to reminding the nation that the First Amendment still means something in this country." Later Monday evening, Bailey joined Elon Musk in a live discussion on X, formerly known as Twitter, which Musk purchased nearly two years ago. Bailey emphasized the importance of this case, saying, "I think this is one of the most important strategic objectives in securing the soul of our nation." "I think that the bedrock of democracy is freedom of speech," Musk said. "Because if you can't say what you want to say then I think that's essentially political coercion."

REPOST: Columbia Daily Tribune, World News Network

AMERICAN OVERSIGHT

Elon Musk Interview with Attorney General Andrew Bailey (Listen)
YouTube via X l Elon Musk
https://www.youtube.com/watch?v=B-Ce1K1CzuU

Is The Government Illegally Censoring Social Media Content? (Listen)
FOX News Radio l
https://radio.foxnews.com/2024/03/19/is-the-government-illegally-censoring-social-media-content/

- How much contact should the federal government have with private social media platforms? When does that contact turn into censorship? Those were the factors the Supreme Court weighed on Monday, as they heard arguments in the Murthy v. Missouri case, where Missouri and Louisiana attorneys general allege social media companies like Facebook and X (formerly Twitter) suppressed speech by encouraging them to remove misinformation about various topics like the COVID-19 vaccine. Missouri Attorney General Andrew Bailey joins the Rundown to explain his state's lawsuit, the threat posed by media censorship, and why he wants "a wall of separation between tech and state." President Biden travels to two battleground states this week in an effort to win over Arizona and Nevada voters as he heads into a rematch with former President Donald Trump. However, recent polling shows that Trump is ahead in both of these states, spelling trouble for the Biden 2024 reelection campaign. FOX News contributor and Democratic strategist Leslie Marshall joins the podcast to discuss the latest reports that the President is unhappy with his 2024 campaign efforts, a political shift occurring with Black and Hispanic voters, and why she doesn't trust the current polling.

Pete Mundo Show: AG Andrew Bailey recaps X Spaces conversation with Elon Musk about Big Tech, Biden Administration and collusion (Listen)
KCMO L Pete Mundo
https://omny.fm/shows/pete-mundo-kcmo-talk-radio-103-7fm-710am/andrew-bailey-missouri-attorney-general-3-19-24

Missouri News:

Josh Hawley says Trump shouldn't issue blanket pardon of Jan. 6 defendants
KC Star l Kacen Bayless and Daniel Desrochers
https://www.kansascity.com/news/politics-government/article286871930.html

Riley Strain's family asks for the public's sensitivity as search continues
Columbia Missourian l Anna Colletto
https://www.columbiamissourian.com/news/higher_education/riley-strains-family-asks-for-the-publics-sensitivity-as-search-continues/article_eb8b2078-e623-11ee-9d3a-fff7a00d875e.html#tncms-source=Top%20Story

Columbia leaders urge police chief to begin mental health 911 dispatch plan
Columbia Missourian l Staff
https://www.columbiamissourian.com/news/columbia-leaders-urge-police-chief-to-begin-mental-health-911-dispatch-plan/article_95022cfc-e61d-11ee-99a9-3b8b375c347b.html#tncms-source=Top%20Story

McCluer North 'resets' as school districts grapple with student violence
St. Louis Post-Disptach l Monica Obradovic
https://www.stltoday.com/news/local/education/mccluer-north-resets-as-school-districts-grapple-with-student-violence/article_f8efc0ac-e308-11ee-b477-c3fa6452586a.html#tracking-source=home-top-story

Jack Buck's daughter claims racial, gender discrimination at Harris-Stowe in trial this week
St. Louis Post-Dispatch l Katie Kull
https://www.stltoday.com/news/local/crime-courts/jack-buck-s-daughter-claims-racial-gender-discrimination-at-harris-stowe-in-trial-this-week/article_b389bd2a-e609-11ee-b188-6b25bfd66179.html#tracking-source=home-top-story

You can get married in Missouri as young as 16 — for now. It used to be even younger
KC Star l Joseph Hernandez
https://www.kansascity.com/news/state/missouri/article286863850.html

Investigation of Missouri House Speaker Dean Plocher continues next week
Missouri Independent l Jason Hancock
https://missouriindependent.com/briefs/investigation-of-missouri-house-speaker-dean-plocher-continues-next-week/

AMERICAN OVERSIGHT

House Budget Committee Chairman Cody Smith (R-Carthage) unveils plan to fund rebuilding and widening of I-44
Missourinet | Alisa Nelson
https://www.missourinet.com/2024/03/19/missouri-could-soon-begin-the-rebuild-and-widening-of-a-second-interstate/

Missouri House budget proposal scales back state funding to boost Missouri child care access
Missourinet | Alisa Nelson
https://www.missourinet.com/2024/03/20/missouri-house-budget-proposal-scales-back-state-funding-to-boost-missouri-childcare-access/

Hundreds expected to attend earthquake summit in Cape Girardeau
KFVS | Amber Ruch
https://www.kfvs12.com/2024/03/18/hundreds-expected-attend-earthquake-summit-cape-girardeau/

National News:

Appeals Court Reinstates Hold on Texas Immigration Law
Epoch Times | Caden Pearson
https://www.theepochtimes.com/us/appeals-court-reinstates-hold-on-texas-immigration-law-5610878

Six takeaways from Tuesday's primary elections in six states
Washington Examiner | Mabinty Quarshie
https://www.washingtonexaminer.com/news/campaigns/2928630/six-takeaways-march-19-primary-elections/

Former Hunter Biden associates to testify publicly in next phase of impeachment inquiry
Fox News | Brooke Singman
https://www.foxnews.com/politics/former-hunter-biden-associates-testify-publicly-amid-next-phase-impeachment-inquiry

Trump Urges Supreme Court to Hold That Presidents Enjoy Absolute Criminal Immunity
Epoch Times | Sam Dorman
https://www.theepochtimes.com/us/trump-urges-supreme-court-to-hold-that-presidents-enjoy-absolute-criminal-immunity-5610653

Special counsel responds to 'meritless' pro-Trump arguments from former Reagan AG and Federalist Society co-founder in Mar-a-Lago documents case
Law & Crime | Jerry Lambe
https://lawandcrime.com/high-profile/special-counsel-responds-to-meritless-pro-trump-arguments-from-former-reagan-ag-and-federalist-society-co-founder-in-mar-a-lago-documents-case/

GOP Rep Says House Speaker's Office Aiding Gold Star Father Charged For SOTU Disruption
Daily Caller | Hailey Gomez
https://dailycaller.com/2024/03/19/brian-mast-says-steve-nikoui-charges-handled-by-mike-johnson-office-state-of-the-union-disruption/

Nevada judge blocks state from limiting Medicaid coverage for abortions
AP | Rio Yamat
https://apnews.com/article/nevada-abortions-medicaid-coverage-78a56fa749f42b713b292147edcdcb61

Supreme Court Refuses Injunction Against Apple Over Its App Store
Epoch Times | Matthew Vadum
https://www.theepochtimes.com/us/supreme-court-refuses-injunction-against-apple-over-its-app-store-5610961

Texas schools pull $8.5 billion from BlackRock over fossil fuel 'boycott'
The Hill | Saul Elbein
https://thehill.com/homenews/state-watch/4543054-texas-schools-pull-billions-investment-blackrock-fossil-fuel-boycott-esg/#:~:text=Texas's%20public%20schools%20are%20pulling,out%20of%20management%20by%20BlackRock.

AMERICAN OVERSIGHT

North Korea resumes missile tests, raising tensions with its rivals after their military drills' end
AP l Hyung-Jin Kim and Mari Yamaguchi
https://apnews.com/article/north-korea-missile-launch-df1b9b5d75f5bf9f845d222adfd31254

Chinese Billionaire Pleads Guilty to Making Straw Donation in New York and Rhode Island
The Epoch Times l Dorothy Li
https://www.theepochtimes.com/us/chinese-billionaire-pleads-guilty-to-making-straw-donation-in-new-york-and-rhode-island-5610649

Thanks for reading and have a great day!

Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355 https://www.dailysignal.com/2024/02/22/exclusive-missouri-ag-orders-school-district-to-end-race-based-hiring/?utm_source=TDS_Email&utm_medium=email&utm_campaign=MorningBell&mkt_tok=ODI0LU1IVC0zMDQAAAGRdKhZkMfR-jZwUHcWMyo-zurcMV-673p3MBJiPPgKmsPkTtihkROFtBdJXYBZu6O_-xQQIRm1mIBfHkukWy_oLTKy6hiYLdj4o-FFNOLa1iEvfAWYqQ
Branden.Rathert@ago.mo.gov

AMERICAN OVERSIGHT

To: McCuien, Grace[Grace.McCuien@ago.mo.gov]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Mon 3/18/2024 7:18:03 AM (UTC-05:00)
Subject: Re: Teasers

Will You Add 7 PM CT to the Elon one?
I'll handle posting other graphics!

Sent from my iPhone

On Mar 18, 2024, at 8:02 AM, McCuien, Grace <Grace.McCuien@ago.mo.gov> wrote:



AMERICAN OVERSIGHT

MISSOURI v. BIDEN

AT THE SUPREME COURT OF THE UNITED STATES



9 AM CT

THE FIRST AMENDMENT IS WORTH DEFENDING

X SPACE

FEATURING

AG BAILEY

ELON MUSK





DEFENDING THE 1ST AMENDMENT

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Goodwin, Gregory[Gregory.Goodwin@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; Hammond, Wyatt[Wyatt.Hammond@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Lewis, Jason[Jason.Lewis@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Woodard, Winderlyn[winderlyn.woodard@ago.mo.gov]
From: Rathert, Branden[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6862523A4FCB4692B7523E7B2723AB70-RATHERT, BRANDEN]
Sent: Thur 3/21/2024 8:53:45 AM (UTC-05:00)
Subject: Daily News/Media Roundup - Thursday March 21st, 2024

Good morning all,

Below is the relevant news relating to the AGO, Missouri, and Nation for today:

AGO News:

Missouri cracks down on Goldner Capital Management over nursing home mismanagement, but contractors say they're still out thousands of dollars

KSDK l Paula Vasan

https://www.ksdk.com/article/news/investigations/goldner-capital-management-nursing-home-mismanagement-unpaid-contractors-industry-flaws/63-ee988f39-047b-4ffa-a220-5c0a96574355

- Behind the serene façade of nursing homes around Missouri lies a troubling reality: Local businesses, essential to their operation, are being left in financial ruin. An investigation into the nursing home industry reveals a troubling pattern of financial problems and unpaid debts. Local businesses are coming forward with allegations that they've been left high and dry after providing essential services to nursing homes, only to be stiffed on payment. Brandon Fornachon has dealt with the consequences. He's the owner of a medical supply company in Wright City, Missouri. He showed the I-Team the impact of unpaid invoices. "It adds up pretty quick," said Fornachon, the owner of Skilled Medical Solutions. He said one nursing home owner with an investment firm called Goldner Capital Management racked up a bill of $350,000 and never paid. "It's kind of infuriating … It hurts because we've had to lay off a few employees, and it definitely hits our bottom line," he said. And in the end, it's the nursing home residents that suffer "because they're going to be having beds and other necessary equipment being removed from the facilities underneath these residents," Fornachon said. The equipment, never paid for, is now piled up and not being used by those who desperately need it. "All they did was take us for granted," Fornachon said. He said his business was at risk of shutting down. This is not an isolated incident. Three businesses in Missouri alone told the I-Team they were never paid by the same nursing home owner. Court documents, invoices and other records show their losses total about $530,000….. We asked Missouri's Attorney General Andrew Bailey what he plans to do. "As the marketplace evolves, those rules have to adapt to that marketplace to ensure that we're providing resources and ensuring the safety of our senior population," Bailey said. A spokesperson with the Missouri Attorney General's Office said in a statement: "If any Missourian believes they've been scammed, I encourage them to reach out to our office. They can call our consumer hotline at 1-800-392-8222 or go online at ago.mo.gov."

Former clerk files civil suit against Belle city for "disciplinary action" termination

Maries County Advocate l Roxie Murphy

https://mariescountyadvocate.com/stories/former-clerk-files-civil-suit-against-belle-city-for-disciplinary-action-termination,115483

- Former city clerk Frankie Horstman filed a lawsuit against the city of Belle on March 14 in Maries County's 25th Circuit Court. She is requesting financial damages following her termination on Jan. 22 from the municipality. According to the eight-page petition filed on Horstman's behalf by her attorney, Shelly Ann Kintzel, she is requisitioning to be "reinstated to her position as city clerk with back pay and compensation for lost benefits, and such other relief as the court deems just and proper." Horstman demanded a trial by jury on all applicable issues, counts and claims asserted, according to the petition. The former clerk served 22 years with the city, minus about a year. Horstman alleges Belle aldermen terminated her employment as a "disciplinary action," by state definition, "for behavior she reported" to both the Maries County Sheriff's Office and Missouri Attorney General (AG) Andrew Bailey's Office. Count One in the petition alleges violations of State Statue 105.055, RSMo.: retaliation for disclosure to Maries County Sheriff. Horstman allegedly reported suspicions to Maries County Sheriff Chris Heitman on Dec. 18, 2023, that Mayor Daryl White, Jr., was stealing from the city…Count Two

AMERICAN OVERSIGHT

of the petition alleges violations of State Statute 105.055, RSMo: retaliation for disclosure to the Attorney General. Horstman said she received Sunshine Law requests from the Missouri Attorney General's Office around June 2023 for meeting minutes, agendas, and notices. She notified the mayor and aldermen of the request and timely responded to the request as required. She also informed the board about the Attorney General's request for documents she didn't have but was ignored. During the investigation, Horstman alleges she divulged to the Missouri Attorney General's Office investigator between June 2023 to present, that "she reasonably believed the city, and/or mayor, and/or aldermen were violating and/or had violated Missouri Sunshine Law." Horstman's report to the AG's office, "constituted a report to a law enforcement official that she believed the board and mayor was committing or had committed a violation of law or policy" and that she "had a reasonable belief that the behavior she reported was occurring or had occurred and was unlawful or inappropriate, in that it was based on her personal observations and knowledge and on statements that had been made to her or in her presence." Further proof of Horstman's belief was justified when a Dec. 19, 2023, law suit was filed by the AG against the city of Belle, "alleging that the city, specifically Mayor White, had systematically violated the Sunshine Law, and is seeking to impose fines or other penalties on the city."

According to the petition, the lawsuit was based largely on information that had been disclosed to the Attorney General by Horstman.

Police and school admin can't agree on training, forcing SROs out of most schools

KTVI l Mitch McCoy

https://fox2now.com/news/fox-files/police-and-school-admin-cant-agree-on-training-forcing-sros-out-of-most-schools/

- Millions of people have watched a horrific after-school fight in Hazelwood online, which has revived an old but relevant conversation about safety. As the bell rings at 2:15 p.m., students leave Hazelwood West High School for the day. As they dismiss, a Hazelwood police car is parked outside. It's a school resource officer (SRO) assigned every day to protect the school. Across town, the FOX Files investigators spotted a parked St. Louis County police SUV. Don't be fooled, though; it's an extra patrol, not a school resource officer. "I think SROs are very important," parent Elizabeth Jackson said. Jackson has been keeping a close eye on what's happening inside the Hazelwood School District after Kaylee Gain, 16, suffered a fractured skull and brain bleed during a March 8 fight. "I was very happy when Hazelwood brought them back to West. I think they are a deterrent and I think that when things do happen, it's nice to have them here for a quick response," Jackson said. St. Louis County Police, Florissant Police, and, briefly, Hazelwood Police, shared concern over the district's mandate to send officers to 10 minimum hours of diversity, equity and inclusion training organized by the school. In a 2021 letter, the departments told the school board that officers already receive ongoing training, including interpersonal perspectives, racial profiling, implicit bias and de-escalation. The instructors, subject-matter experts, and classes are approved by the Missouri Peace Officers Standards and Training (POST). The police agencies and school district did not come to an agreement, ending the relationship and pulling the school resource officers out of all Hazelwood schools. About two years later, Hazelwood got a new police chief and the school district got its way, at least on the west side…. On Wednesday, Bailey called for an investigation into the district's mandated diversity, equity, and inclusion training. "By putting DEI agendas ahead of protecting students and neglecting to have law enforcement presence on campus, Hazelwood School District has failed in its fundamental duty to ensure a safe learning environment," Bailey posted on his social media. In a joint statement, Florissant and County Police confirmed no agreement has been reached with the school district but the agencies are hopeful for the future. "We are committed to collaborating on solutions to the youth violence issues we are experiencing and look forward to the return of our school resource officers in the Hazelwood School District," the agencies wrote.

REPOST: Yahoo, Ground News

Six Massachusetts Middle Schoolers Face Hate Crime Charges

Epoch Times l Allan Stein

https://www.theepochtimes.com/us/six-massachusetts-middle-schoolers-face-hate-crime-charges-5610882

- Six middle school students in Western Massachusetts face criminal charges stemming from alleged "hate speech" and "race-based bullying" in social media posts. Authorities charged all six Grade 8 students at Southwick Regional School with threats to commit a crime, two with interference with civil rights, and one with witness interference. On Feb. 15, Hampden County District Attorney Anthony Gulluni held a press conference to announce formal charges against the youths. Mr. Gulluni said in the videotaped conference that his office found sufficient evidence to pursue criminal charges against the minors, who allegedly participated in a "hateful, racist online chat that included heinous language, threats, and a mock slave auction." He said that authorities would not release the names and identities of the students because of their age. It is also unclear whether all six students are white. The alleged incident involved a group chat on the social media application Snapchat on Feb. 8 and Feb. 9……On March 8, a black female student at Hazelwood East High School in Missouri allegedly beat a white female student during an altercation, slamming the victim's head into the pavement. The victim suffered severe head injuries and remained in critical condition at a local hospital. According to Yahoo! News, Missouri Attorney General Andrew Bailey wants the alleged assailant tried as an adult. "This evil and complete disregard for human life has

AMERICAN OVERSIGHT

no place in Missouri or anywhere," Mr. Bailey wrote on X, formerly Twitter. "I am praying for the victim. The criminal should be charged and tried as an adult. If the victim dies, that offense should rise to a homicide." In light of the Southwick incident, Mr. Gulluni said his office hopes to "foster progress" using a "proactive approach to teach children about empathy, compassion, and fairness."

Missouri lawmakers hope to drive down the demand of sex trafficking

KTVI l Emily Manley

https://fox2now.com/news/missouri/missouri-lawmakers-hope-to-drive-down-the-demand-of-sex-trafficking/

- The Missouri General Assembly hopes to combat sex and human trafficking while safeguarding the rights of children with legislation moving forward inside the statehouse. The bill, sponsored by Rep. Jeff Myers, Warrenton, passed by nearly a unanimous vote in the House earlier this month. Myers said the goal of the legislation is to drive down demand and address issues related to sex and human trafficking by mandating training for various professionals and requiring those found guilty of the crime to pay restitution. "If you look in this world, there is evil; and I think this is one of the ugliest faces of it," Myers said. "It's not just an urban issue, it's not just a suburban issue, it's in the rural areas. There are parents who are trafficking their children for rent, trafficking their children for drugs." Fighting human trafficking in Missouri is a bipartisan issue. Myers, a former Missouri State Highway Patrol trooper, said House Bill 1706 would require prosecutors, social workers, juvenile officers, paramedics, and law enforcement officers to receive sex and human trafficking training. "Unfortunately, so many professionals have to be knowledgeable about so many things beyond the scope of what they are trained to do, and sex trafficking is definitely one of those buckets where folks need to understand the warning signs of that and how to intervene and how to really figure out what's going on," House Minority Leader Crystal Quade, D-Springfield, said. The legislation would also establish a Statewide Council Against Adult Trafficking and Commercial Sexual Exploitation of Children within the attorney general's office, which would be required to meet quarterly. Members of the council could consist of two members of the Senate and two members of the House. This group would coordinate a statewide plan to combat these crimes. "The goal of this first part is to drive down the demand," Myers said. "It's not a victimless crime. Then, start opening the eyes of folks who are constantly coming into contact with these victims." Myers said his background in law enforcement made him aware of the crime, which led to his filing the bill. The legislation also has a provision to increase the penalties for purchasers of sex. He recalls sitting in a training class when he was a law enforcement officer when he realized how to point out human trafficking. "Some things, when you see them, you can't unsee them," Myers said. "Once my eyes were open to this topic, it was something that really did motivate me."…. The legislation is now waiting to be heard in the Senate.

Elon Musk: 'The Bedrock of Democracy is Freedom of Speech'

MRC NewsBusters l Tom Olohan

https://newsbusters.org/blogs/free-speech/tom-olohan/2024/03/20/elon-musk-bedrock-democracy-freedom-speech

- Tech mogul Elon Musk unloaded about the importance of free speech and the challenges he has faced dealing with the prior regime at X, the social media platform formerly known as Twitter. During a live conversation with Missouri Attorney General Andrew Bailey on March 18, Musk stressed that Americans have an unparalleled right to freedom of speech that must be protected on social media. "No country has the protection of speech that the United States does, not even Canada," he said on X Spaces (formerly Twitter Spaces). "So that's something we should really take pride in and seek to preserve. I think that the bedrock of democracy is freedom of speech." ……Musk said that these advertiser boycotts had cost X two-thirds of its American advertising revenue and that the company would not have survived without significantly reducing costs. "If we had not been able to reduce our costs dramatically, X, formerly Twitter, would have gone bankrupt. And that's fully what they were trying to do. They were trying to drive the company into bankruptcy, which obviously is major suppression of free speech." The X Space unfolded two days after Bailey, who hosted the interview, had his landmark free speech case heard by the Supreme Court. The Murphy v. Missouri case pitted Americans' free speech on social media against collusion between Big Tech and the federal government.

REPOST: The Millennial Press, Conservative Angle

Biden censorship case has historic implications for the future of free speech, state AG says

FOX News l Joe Schoffstall , Aubrie Spady

https://www.foxnews.com/politics/biden-censorship-case-has-historic-implications-for-future-of-free-speech-state-ag-says

- A case at the Supreme Court alleging "collusion" between President Biden's administration and Big Tech companies to silence specific speech on social media platforms is the "most important First Amendment suit in this nation's history," Missouri Attorney General Andrew Bailey told Fox News Digital. On Monday, the Supreme Court heard oral arguments in Murthy v. Missouri. The case originated from a lawsuit filed by state attorneys general from Missouri and Louisiana accusing senior government officials of colluding with major social media companies to counter misinformation. The lawsuit alleged that this collaboration ultimately led to the censorship of speech on various topics, including Hunter Biden's laptop, the origins of COVID-19 and the effectiveness of face masks. "This is the most important First Amendment suit in

AMERICAN OVERSIGHT

this nation's history," Bailey told Fox News Digital in an interview in late February. "We've uncovered a relationship of coercion and collusion between the Biden White House across a spectrum of federal bureaucratic agencies targeting free speech for censorship at the government's demand on Big Tech social media platforms." "We've got to build a wall of separation between Big Tech and state to protect our First Amendment right to free speech," Bailey said. "To that end, we went to court back in May and asked the United States District Court for a nationwide injunction to lay that first brick in the wall between tech and state. "The court granted the injunction on the Fourth of July — on the celebration of this nation's founding — and we've successfully defended that injunction twice at the Fifth Circuit Court of Appeals." Bailey added that the score is "Missouri three, Biden zero in the fight for free speech." He said they're "excited to continue to fight to protect Americans' right to free speech on Big Tech platforms."……. A decision on the case is expected this summer.

REPOST: Yahoo, US Times Mirror, One News Page, Ordo News, Scoop Rocket,

Ketanji Brown Jackson criticized for saying First Amendment is 'hamstringing the government'

Christian Post l Jon Brown

https://www.christianpost.com/news/ketanji-brown-jacksons-first-amendment-comment-sparks-criticism.html

- U.S. Supreme Court Justice Ketanji Brown Jackson drew criticism earlier this week for a line of questioning that appeared to criticize the view that the First Amendment is intended to limit the government. Jackson's comments came Monday during oral arguments in Murthy v. Missouri, a case brought by the states of Louisiana and Missouri, as well as seven individual plaintiffs against Surgeon General Vivek Murthy and other members of the Biden administration. The plaintiffs allege that the administration violated the First Amendment by illegally coercing social media companies to suppress posts and news stories expressing views unfavorable to federal officials on controversial issues related to COVID-19, Hunter Biden, election integrity and other things "under the guise of combating 'misinformation….. Missouri Attorney General Andrew Bailey endorsed the idea that the First Amendment was intended to limit the government. "It is hamstringing, and it's supposed to," Bailey told Fox News. "The whole purpose of the Constitution is to protect us from the government, and the government exists to protect our rights. But here, the federal government is ignoring our First Amendment protections and weaponizing the federal government to silence our voices." Limiting what the federal can do is "a good thing," Bailey contends.

Missouri AG sues MV Realty for deceptive practices

The Legal Description l Staff

https://www.thelegaldescription.com/TLD/ArticlesTLD/Missouri-AG-sues-MV-Realty-for-deceptive-practices-90909.aspx

- Missouri Attorney General Andrew Bailey filed suit against MV Realty for its deceptive practices in marketing its services to Missouri homeowners. “As attorney general, I will enforce the laws as written and defend innocent Missourians from being ripped off,” Bailey said. “I’m proud of the work done by our consumer protection unit to obtain justice for victims in this case. The attorney general’s office will continue to do everything in our power to protect Missourians from deceptive business practices.” The petition alleges that MV Realty, in violation of Missouri law, paid homeowners a tiny percentage of the value of their homes in exchange for a promise that the homeowner would use MV Realty as their brokers when they sold their homes. MV Realty described the agreement over the phone to thousands of consumers, many of whom had registered their numbers on Missouri’s No Call list. Bailey’s announcement stated MV Realty then sent notaries to meet with the homeowners in their homes, where the notaries claimed to be unable to answer any questions about the contract. The petition further alleged that MV Realty failed to tell the homeowners that the contract would be enforceable against their heirs after their death, that the contract bound them for 40 years, and that it would result in a lien being placed on their homes. In some instances, MV Realty falsely told homeowners that MV Realty would not place a lien on their homes, and that they would never have to pay the money back. The petition asked the court to order that the liens be removed, to declare that the agreements are void and unenforceable, to provide restitution to consumers who have been charged unlawful cancellation penalties, and to order that MV Realty pay fines and penalties, including $213 million in penalties for calling homeowners on the No Call list. Bailey is the 10th attorney general to sue MV Realty over its Homeowner Benefit Program. The other attorney generals who filed suit include New Jersey Attorney General Matthew Platkin, Florida Attorney General Ashley Moody, Massachusetts Attorney General Maura Healey, Ohio Attorney General Dave Yost, Pennsylvania Attorney General Josh Shapiro, North Carolina Attorney General Josh Stein, California Attorney General Rob Bonta, Indiana Attorney General Todd Rotika, and, most recently, Georgia Attorney General Christopher Carr.

Missouri News:

Google selects Kansas City for site of new $1 billion data center

KMBC l Connor Hills

https://www.kmbc.com/article/google-kansas-city-1-billion-dollar-data-center/60254979

AMERICAN OVERSIGHT

Teen boy dead in Pagedale homicide; Major Case Squad activated

KSDK | Kelsi Anderson and Robert Townsend
https://www.ksdk.com/article/news/crime/pagedale-major-case-squad/63-d9ff4c9a-4258-4ece-8a9a-823b418f3ea9

15-year-old charged with murder in stabbing death of Jennings teen
KTVI | Kevin S. Held
https://fox2now.com/news/missouri/15-year-old-charged-with-murder-in-stabbing-death-of-jennings-teen/

Holleman: Wesley Bell dogged by questions about hiring and firing practices
St. Louis Post-Dispatch | Joe Holleman
https://www.stltoday.com/news/local/column/joe-holleman/holleman-wesley-bell-dogged-by-questions-about-hiring-and-firing-practices/article_c9e19ff8-e630-11ee-a886-4321bb861479.html#tracking-source=home-top-story

FAFSA delays cause financial uncertainty among Missouri students
Missouri Independent | Lydia Williams and Aryana Hadjihohammadi
https://missouriindependent.com/2024/03/20/fafsa-delays-cause-financial-uncertainty-among-missouri-students/

Missouri Could See a Battle Over IVF Treatments
Missourinet | Anthony Morabith
https://www.missourinet.com/2024/03/21/missouri-could-see-a-battle-over-ivf-treatments/

Missouri Republican candidates want to end income tax, raising fears of Kansas-like woes
KC Star | Jonathan Shorman and Kacen Bayless
https://www.kansascity.com/news/politics-government/article286931305.html

JetBlue says it will stop flying from Kansas City International Airport. Here's why
KC Star | Joseph Hernandez
https://www.kansascity.com/news/local/article286907455.html#storylink=cpy

Greene County Jail places 10 employees on paid leave after recent inmate death
Springfield News-Leader | Ryan Collingwood
https://www.news-leader.com/story/news/crime/2024/03/20/greene-county-jail-places-10-employees-on-leave-after-inmate-death/73043985007/

'Mayberry is a myth': Forsyth police react after officer injured in Tuesday shooting
Springfield News-Leader | Ryan Collingwood
https://www.news-leader.com/story/news/crime/2024/03/20/forsyth-police-react-after-officer-injured-shooting/73040330007/

MoDOT: Don't wear 'eclipse glasses' while driving to or from total solar eclipse festivities
KSDK | Clarissa Cowley
https://www.ksdk.com/article/news/world/solar-eclipse/eclipse-glasses-total-solar-eclipse-missouri-april/63-c4b05603-fbc9-4d70-b7a2-2ecf6c740fdc

National News:

Supreme Court Justice Warns Texas Immigration Law Will 'Sow Chaos'
Epoch Times | Jack Phillips
https://www.theepochtimes.com/us/supreme-court-justice-warns-texas-immigration-law-will-sow-chaos-5611361

Hunter Biden Hearing Grinds To A Halt After Ranking Democrat Threatens Bobulinski With Subpoena
Daily Caller | Reagan Reese
https://dailycaller.com/2024/03/20/hunter-biden-tony-bobulinski-hearing-james-comer-jamie-raskin-subpoena-blackberry/

Congressional leaders sell $1.2 trillion spending package to members before shutdown deadline
AP | Kevin Freking
https://apnews.com/article/trillion-congress-budget-deal-democrats-gop-biden-38ed7713ae6436ee27c81ce62b0a9a7d

AMERICAN OVERSIGHT

Historic crackdown on gas cars will ensure two-thirds of vehicles will be electric, hybrid by 2032 after Biden admin finalizes new rule
NYU Post l Glebova
https://nypost.com/2024/03/20/business/epa-issues-less-strict-auto-emission-rules-that-slow-transition-to-evs/

Planned Parenthood Faces New Allegations of Selling Aborted Fetal Tissue
Epoch Times l Brad Jones
https://www.theepochtimes.com/us/planned-parenthood-faces-new-allegations-of-selling-aborted-fetal-tissue-5610947

Over 6-In-10 U.S. Abortions Last Year Were Done Via Medication
One America News l Brooke Mallory
https://www.oann.com/newsroom/over-6-in-10-u-s-abortions-last-year-were-done-via-medication/

Federal Court Rules Firearm Restrictions on Defendants Awaiting Trial Are Constitutional
Epoch Times l Patricia Tolson
https://www.theepochtimes.com/us/federal-court-unanimously-rules-firearm-restrictions-on-defendants-awaiting-trial-are-constitutional-5539011

US Supreme Court hears oral arguments on Texas councilwoman First Amendment retaliatory arrest case
Jurist l Lou Kettering
https://www.jurist.org/news/2024/03/us-supreme-court-hears-oral-arguments-on-texas-councilwoman-first-amendment-retaliatory-arrest-case/

Judge says Ohio dad's confession to killing 3 young sons cannot be used in court
FOX News l Lawrence Richard
https://www.foxnews.com/us/judge-says-confession-ohio-dad-charged-killing-his-3-young-sons-cannot-be-used-court

'We're almost back to the axis of evil': Top US commanders warn of growing threat as China and North Korea align with Russia
Washington Examiner l Jamie McIntyre
https://www.washingtonexaminer.com/daily-on-defense/2931431/were-almost-back-to-the-axis-of-evil-top-us-commanders-warn-of-growing-threat-as-china-and-north-korea-align-with-russia/

Gorsuch begins to 'regret' giving government authority over Rio Grande water deal
Washington Examiner l Kaelan Deese
https://www.washingtonexaminer.com/news/2931088/gorsuch-regret-government-authority-rio-grande-water-deal/

Thanks for reading and have a great day!

Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355 https://www.dailysignal.com/2024/02/22/exclusive-missouri-ag-orders-school-district-to-end-race-based-hiring/?utm_source=TDS_Email&utm_medium=email&utm_campaign=MorningBell&mkt_tok=ODI0LU1IVC0zMDQAAAGRdKhZkMfR-jZwUHcWMyo-zurcMV-673p3MBJiPPgKmsPkTtihkROFtBdJXYBZu6O_-xQQIRm1mIBfHkukWy_oLTKy6hiYLdj4o-FFNOLa1iEvfAWYqQ
Branden.Rathert@ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

In the Matter of:

CID NO. 24-10
Date: March 25, 2024

Media Matters for America

INVESTIGATIVE DEMAND

THE ATTORNEY GENERAL TO:

Served: *U.S. Postal Service Certified Mail*

Media Matters for America
PO Box 44811
Washington, DC 20026

The Attorney General of the State of Missouri believes it to be in the public interest that an investigation be made to ascertain whether **Media Matters for America** (**Subject**) has engaged in or is engaging in practices declared unlawful by § 407.020, RSMo.

The investigation will inquire into the activities of **Subject** in connection with the solicitation of funds for a charitable purpose, or the sale or advertisement of merchandise, §§ 407.020, 407.453, RSMo.

The Attorney General has reason to believe that the **Subject** has used deception, fraud, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of material fact in connection with the soliciting of funds for a charitable purpose or the sale or advertisement of merchandise in or from the State of Missouri, § 407.020, RSMo. Independently, the Attorney General also believes it to be in the public interest to investigate whether such acts have occurred.

The Attorney General believes you have information, documentary material or physical evidence relevant to the above-mentioned conduct.

AMERICAN OVERSIGHT

DEFINITIONS

As used in this Demand, the following terms have the meanings described below:

"Communication" means any expression, statement, conveyance, or dissemination of any words, thoughts, statements, ideas, or information regardless of form, format, or kind. "Communication" includes but is not limited to oral or written communications of any kind, such as telephone conversations, discussions, meetings, notes, letters, agreements, emails or other electronic communications, facsimiles, and other forms of written or oral exchange that are recorded in any way, including video recordings, audio recordings, written notes, or otherwise. Any "Communication" that also falls within the definition of "Document" shall constitute both a Document and a Communication for purposes of this civil investigative demand.

"Document" means all written, printed, typed, and recorded matter of every kind and description, originals and copies, and all attachments and appendices thereto. Without limiting the foregoing, "documents" include all agreements, contracts, correspondence and other communications including notes, memoranda and marginal notations, records, reports, books, manuals, instructions, statistical data and data compilations, drafts, charts, graphs and tables, bills, statements and invoices, advertising, surveys, transcripts, microfilm and microfiche, electronic records that can be reproduced in paper form, recordings, film, tapes, photographs, electronic mail and Web pages, and all other computer-generated, computer-stored, or electronically-stored matter, however and by whomever produced, prepared, reproduced, disseminated, or made.

"Identify", when used with respect to a **person or entity**, means information sufficient to allow employees of the Attorney General to ascertain the name, address, telephone number, and if not a natural person, the contact person of the entity or facility to be identified, as well as the relationship of that person or entity to you.

"Identifying", when used with respect to a **fact or event**, means information sufficient to allow employees of the Attorney General to ascertain the fact or event with reasonable particularity, and to identify each person believed to have knowledge with respect to the fact or event and each document that refers or relates to the fact or event.

AMERICAN OVERSIGHT

"Relating to", "**related to"**, "**relate to"** means to be relevant in any way to the subject matter in question, including without limitation all information that directly or indirectly contains, records, reflects, summarizes, evaluates, refers to, is pertinent to, indicates, comments upon, or discusses the subject matter; or that states the background of, or was the basis for, or that records, evaluates, comments, was referred to, relied upon, utilized, generated, transmitted, or received in arriving at any conclusion, opinion, estimate, position, decision, belief, policy, practice, course of business, course of conduct, procedure, or assertion concerning the subject matter.

"You", including your, means Media Matters for America, subsidiaries, partnerships, or any other entities related to Media Matters for America.

DEMAND FOR INFORMATION

Demand is hereby made upon you, under the authority granted by Section 407.040, RSMo, to produce in person or via mail to Michelle Starke, P.O. Box 899, Jefferson City, Missouri 65102 by April __, 2024, the following documentary material and information that may be in your possession, custody or control, and permit the inspection and copying thereof:

1. A list or information identifying any and all donations of funds from donors located in the state of Missouri from January 01, 2023 through March 25, 2024.

   The list of donations should include, but is not limited to:
   - Identity of each individual or organization who donated funds;
   - Address of each individual or organization who donated funds;
   - Total amount spent per donation;
   - Date and time of each donation;
   - Payment method for each donation;
   - Identity of financial institution where funds were sent;
   - Contracts and/or agreements governing or related to each donation;

For each Demand for Information, you shall type the Demand and type your corresponding response. If you do not know the answer to a Demand for Information, you shall identify in your response the individual or business entity that has the answer to the Demand for Information. The document on

AMERICAN OVERSIGHT

which you type each Demand and your corresponding response shall be executed by you before a Notary Public.

DEMAND FOR DOCUMENTS

Demand is hereby made upon you, under the authority granted by Section 407.040, RSMo, to produce in person or via mail to Michelle Starke, P.O. Box 899, Jefferson City, Missouri 65102 by April 15, 2024, the following documentary material that may be in your possession, custody or control, and permit the inspection and copying thereof:

2. All promotional or marketing information provided by you from January 1, 2023 to March 25, 2024 to any individual or organization for the purpose of soliciting donations.

3. All documents or communications showing how solicited donations were used.

4. All communications or materials relating to any policy, strategy or operation related to generating stories or content intended to cancel, deplatform, demonetize, or otherwise interfere with businesses located in Missouri, or utilized by Missouri residents.

5. All communications, internal and external, regarding your strategy to pressure advertisers into pulling advertisements from the social media platform, X (formerly Twitter).

6. Documents sufficient to identify your employee organizational chart.

7. Documents sufficient to identify all your operational expenses in the state of Missouri.

8. All documents discussing Elon Musk's purchase of X (formerly Twitter).

9. All documents related to the article, or to the events described in the article, by Eric Hananoki entitled "As Musk endorses antisemitic conspiracy theory, X has been placing ads for Apple, Bravo, IBM,Oracle, and Xfinity next to pro-Nazi content."

AMERICAN OVERSIGHT

10. All documents sufficient to identify X accounts owned, controlled, or authorized by you used to obtain the images in the article referenced in paragraph 9.

11. All documents sufficient to identify all X accounts followed by the X accounts identified in response to paragraph 10.

12. All communications with Apple, International Business Machine Corporation, Bravo Television Network, NBCUniversal, Oracle Corporation, Comcast Corporation, Lions Gate Entertainment Corporation, Warner Bros Discovery Inc., Paramount Pictures Corporation, or Sony Group Corporation from November 1, 2023, to March 25, 2024.

NOTICE OF DEMAND FOR RETENTION OF RECORDS

You are hereby notified that all records, including communications, documents and things, relating to the above requests and the matters that are the subject of these requests for information are to be preserved during the pendency of this investigation. This includes, but is not limited to, all related customer records, including recordings made of customers, all related correspondence and other communications with third parties, all related documents and things received from third parties, and all internal documents and things.

COMPLIANCE

You may comply with this Investigative Demand by producing copies of the requested documents and information by regular mail or overnight delivery to **Michelle Starke, P.O. Box 899, Jefferson City, Missouri 65102.** The requested copies of documents and information should be received by the Office of the Attorney General **by 10:00 a.m. (Central) on April 15, 2024** and be accompanied by the attached Business Records Affidavit and Certification of Compliance.

You are advised that the Attorney General will not grant an extension of time or modification of the terms of the Demand except for good cause pursuant to the terms of Section 407.070, RSMo. Your prompt response and provision of the requested information is requested.

AMERICAN OVERSIGHT

Your attention is respectfully called to the provisions of Section 407.080, RSMo, which makes certain acts done with the intent to avoid, evade or prevent compliance in whole or in part with any Investigative Demand served hereunder a Class A misdemeanor, which is punishable by a fine not to exceed $1,000.00 for individuals and $5,000.00 for corporations, or by imprisonment for a term of not more than one year, or both a fine and imprisonment.

Please direct all questions regarding this Investigative Demand to Jeremiah Morgan at 573-751-1800 or by e-mail to: Jeremiah.Morgan@ago.mo.gov.

Respectfully Submitted,

ANDREW BAILEY
Attorney General

/s/ Jeremiah J. Morgan
Jeremiah J. Morgan, #50387
Deputy Attorney General – Civil Litigation
Missouri Attorney General's Office
Post Office Box 899
Jefferson City, MO 65102
Tel: (573) 751-8870; Fax: (573) 751-0774
Jeremiah.Morgan@ago.mo.gov

AMERICAN OVERSIGHT

STATE OF _____)
) SS.
COUNTY OF _____)

BUSINESS RECORDS AFFIDAVIT AND CERTIFICATE OF COMPLIANCE

Before me, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

My name is _____, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the custodian of the records of _____. Attached hereto are _____ pages of records from _____. These _____ pages of records are kept by _____ in the regular course of business, and it was the regular course of business of_____ for an employee or representative of_____ with knowledge of the act, event, condition, opinion, or diagnosis recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time of the act, event, condition, opinion or diagnosis. The records attached hereto are the original or exact duplicate of the original.

I further certify that all documents and information required by Civil Investigative Demand No. 24-10 which is in the possession, custody, control, or knowledge of, _____ has been submitted to the Missouri Attorney General as directed herein.

_____
Affiant

Sworn to before me this ____ day of_____, 2024.

_____
Notary Public
Commission Expires:

AMERICAN OVERSIGHT

To: 'jamie.joseph@fox.com'[jamie.joseph@fox.com]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Fri 3/22/2024 2:26:50 PM (UTC-05:00)
Subject: RE: AG Bailey Media Matters Suit
2024-03-25 DRAFT CID 24-10 to Media Matters.docx

Jamie,
Here's the DRAFT civil investigative demand (subpoena power reserved for an AG office) that will accompany our suit. Will get you final version over weekend with final petition.
Thanks,
Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

From: Sieren, Madeline
Sent: Friday, March 22, 2024 12:00 PM
To: 'jamie.joseph@fox.com' <jamie.joseph@fox.com>
Subject: AG Bailey Media Matters Suit
Hi Jamie,
See attached draft petition embargoed until Monday at 8 AM CT. I'll let you know shortly if we can go earlier (hopeful that we can). get you the final petition once I have it.
Here's some background on AG Bailey's investigation into Media Matters up to this point:
https://ago.mo.gov/attorney-general-bailey-notifies-media-matters-of-pending-investigation/
https://ago.mo.gov/attorney-general-bailey-directs-letter-to-advertisers-amidst-media-matters-investigation/
https://twitter.com/AGAndrewBailey/status/1726356260088426894
I'll get you a quote from AG Bailey shortly. Let me know what else you need from me.
Thanks so much,
Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov
This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

- I have filed a lawsuit to force Media Matters to turn over documents regarding the solicitation of donations to bully advertisers into pulling out of X, one of the last platforms dedicated to free speech in America.

- Media Matters came under fire after allegations surfaced that the organization deceitfully manipulated X's algorithm to place advertisers' content next to contrived controversial posts, causing X to suffer astronomical financial losses when affected advertisers pulled their money from the site.

- Media Matters has been outspoken in its attempts to defame X and Elon Musk for their refusal to censor disfavored viewpoints.

- Media Matters has a sordid history of refusing to comply with fraud investigations.

    1. Sued Texas when Ken Paxton opened an investigation

AMERICAN OVERSIGHT

    - I'm not going to let them stonewall us in our quest for truth.
        - If there has been any attempt to defraud Missourians in order to trample on their free speech rights, I will root it out and hold bad actors accountable.

- **Type of documents requested:**
    1. All donations from Missourians in the last year, so we can ensure every Missourian's charitable donation is being used as promised
    2. All documents surrounding how they market/advertise in Missouri, so we can ensure every Missourian's contribution is being used as promoted
    3. All documents surrounding the targeting of X, Elon Musk, or Missourians, so we can ensure we are protecting free speech rights

AMERICAN OVERSIGHT

Past Talking Points

- Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** one of the last social media platforms committed to free speech, X.

- Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.

- Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme**. We're encouraged other states, namely Texas, are taking action as well.

- Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:

AMERICAN OVERSIGHT

1. Social media platforms
    - We sued in federal court. The score is Missouri, 3, Biden 0, and we just argued at SCOTUS
2. President Trump
    - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms pervert the algorithms to trick advertisers to pull out of one of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
    - Elon Musk controversy: Mr. Musk has clarified several times what his views are. The point is that anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. They made that post in order to get advertisers to pull out of X. All Americans should be concerned because if this behavior goes

AMERICAN OVERSIGHT

unchecked, **the marketplace for free, fair and open debate will cease to exist**

- The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.
    1. We will never back down in the **fight** for free speech.

Local media:

- Media Matters lied when they took money from everyday Americans and used it in a way different from how they advertised it
- Media Matters appears to have used coordinated, inauthentic activity to solicit charitable donations from consumers across the country
    1. We have a law called the Missouri Merchandising Practices Act that gives the Attorney General the authority to prosecute deceptive, fraudulent or unfair business practices.
        - We have reason to believe Missourians have been affected by this behavior

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

To: Haines, Diana[Diana.Haines@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Tue 3/26/2024 8:25:29 AM (UTC-05:00)
Subject: Talking Points 3.26.24
Media Matters v. 2.docx

Please print for AB – thank you!

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: McCuien, Grace[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3070B53594504B3FB9B45CDE1131FF4D-NOTEBOOM, GRACE]
Sent: Fri 1/5/2024 9:42:25 AM (UTC-06:00)
Subject: Dec 12. Media Matters and X space

Media Matters Interviews Dec. 12

Attorney General Bailey takes interviews with the press following the announcement of his office's investigations into Media Matters for fraudulent and misleading business practices.

X Space Dec. 12

Attorney General Bailey joins an X space talking about free speech and government censorship on social media. The X space was also joined by Tucker Carlson, Elon Musk and other proponents of free speech.

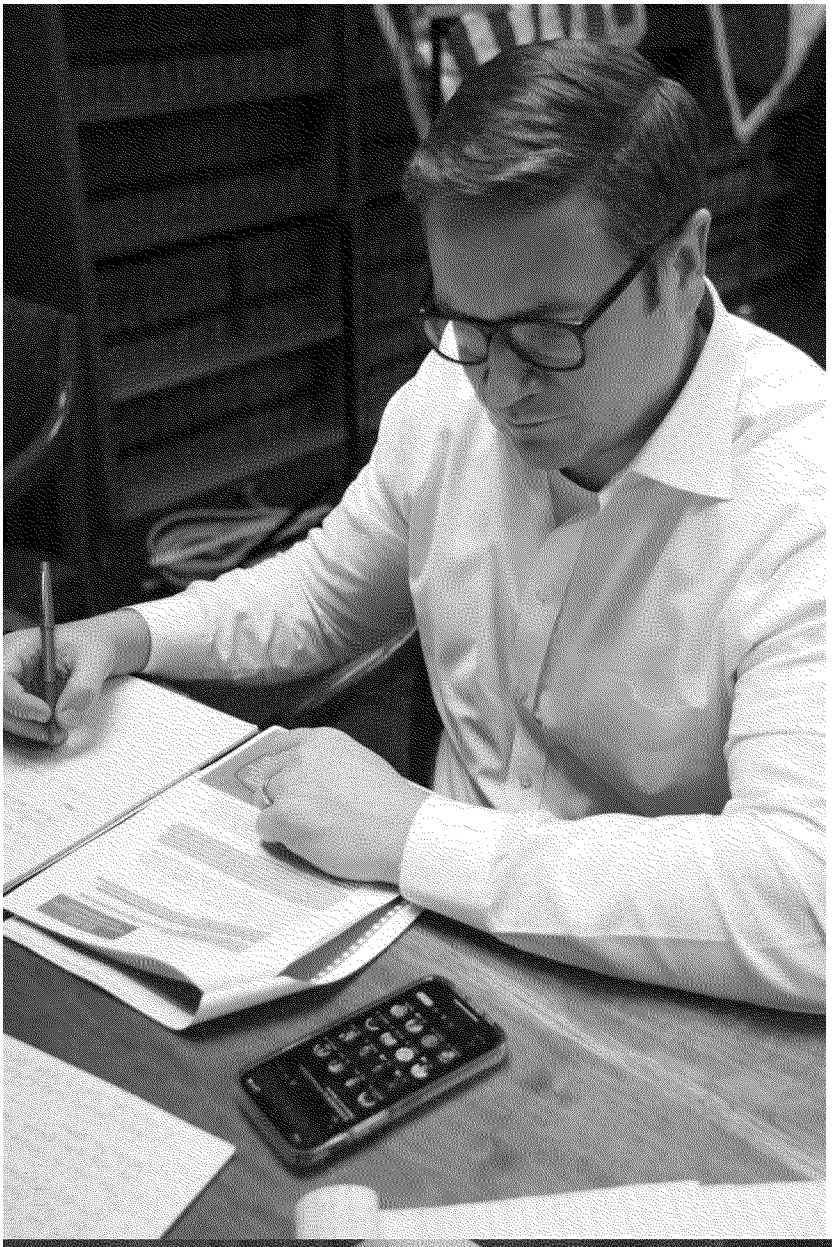


AMERICAN OVERSIGHT





AMERICAN OVERSIGHT





AMERICAN OVERSIGHT





AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Goodwin, Gregory[Gregory.Goodwin@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; Hammond, Wyatt[Wyatt.Hammond@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Lewis, Jason[Jason.Lewis@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Woodard, Winderlyn[winderlyn.woodard@ago.mo.gov]
From: Rathert, Branden[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6862523A4FCB4692B7523E7B2723AB70-RATHERT, BRANDEN]
Sent: Thur 3/28/2024 9:01:08 AM (UTC-05:00)
Subject: Daily News/Media Roundup - Thursday March 28th, 2024

Good morning all,

Below is the relevant news relating to the AGO, Missouri, and Nation for today:

AGO News:

Missouri high school where teen was brutally attacked refuses to give records to state's AG
FOX News l Stepheny Price
https://www.foxnews.com/us/missouri-high-school-where-teen-was-brutally-attacked-refuses-give-records-states-ag

- After opening an investigation into the Missouri school district where a teenage girl was brutally beaten by another student, Missouri Attorney General Andrew Bailey tells Fox News Digital that the school is refusing to comply. Last week, Bailey told Fox News Digital exclusively that he would open an investigation into the Hazelwood School District and how their diversity, equity, and inclusion (DEI) programs contributed to the safety failures following the violent attack. "Hazelwood owes the parents of the district and the entire community an explanation as to what role these radical programs and safety failures played here," Bailey's staff said, emphasizing that this is the focus of the investigation. After several days of silence from the Hazelwood School District, a spokesperson fired back at Bailey, claiming his investigation was full of inaccuracies. Bailey shared the email correspondence with Fox News exclusively….."My letter cited several sources for information, including publicly-available reporting and the District's own policies. The most egregious "error" you identify is an incorrect date reference that was reported in local media. As with any investigation, my office seeks to uncover facts surrounding the incident at issue. An incident you openly acknowledge involved Hazelwood East students," Bailey responded. "I'd like to clarify that my letter did not indicate that your "most egregious error" was the incorrect date (and time) of the incident. Your most egregious errors are your unsupported allegations that race was a factor in the incident and that school resource officers would have been on the scene of an incident that occurred after school hours and one-half mile from school property," Ownsby sent in a response email….Bailey said the investigation will determine whether the school district violated Missouri's Human Rights Act, which "guarantees every Missouri resident the right to be free from discrimination and the right to full enjoyment of places of public accommodation." Kaylee, the 16-year-old teen who was brutally attacked in the video that went viral, is reportedly breathing on her own, has been moved out of the ICU and remains in stable condition, according to an update on her GoFundMe page on Friday.

REPOST: Yahoo, FOX 8, FOX Bangor, US Times Mirror, 1010 WCSI

Missouri attorney general demands Hazelwood school records, blames media for errors
St. Louis Post-Dispatch l Monica Obradovic
https://www.stltoday.com/news/local/education/missouri-attorney-general-demands-hazelwood-school-records-blames-media-for-errors/article_95c1410c-ec4c-11ee-84bf-43578e824861.html#tracking-source=home-the-latest

- JEFFERSON CITY — Missouri's attorney general is demanding Hazelwood School District turn over records for an investigation that the district said was "based on lies" and initially dismissed. Earlier this week, in a scathing response to Attorney General Andrew Bailey, the district said it would not provide the records until he "reframed" the request on the district's policies on bullying, law enforcement in schools and diversity, equity and inclusion efforts. After the district's initial response, Bailey sent a notice to the district on Tuesday demanding the records by 5 p.m. the next day. He argued that the district can't dismiss open records laws because it "disagree(s) with the investigation. By Wednesday afternoon, the district said it would indeed turn the records over — aiming to send them by April 15…..In its first response, sent by lawyer Cindy Reeds Ormsby, the school district accused Bailey of racial bias and "elevating political narrative above student safety." The Missouri chapter of the NAACP also criticized Bailey's investigation on Wednesday. President Nimrod Chapel Jr. said in a statement that read, in part: "Attorney General Bailey's blind eye to racism when the victim is Black is telling,

AMERICAN OVERSIGHT

but the use of the investigative power in his office to lift the harm suffered by a Caucasian student while ignoring the Black victims is nothing short of Jim Crow. It is outrageous that our tax dollars are funding his racist political talking points."

Girl injured in viral fight near Hazelwood East had been suspended from school the previous day

KSDK | Genell Reynolds, Clarissa Cowley, Sydney Stallworth

https://www.ksdk.com/article/news/politics/hazelwood-east-fight-andrew-bailey-letter-demanding-dei-records/63-3585bb6f-e461-4531-8bb1-39c39e735d26

- New details were released Wednesday regarding a fight between students near Hazelwood East High School on March 8. The Missouri Attorney General and the school district continued a public back-and-forth on an investigation. Kaylee Gain, 16, was seriously injured in a fight in north St. Louis County. The fight was captured on video and widely circulated online. A Hazelwood District spokesperson confirmed that the day before the attack that injured Gain, there was another fight involving students from the school. The spokesperson says at least one student was suspended as a result of that fight. While the district wouldn't name the student who was suspended, an attorney for the suspect tells 5 On Your Side it was Gain. He says that the initial fight was the precursor to the fight the next day that left Gain critically injured. Missouri Attorney General Andrew Bailey sent another letter Tuesday to Hazelwood School District demanding a response after sending an information request to investigate what caused the viral video involving two Hazelwood East students in a fight earlier this month. In the letter, Bailey addresses Hazelwood School District's attorney Cindy Reeds Ormsby. He begins the letter by saying he thinks there has been a misunderstanding on the district's end about the clear request and the overall nature of his office's investigation. According to a news release, Bailey's investigation will examine how the district's diversity, equity and inclusion programs could have contributed to the incident. He goes on to write, "In your letter, you allege 'inaccuracies' concerning the student fight that occurred earlier this month that resulted in serious injuries to a Hazelwood East High School student … My letter cited several sources for information, including publicly-available reporting and the District's own policies. The most egregious 'error' you identify is an incorrect date reference that was reported in local media. As with any investigation, my office seeks to uncover facts surrounding the incident at issue."

REPOST: WQAD

NAACP criticizes MO Atty. General's response to viral fight

FOX 2 | Jeff Bernthal

https://fox2now.com/news/missouri/naacp-criticizes-mo-atty-generals-response-to-viral-fight/

- The Missouri State Conference of the NAACP is weighing in on a viral fight that left one teen fighting for her life and another facing criminal charges. The civil rights organization is calling a recent response by Missouri Attorney General Andrew Bailey harmful and politically motivated. John Bowman, president of the St. Louis County branch of the NAACP, said the Attorney General has not shown interest in getting involved in cases where the victims were Black. He views Bailey's call for an investigation into the Hazelwood School District's diversity, equity and inclusion training as an attempt at scoring political points. "That is clearly what is happening here," Bowman said. Bailey's call for an investigation came after FOX 2 reported on a past dispute between the Hazelwood School District and police over required diversity training. The dispute resulted in the absence of school resource officers at Hazelwood East High School…."We have to be very careful as responsible adults to not pour gasoline on a fire that needs to be put out," Bowman said.

Missouri attorney general is accused of racial bias for pinning a student fight on diversity program

AP | Summer Ballentine

https://apnews.com/article/dei-diversity-school-beating-missouri-hazelwood-928cd2980047d9f6c37351901f7d0e29

- Days after Missouri Attorney General Andrew Bailey blamed an after-school fight on a school district's diversity programming, a lawyer for the majority Black district in suburban St. Louis said that the state's chief attorney is showing "obvious racial bias." Bailey, who is campaigning to keep his seat, said last week that he is investigating possible violations of the state's human rights laws by the Hazelwood School District, after a March 8 fight left a girl hospitalized with severe head injuries. Bailey blamed the school district's diversity, equity and inclusion programming as a cause for the fight, which St. Louis County police say happened after school hours in a neighborhood about two blocks from Hazelwood East High School. He said were it not for the programs, a school resource officer would have been present at the school. "I am launching an investigation into Hazelwood School District after a student was senselessly assaulted by another student in broad daylight," Bailey said in a statement. "The entire community deserves answers on how Hazelwood's radical DEI programs resulted in such despicable safety failures that has resulted in a student fighting for her life."…. Hazelwood spokeswoman Jordyn Elston said in a statement that the school district "does not prioritize DEI initiatives at the expense of student safety" and believes the programs help student safety and learning. "These values are not negotiable," Elston said, "and we will continue to prioritize them in all aspects of our work as community leaders."

REPOST: ABC, ABC 17, KTVO, Yahoo, Toronto Star

AMERICAN OVERSIGHT

Missouri Attorney General successfully defends Missouri meat labeling law

KTTN | Staff
https://www.kttn.com/missouri-attorney-general-successfully-defends-missouri-meat-labeling-law/

- Missouri Attorney General Andrew Bailey announced that his office successfully defended a state law protecting the integrity of advertising surrounding meat products. “Ensuring that food sold within the State of Missouri is marketed correctly is of vital importance to both consumers and the farmers and ranchers that produce that food,” said Attorney General Bailey. “I will continue to fight to defend the integrity of Missouri’s marketplace.” “When our association led this legislation nearly six years ago, we were the first state in the country to require labeling with integrity. The legislation in no way prohibited the sale or consumption of these imitation products but did require truthful and accurate labeling. Misleading consumers was unacceptable then, and it is clear with today’s decision that it’s unacceptable now. We are truly grateful for the work of Attorney General Andrew Bailey and his team,” said Missouri Cattlemen’s Association President Chuck Miller. The General Assembly passed the statute in 2018 with the intent to prohibit the use of advertising that falsely labels plant-based or lab-grown products as conventional meat or misleads consumers about the product. The statute requires producers of plant-based or lab-grown meat to disclose that they are plant-based or lab-grown so as not to mislead consumers. The statute only prohibits misrepresenting a product as “any edible portion of livestock, poultry, or captive cervid carcass” that is not derived from harvested production livestock or poultry. Siding with Attorney General Bailey, the Court noted that the General Assembly enacted the law “to reduce consumer confusion and ensure that consumers know what type of product they are purchasing.” The Court reasoned that “simply because lab-created or cultivated meat producers may be impacted by the Missouri Statute, but producers of harvested production livestock or poultry are not impacted, does not show that the Missouri Statute had a discriminatory purpose or make the Statute unconstitutional.” The Department of Agriculture worked closely with the Attorney General’s Office on this case.

Embattled Cape Girardeau County coroner seeks reelection amid legal turmoil
Southeast Missourian | Bob Miller and Christopher Borro
https://www.semissourian.com/story/3034625.html

- Suspended Cape Girardeau County Coroner Wavis Jordan is running for reelection amid efforts by the Missouri attorney general to oust him from office. Jordan added his name to the list of candidates seeking office before filing deadline Tuesday, March 26. The AG’s office filed a Quo Warranto filing with the court Feb. 8 seeking to remove Jordan from office, alleging he engaged in misconduct and failed to perform his duties by entering the wrong cause of death for three people; failed to properly investigate the causes and manners of death of several individuals; failed to take the necessary steps to be prepared to investigate deaths; failed to obtain blood from two individuals who died in separate motor vehicle wrecks; and solicited family members regarding funeral arrangements of a deceased person. Shortly after the attorney general’s filing was entered into the court system, Jordan, when contacted by a newspaper reporter, said he didn’t want to comment, adding, "I don’t know if this is a racial issue or what." When reached by a newspaper reporter Wednesday, March 27, for questions regarding his reasons for running for reelection, Jordan told the reporter he would send a written statement to the newspaper. He didn’t say when he would do so. In addition to the state’s case to remove Jordan from office, the AG also filed criminal charges that allege he falsified three documents, all Class E felonies; and a misdemeanor that he stole less than $20 from a deceased person’s wallet. In the hours after the Quo Warranto was filed, a judge suspended Jordan from operating as the coroner, saying Jordan was not to go into the office or do anything in the official capacity of the coroner. Cape Girardeau County continues to pay Jordan while he is prohibited from working. An additional deputy coroner was hired to help handle the workload. The Cape Girardeau County Sheriff’s Office is overseeing the work of the coroner’s office while Jordan works through his court battles.

Bills aim to strengthen penalties for human traffickers, enhance training
KOMU 8 | Siobhan Harms
https://www.komu.com/news/state/bills-aim-to-strengthen-penalties-for-human-traffickers-enhance-training/article_bd641e68-ec70-11ee-8dd7-37c5ac4dcb75.html

- The Missouri Senate Health and Welfare Committee heard testimony Wednesday from those in support of House Bills 1706 and 1539, which address human trafficking. The bills previously passed through the House in a 143-1 vote before being delivered to the Senate. “It's basically modern-day slavery and runs anywhere from escort services down to labor, trafficking and agricultural,” bill sponsor Rep. Jeff Myers, R-Warrenton, said. Myers is not the only one to define human trafficking this way. Missouri Attorney General Andrew Bailey defines human trafficking as “a modern form of slavery involving the exploitation of a person for involuntary labor, services, debt bondage, or commercial sex through the use of force, fraud, or coercion; or in which the person induced to perform such acts has not yet attained 18 years of age.” ….HBs 1706 and 1539 would establish the Statewide Council Against Adult Trafficking and Commercial Sexual Exploitation of Children and replace the Missouri Statewide Council on Sex Trafficking and Sexual Exploitation of Children which expired in 2023. Under the bills, a Committee on Sex and Human Trafficking Training would be responsible for evaluating and establishing guidelines for sex and human trafficking training. As recently as 2020, Missouri had the fourth-highest incidence rate of human trafficking in the country at 4.32 per 100,000 people, according to a 2023 report by the Missouri

AMERICAN OVERSIGHT

Statewide Council on Sex Trafficking and Sexual Exploitation of Children. Myers said a new committee to address trafficking is necessary due to the high rate of the issue in the state of Missouri….Rep. Jo Doll, D-St. Louis was the only lawmaker who opposed HBs 1706 and 1539 during the House vote. She said she opposed the language in the bill that would require nurses to undergo human trafficking training, as she said there are no mechanisms currently in place to support that training. However, she said she supported the bill otherwise.

Missouri Attorney General sues Boone County contractor on fraud accusations
ABC 17 l Madison Stuerman
https://abc17news.com/news/boone/2024/03/26/missouri-attorney-general-sues-boone-county-contractor-for-fraud/

- Missouri's Attorney General Andrew Bailey is suing a Boone County contractor for allegedly failing to provide promised construction work to a customer. The lawsuit claims Walters and his company violated the Merchandising Practices Act and accuses both of false promises, misrepresentation, deception and unfair practice. The lawsuit was filed on March 5 and a summons was issued for Anthony Walters and Walters Carpentry LLC. The summons for Walters was returned on March 21 because he did not live at the listed address, according to notes written on the summons. According to the lawsuit, Anthony Walters was hired by a customer in October 2022 for a home renovation project. Walters completed three projects and continued to provide work for new projects. In November 2022, Walters signed a contract for a fence project costing $6,200 and requested $4,700 in advance for materials along with a promise to start work immediately, according to the lawsuit. He later also requested another $1,800 for materials, court documents claim. The lawsuit states between Nov. 15, 2022-Feb. 16, 2023, the victim said they reached out to Walters multiple times about his failure to finish the project as promised. He allegedly gave excuses and promised to start work the next day but never did. The petition claims that Walters worked on the fence on eight separate occasions between Nov. 15-Dec.15, 2022. Walters and workers allegedly dug fence post holes, put in 75% of the frame for the back portion of the property and put up 5 feet of "completed fence" near the driveway….In a news release sent on Tuesday, Bailey said "I will always fight for the rule of law, which includes holding individuals accountable for ripping off Missourians

REPOST: KTTN, KOMU, KJLU, KMZU, News-Press Now, NewsBreak

Supreme Court Justice Clarence Says Comstock Act Should Ban Mail-Order Abortions Nationwide
Life News l Steven Ertelt
https://www.lifenews.com/2024/03/27/supreme-court-justice-clarence-says-comstock-act-should-ban-mail-order-abortions-nationwide/

- During the Supreme Court hearing yesterday on the dangerous abortion pill mifepristone, Justice Clarence Thomas brought up the Comstock Act. The Comstock Act is an 1873 law that prohibits mailing of any “article or thing designed, adapted, or intended for producing abortion.” And it could be enforced to prohibit mail-order abortion sales nationwide — which is especially important given the fact that over a majority of abortions know involve the dangerous abortion drug that starves a baby to death and expels his or her body. In his ruling, U.S. District Judge Matthew Kacsmaryk quoted a federal law called the Comstock Act that prohibits mailing any type of abortion drug or device. And in its decision last year in the case, the 5th Circuit ruled that abortionists are no longer allowed to send chemical abortion drugs through the mail, which the FDA had been allowing since 2021, in direct violation of longstanding federal law. The appeals court agreed that the Comstock Act prohibits mailing abortion drugs and it said the doctors who brought the case had legal standing because they had treated so many women injured by abortion drugs…..“Federal law expressly prohibits using the mail to send or receive any drug that will ‘be used or applied for producing abortion,’” stated a letter from Missouri Attorney General Andrew Bailey. “The text could not be clearer…[However] In December, the Biden administration’s Office of Legal Counsel encouraged the U.S. Postal Service to disregard this plain text. But the text, not the Biden administration’s view, is what governs. And the Biden administration’s opinion fails to stand up even to the slightest amount of scrutiny.” Joining Attorney General Bailey with nearly identical letters were attorneys general from Alabama, Alaska, Arkansas, Florida, Georgia, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Montana, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, and West Virginia…..Coercion and abuse also are concerns. LifeNews has reported a number of stories in recent years about sex traffickers, abusive partners and parents forcing or tricking pregnant women and girls into aborting their unborn babies. A midwife with the abortion chain MSI Reproductive Health recently told the BBC that recognizing coercion is a big problem among abortion providers, and the new mail-order abortion practice makes it even worse.

SCOTUS Errs In Murthy v. Missouri By Assuming Big Tech Is Just Like Print Media
Conservative Review l Aaron Kheriaty
https://www.conservativereview.com/scotus-errs-in-murthy-v-missouri-by-assuming-big-tech-is-just-like-print-media-2667623461.html

- Along with my co-plaintiffs, I was at the Supreme Court last week for oral arguments in our Murthy v. Missouri case, in which we are challenging the federal government’s alleged censorship on social media. The Supreme Court will likely rule

AMERICAN OVERSIGHT

in June whether to uphold, modify, or strike down the Fifth Circuit Court of Appeals' injunction against five federal agencies, in what, the district court judge wrote, "arguably involves the most massive attack against free speech in United States' history." At the hearing, Justice Samuel Alito pointed out that emails between the White House and Facebook "showed constant pestering of Facebook." He went on to comment, "I cannot imagine federal officials taking this approach to the print media. … It's treating these platforms like subordinates." He then asked the government's attorney, "Would you treat The New York Times or The Wall Street Journal this way? Do you think the print media considers themselves 'partners' with government? I can't imagine the federal government doing that to them." The government's attorney had to admit, "The anger is unusual" — referring to White House official Rob Flaherty literally cursing at a Facebook executive and berating him for not taking action quickly enough to comply with the government's censorship demands. Justice Brett Kavanaugh followed up, asking, "On the anger point, do you think federal government officials regularly call up journalists and berate them?" It's worth recalling that Kavanaugh worked as a White House attorney before he was appointed to the court, as did Justices John Roberts and Elena Kagan. No doubt there were times they dialed a journalist or editor to try to convince them to change a story, clarify a factual assertion, or even hold or quash the publication of a piece. Kavanaugh admitted, "It's not unusual for the government to claim national security or wartime necessity to suppress a story." Perhaps colorful language is sometimes used in these conversations, as Kavanaugh himself hinted. Kagan concurred: "Like Justice Kavanaugh, I have had some experience encouraging the press to suppress its own speech. … This happens literally thousands of times a day in the federal government." With a wink to the other former executive branch attorneys on the bench, Roberts quipped, "I have no experience coercing anyone," which generated a rare chuckle from the bench and audience. This analogy to government interactions with print media, however, does not hold in the case of the government's relationship with social media. There are several crucial differences that profoundly change the power dynamic of those interactions in ways directly relevant to our case. These differences facilitate, in Alito's words, the government treating the platforms like subordinates in ways that would be impossible with print media….But if the justices want to distinguish between persuasion and coercion in the injunction, they need to appreciate that social media companies operate in a very different relationship with government than traditional print media. These asymmetrical power dynamics create a relationship ripe for unconstitutional government coercion.

Missouri Court Allows University to Reclassify Restricted Endowment Funds Under UPMIFA

JD Supra l Staff

https://www.jdsupra.com/legalnews/missouri-court-allows-university-to-1148701/

- Earlier this month, a Missouri state court allowed Webster University to reclassify various donor-restricted endowment funds as unrestricted endowment funds so the funds could be held as collateral to help Webster meet a 75% minimum liquidity ratio requirement set forth in a loan agreement Webster entered into in 2011. In re Webster University, No. 24SL-CC00511 (Mo. Cir. Ct., St. Louis, Mar. 1, 2024) (unpublished). Pursuant to Missouri's version of the Uniform Prudent Management of Institutional Funds Act (UPMIFA, R.S. Mo. §§ 402.130–402.148), "if a particular … restriction contained in a gift instrument on the use of an institutional fund becomes … impracticable … the court … may modify … the restriction … in a manner consistent with the charitable purposes expressed in the gift instrument." Without reclassification of the restricted funds, Webster would have been unable to achieve the required 75% liquidity ratio. And if the issuer of Webster's outstanding bonds were to provide notice of an alleged breach of the loan agreement due to Webster's failure to maintain the required liquidity ratio, Webster's viability as an educational institution could be impacted. Thus, Webster argued that "the current crisis in higher education and its impact on Webster University made the restrictions currently present on the [funds] impractical." As required under UPMIFA, in connection with filing its petition, Webster notified the Missouri attorney general of its plans to remove the restrictions on the funds. The attorney general's office declined to object. The court agreed with Webster, finding that releasing the donor restrictions was consistent with and related to the purposes for which the funds were created — "to promote high-quality learning experiences by well-qualified professors for all students, regardless of financial need." Nonetheless, the court made clear that reclassification of the funds was a temporary adjustment, and that donor restrictions must be reinstated once: (1) Webster experiences at least one full year of budget surplus, (2) the ratio of unrestricted assets to outstanding long-term indebtedness is 100%, and (3) Webster is compliant with all bond or loan-related agreements…..Similarly, the U.S. Department of Education in recent years has substantially revised its "financial responsibility" requirements for continued institutional participation in the federal student financial aid programs, including enumerating various fiscal events that institutions must report to the Department and that may require institutions to provide it with letters of credit.

Attorney General files suit against Media Matters over alleged anti-X initiatives

Teslarati l Simon Alvarez

https://www.teslarati.com/attorney-general-sues-media-matters-anti-x-initiatives/

- Attorney General Andrew Bailey has filed a lawsuit against Media Matters of America in an attempt to force the nonprofit to turn over documents that are allegedly related to its efforts to bully advertisers out of social media X. Media Matters published a report last year claiming X was showing advertisements from major corporations alongside extremist content.

AMERICAN OVERSIGHT

X has defended itself against Media Matters' claims, arguing that the nonprofit essentially manipulated the social media platform's system by specifically following accounts only known to produce provocative content and accounts of the company's big-time advertisers. X noted that Media Matters then reportedly scrolled and refreshed its feed an unnatural number of times until a screenshot could be taken showing paid posts from a major advertiser next to controversial content. In a press release, Missouri Attorney General Andrew Bailey noted that he launched an investigation into Media Matters' practices after alleged evidence came to light suggesting that the nonprofit was soliciting "donations from Missourians under false pretenses to target X." This, the Attorney General argued, was "in direct violation of the Missouri Merchandising Practices Act." "My office has reason to believe Media Matters used fraud to solicit donations from Missourians in order to bully advertisers into pulling out of X, the last social media platform dedicated to free speech in America, so we launched an investigation to get to the bottom of it. However, Media Matters has a sordid history of refusing to cooperate with investigations. I'm not going to let this activist group stonewall us. If there has been any attempt to defraud Missourians in order to trample on their free speech rights, I will root it out and hold bad actors accountable," Bailey wrote. …Media Matters has responded to the Missouri Attorney General's legal action. In a comment, Media Matters President Angelo Carusone criticized Elon Musk, stating that the investigation is meritless and it is a way for the CEO to punish his critics. He also noted that the lawsuit is part of an attempt to curb free speech. "Far from the free speech advocate he claims to be, Elon Musk has actually intensified his efforts to undermine free speech by enlisting Republican attorneys general across the country to initiate meritless, expensive, and harassing investigations against Media Matters in an attempt to punish critics. This Missouri investigation is the latest in a transparent endeavor to squelch the First Amendment rights of researchers and reporters; it will have a chilling effect on news reporters," Carusone noted.

Judge's stern rebuke of Elon Musk's X gives researchers fresh hope
CNN l Brian Fung and Clare Duffy
https://www.cnn.com/2024/03/26/tech/judges-stern-rebuke-of-elon-musks-x-gives-researchers-fresh-hope/index.html

- A federal judge's decision this week reprimanding Elon Musk's X will have reverberating effects on efforts to hold influential online platforms accountable, legal experts and advocacy groups say. On Monday, District Judge Charles Breyer dismissed and excoriated a lawsuit by X against online watchdog group Center for Countering Digital Hate as an attempt to silence the non-profit group for sounding alarms about hate speech on the platform. Breyer wrote in Monday's order that the lawsuit was "unabashedly" about "punishing" reports written by CCDH, which X had accused of campaigning to drive away its advertisers. Breyer held that the reports were "unquestionably" protected by the group's free speech rights…..As recently as Monday, Missouri Attorney General Andrew Bailey filed a petition in state court seeking to compel Media Matters' cooperation with his investigation. The filing came a week after he appeared with Musk in a live event on X — which Carusone said shows how Musk hopes to deputize the power of government to silence his critics. "They have every reason to do it," Carusone said of the AGs' investigations. "They get the political benefits, they get the attention. There doesn't seem to be any cost to them yet. And if they are successful at developing this new playbook, this new terrain, legally, then it's going to pave the way for them to just use this tool and tactic over and over and over again." A representative for X did not immediately respond to a request for comment about Carusone's claims…Ultimately, Benavidez called the ruling "a reminder that platform accountability is essential and will inevitably prevail when up against bullies like Musk who try to silence us."

REPOST: Business Times, News Channel Nebraska

Missouri News:

New entries double the candidates seeking GOP nomination for Missouri secretary of state
Springfield News-Leader l Kelly Dereuck
https://www.news-leader.com/story/news/politics/elections/2024/03/28/surprise-candidates-join-race-for-missouri-secretary-of-state/73120779007/

Late withdrawals mean more time to file for lieutenant governor, other Missouri offices
Missouri Independent l Rudi Keller
https://missouriindependent.com/briefs/late-withdrawals-mean-more-time-to-file-for-lieutenant-governor-other-missouri-offices/

Is the Missouri House of Representatives too big? One state lawmaker thinks so.
Columbia Missourian l Komlavi Adissem
https://www.columbiamissourian.com/news/state_news/is-the-missouri-house-of-representatives-too-big-one-state-lawmaker-thinks-so/article_fb8b73e4-d5b9-11ee-a93d-4f4bc6e76afb.html

Can a fetus be a state employee? Missouri Supreme Court weighs wrongful death claim
KC Star l Kacen Bayless
https://www.kansascity.com/news/politics-government/article287154300.html

AMERICAN OVERSIGHT

All-Female Whiteman Air Force Base Pilots Make History (LISTEN)
Missourinet | Cameron Connor
https://www.missourinet.com/2024/03/27/all-female-whiteman-air-force-base-pilots-make-history-listen/

Missouri strips marijuana licenses connected to company accused of predatory behavior
KC Star | Kacen Bayless
https://www.kansascity.com/news/politics-government/article287148575.html

Missouri Senate votes to bar foreign ownership of farmland in the state
STL NPR | Sarah Kellog
https://www.stlpr.org/government-politics-issues/2024-03-27/missouri-senate-votes-to-bar-foreign-ownership-of-farmland-in-the-state

Missouri House advances bill requiring citizenship marker on driver's licenses
STL NPR | Sarah Kellog
https://www.stlpr.org/government-politics-issues/2024-03-27/missouri-house-advances-bill-requiring-citizenship-marker-on-drivers-licenses

Missouri House again votes to cut corporate income taxes
Missouri Independent | Rudi Keller
https://missouriindependent.com/briefs/missouri-house-again-votes-to-cut-corporate-income-taxes/

Missouri Senate Working to Guarantee Benefits to Foster Children
Missourinet | Anthony Morabith
https://www.missourinet.com/2024/03/27/missouri-senate-working-to-guarantee-benefits-to-foster-children/

Bid to ban hair-based discrimination wins approval in Missouri House
St. Louis Post-Dispatch | Kurt Erickson
https://www.stltoday.com/news/local/government-politics/bid-to-ban-hair-based-discrimination-wins-approval-in-missouri-house/article_11af18ea-ec6e-11ee-a7dc-bfef953cb7a9.html

Holleman: Wesley Bell's office set to answer sexual-relations questions in discrimination suit
St. Louis Post-Dispatch | Joe Holleman
https://www.stltoday.com/news/local/column/joe-holleman/holleman-wesley-bell-s-office-set-to-answer-sexual-relations-questions-in-discrimination-suit/article_9d1153fe-ebb4-11ee-8097-57c90a3cb153.html

States across the country, including Missouri, rush to combat AI threat to elections
Missouri Independent | Zachary Roth
https://missouriindependent.com/2024/03/27/states-rush-to-combat-ai-threat-to-elections/

Springfield funeral, visitation set for Kickapoo High grad, Mizzou student Riley Strain
Springfield News-Leader | Claudette Riley
https://www.news-leader.com/story/news/local/2024/03/27/springfield-funeral-set-for-kickapoo-grad-mizzou-student-riley-strain/73126397007/

Missouri Congressman Demanding SBA To Bar Their Staff from Working at Home
Missourinet | Marshall Griffin
https://www.missourinet.com/2024/03/27/missouri-congressmen-demanding-sba-to-bar-their-staff-from-working-at-home/

National News:

Former Sen. Joe Lieberman, Democrats' VP pick in 2000, dead at 82
AP News | Susan Haigh
https://apnews.com/article/joe-lieberman-death-obit-senate-c82d9c92c1c4493fa5d708719884b12d

AMERICAN OVERSIGHT

Two Bodies Found After Massive Cargo Ship Ripped Apart Baltimore Bridge
Daily Wire | Staff

https://www.dailywire.com/news/two-bodies-found-after-massive-cargo-ship-ripped-apart-baltimore-bridge

How the Army Corps of Engineers plans to reopen the Port of Baltimore
Washington Examiner l Jamie McIntyre
https://www.washingtonexaminer.com/daily-on-defense/2942493/how-the-army-corps-of-engineers-plans-to-reopen-the-port-of-baltimore/

Sam Bankman-Fried is set to be sentenced for defrauding FTX investors
Washington Times l Stephen Dinan
https://www.washingtontimes.com/news/2024/mar/28/us-now-has-137-million-illegal-immigrants-up-37-un/?utm_source=RSS_Feed&utm_medium=RSS

Virginia governor vetoes 30 bills concerning gun regulation
Jurist l Sarah Ferguson
https://www.jurist.org/news/2024/03/virginia-governor-vetoes-30-bills-concerning-gun-regulations/

George Soros pledged $1 million to 'Hamas propaganda' organization linked to terrorism
Washington Examiner l Gabe Kaminsky
https://www.washingtonexaminer.com/policy/foreign-policy/2939032/george-soros-pledged-1-million-to-hamas-propaganda-organization-linked-to-terrorism/

US Immigration Surged So Rapidly That It Beat Out Biden Admin Projections By Decades
Daily Caller l Jake Smith
https://dailycaller.com/2024/03/28/biden-census-bureau-projections-immigrants-living-us-obsolete-report/

Supreme Court Rebuffs Drug Defendant's First Step Act Application
Epoch Times l Matthew Vadum
https://www.theepochtimes.com/us/supreme-court-rebuffs-drug-defendants-first-step-act-application-5615679

Supreme Court Won't Undo Nullification of Pro-Labor Law in Puerto Rico
Epoch Times l Matthew Vadum
https://www.theepochtimes.com/us/supreme-court-wont-undo-nullification-of-pro-labor-law-in-puerto-rico-5615675

Robotic police dog shot multiple times, credited with avoiding potential bloodshed
AP News l Staff
https://apnews.com/article/massachusetts-cape-cod-robot-dog-police-f63586d5286750702f396109c9a81836

Thanks for reading and have a great day!

Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355 https://www.dailysignal.com/2024/02/22/exclusive-missouri-ag-orders-school-district-to-end-race-based-hiring/?utm_source=TDS_Email&utm_medium=email&utm_campaign=MorningBell&mkt_tok=ODI0LU1IVC0zMDQAAAGRdKhZkMfR-jZwUHcWMyo-zurcMV-673p3MBJiPPgKmsPkTtihkROFtBdJXYBZu6O_-xQQIRm1mIBfHkukWy_oLTKy6hiYLdj4o-FFNOLa1iEvfAWYqQ
Branden.Rathert@ago.mo.gov

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Goodwin, Gregory[Gregory.Goodwin@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; Hammond, Wyatt[Wyatt.Hammond@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Lewis, Jason[Jason.Lewis@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Woodard, Winderlyn[winderlyn.woodard@ago.mo.gov]
From: Rathert, Branden[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6862523A4FCB4692B7523E7B2723AB70-RATHERT, BRANDEN]
Sent: Mon 4/1/2024 8:58:12 AM (UTC-05:00)
Subject: Daily News/Media Roundup - Monday April 1st, 2024

Good morning all,

Below is the relevant news relating to the AGO, Missouri, and Nation for today:

AGO News:

Kaylee Gain out of coma, begins speaking after brutal beatdown by high school classmate
NY Post | Katherine Donlevy
https://nypost.com/2024/03/30/us-news/missouri-teen-kaylee-gain-out-of-coma-begins-speech-therapy-after-beatdown/

- The Missouri teen who slipped into a coma after her head was mercilessly bashed into the pavement in a twisted after-school brawl has slowly begun the road to recovery — but has no recollection of the beating. Kaylee Gain, 16, has "been able to engage in limited verbal conversations" in the week since she was moved out of the intensive care unit, her family announced Friday. "Kaylee also recently began speech therapy, and has gone on a few short walks with the assistance of hospital staff as she is still unable to ambulate on her own," attorney Bryan Kaemmerer, a spokesperson for Gains, said in a statement. "However, Kaylee does not have any recollection of the altercation that led to her hospitalization."…. Gain's family — as well as Missouri Attorney General Andrew Bailey — have been pushing for the unnamed girl to be tried as an adult for the vicious crime.

Family of teen injured in fight near Hazelwood East wants accused teen charged as adult
100.7 The Viper | Staff
https://viperrocks.com/2024/03/family-of-teen-injured-in-fight-near-hazelwood-east-wants-accused-teen-charged-as-adult/

- The family of Kaylee Gain, a 16-year-old girl hospitalized after a fight near Hazelwood East High School earlier this month, wants another teenager accused in the fight to be charged as an adult. The family's attorney, Bryan M. Kaemmerer of the law firm McCarthy, Leonard & Kaemmerer, released a statement Friday to FOX 2 that addresses more information around the fight and Gain's condition. One part of the statement near the end reads as follows: "Given these circumstances, the family believes trying the accused as an adult is the most appropriate way to provide the justice that Kaylee deserves."…. The fight has been subject to national attention, recently in the form of a controversy between Missouri Attorney General Andrew Bailey and the Hazelwood School District. On March 22, Missouri Attorney General Andrew Bailey sent a letter to Dr. Nettie Collins-Hart, superintendent of the Hazelwood School District, and local media to notify them that his office had begun an investigation into the district's mandated training of Hazelwood East school resource officers.

Family Pleading for Mercy After 15-Year-Old Girl Seen Fighting in Viral Video Faces Charges
Yahoo News Via The Root | Jessica Washington
https://www.yahoo.com/news/reverse-racism-girl-seen-getting-195000261.html

- The family of the 15 year-old suspect, who was allegedly seen in a viral video slamming another girls head to the pavement, is pleading for mercy in the handling of the incident. "Prior to an incident on March 8th where she was seen defending herself from harassment and bullying, she had never been in trouble," her family wrote in a Change.org petition, obtained by the New York Post, asking Chief Juvenile Officer Rick Gaines not to charge her as an adult….The Missouri Attorney General Andrew Bailey is saying he wants the 15 year old suspect to be tried as an adult.

Legal Challenges to Biden's SAVE Plan Ramp Up
Inside Higher Ed | Katherine Knott
https://www.insidehighered.com/news/quick-takes/2024/04/01/11-red-states-sue-block-bidens-save-plan

- Acoalition of 11 Republican-led states is suing the Biden administration to block its new student loan repayment plan.

AMERICAN OVERSIGHT

Kansas is leading the lawsuit. Filed Thursday, the lawsuit argues that the plan, known as Saving on a Valuable Education (SAVE), exceeds the Education Department's authority, hurts the states' bottom lines and is just another version of the broad-based debt-relief plan that the Supreme Court struck down last summer in Biden v. Nebraska. "The law simply does not allow Biden to do what he wants to do," Kansas attorney general Kris Kobach said in a news release. "Biden is trying to exercise the powers of a king rather than the powers of a President in a constitutional republic." Kobach is joined in the suit by attorneys general from Alabama, Alaska, Idaho, Iowa, Louisiana, Montana, Nebraska, South Carolina, Texas, and Utah. Missouri attorney general Andrew Bailey, who was a plaintiff in Biden v. Nebraska, announced Thursday that he's also leading a multi-state coalition to bring a similar legal challenge to SAVE. "Between our two coalitions of states, we will get this matter in front of a judge even more quickly to deliver a win for the American people," Bailey said in a statement.

Google Threatens to Demonetize Wall Street Watchdog as GOP Targets Ad Collusion
Georgia Star News l Greg Piper
https://georgiastarnews.com/news/google-threatens-to-demonetize-wall-street-watchdog-as-gop-targets-ad-collusion/jtnews/2024/03/30/

- Google's artificial intelligence isn't particularly bright when it comes to evaluating publishers' compliance with its advertising policies, if the experience of a heterodox economics blog with outsized influence is any indication. With a megaphone from Twitter Files journalist Matt Taibbi, both darlings of progressives in the "Occupy Wall Street" era, Naked Capitalism accused Google of making "flagrant errors" in its threats to demonetize the 18-year-old site for verboten content. The Alphabet-owned company made censorship demands that were "not advertiser-driven," listed "non-existent posts in the spreadsheet" shown Naked Capitalism, and issued "wildly inaccurate negative classifications" of its content, according to editor "Yves Smith," the pen name of Aurora Advisors founder Susan Webber. Missouri Attorney General Andrew Bailey, who with Louisiana is suing the feds for coercing social media to censor certain narratives, sued Media Matters for America for refusing to cooperate with his investigation of its allegedly fraudulent campaign to scare advertisers away from X, as it did with a similar Texas investigation.

Missouri AG sues Media Matters as Republicans take on critics of Musk's X
Guardian l Staff
https://www.theguardian.com/us-news/2024/mar/30/media-matters-lawsuit-missouri-elon-musk#:~:text=The%20attorney%20general%20of%20Missouri,the%20social%20media%20platform%20X

- The attorney general of Missouri is suing Media Matters, a progressive watchdog group, alleging that it failed to turn over internal documents following its 2023 coverage of hate speech on the social media platform X. The head of the group says news outlets could be the next targets. The lawsuit, filed by Missouri's attorney general, Andrew Bailey, on Monday, marks the second time that GOP officials have taken legal action against Media Matters to support Elon Musk, X's billionaire owner. In November, the Texas attorney general, Ken Paxton, launched an investigation into Media Matters, describing the group as a "radical anti-free speech organization". "These state attorney generals, first Paxton and now Bailey, are directly responding to Musk's pleas. They are helping him punish critics," said Angelo Carusone, president of Media Matters….Carusone said it should be "alarming for everybody, especially the media", that two state attorney general's offices appear eager to become a personal injury law firm for a tech billionaire. Bailey's lawsuit lays out a blueprint for punishing newsrooms that dare print negative stories about X or Musk, Carusone warned.

REPOST: UK Times News, News Explorer, Secular Times, Web Today, VN Explorer Channel, Bing News

Missouri News:

Man armed with gun died after being shot by KCPD Easter morning: police
FOX 4 KC l Grant Flanders
https://fox4kc.com/news/man-armed-with-gun-died-after-being-shot-by-kcpd-easter-morning-police/

Christian County sued for sex discrimination, retaliating against female employee
Springfield News-Leader l Marta Mieze
https://www.news-leader.com/story/news/local/ozarks/2024/04/01/employee-sues-christian-county-for-sexual-discrimination-retaliation/73131978007/

Missouri Lawmaker Proposes Crackdown on Expired Temp Tags
Missourinet l Alisa Nelson
https://www.missourinet.com/2024/03/29/missouri-lawmaker-proposes-crackdown-on-expired-temp-tags/

AMERICAN OVERSIGHT

Proposed legislation could ban the majority of Delta-8 drinks and edibles in Missouri

Missouri Independent | Rebecca Rivas
https://missouriindependent.com/2024/04/01/proposed-legislation-could-ban-the-majority-of-delta-8-drinks-and-edibles-in-missouri/

Jefferson City man pleads guilty to $12.4 million in Paycheck Protection Program fraud
KRCG | Jennifer Weiser
https://krcgtv.com/news/local/jefferson-city-man-pleads-guilty-to-124-million-in-paycheck-protection-program-fraud-tod-ray-keilholz-valpo-valparaiso-indiana#

How law enforcement in this small town grapples with anti-police reforms: 'Hands are tied'
FOX | Teny Sahakian
https://www.foxnews.com/media/american-values-law-enforcement-small-town-grapples-anti-police-reforms-hands-tied

2024 Eclipse Guide: How to enjoy totality in Missouri and Illinois
STL NPR | Brian Munoz and Lara Hamdan
https://www.stlpr.org/health-science-environment/2024-03-27/2024-total-solar-eclipse-illinois-missouri-what-to-know

Who is for and against Chiefs, Royals stadium tax? Where groups, officials stand on vote
KC Star | Eleanor Nash
https://www.kansascity.com/news/local/article286878560.html

'Shocked that it's come up again.' Critics say MO bill could undo new boarding school law
KC Star | Laura Bauer and Judy L. Thomas
https://www.kansascity.com/news/politics-government/article287221545.html

Dallas police seeking Chiefs wide receiver Rashee Rice after 6-vehicle crash
Columbia Missourian | Jacob Richey
https://www.columbiamissourian.com/news/state_news/dallas-police-seeking-chiefs-wide-receiver-rashee-rice-after-6-vehicle-crash/article_0a704c1e-2cbe-53e3-8dab-d774016e9c17.html#tncms-source=Top%20Story

'I can't stop grinning': Festus fisherman has tale of a lifetime after world-record catch on Mississippi River
KSDK | Corey Miller
https://www.ksdk.com/article/sports/outdoors/festus-missouri-mississippi-river-world-record-bighead-carp-catch/63-60d2cbcc-b9b3-405d-9164-e4e680c4d63a

National News:

'Target No. 1 for ISIS-K': Terror group that hit Moscow nightclub has sights set on US
USA Today | Tom Vanden Brook
https://www.usatoday.com/story/news/world/2024/04/01/isis-k-eyes-us-attack-after-moscow-nightclub/73147971007/

Weekend Media Wrap, Vol. 37: What You Missed If You Weren't Glued To The Sunday Shows
Daily Wire | Virginia Kruta
https://www.dailywire.com/news/weekend-media-wrap-vol-37-what-you-missed-if-you-werent-glued-to-the-sunday-shows

Russian nexus revealed during 60 Minutes Havana Syndrome investigation into potential attacks on U.S. officials
CBS News | Scott Pelley , Aliza Chasan , Oriana Zill de Granados, Michael Rey, Emily Gordon, Kit Ramgopal, Jamie Woods
https://www.cbsnews.com/news/havana-syndrome-russia-evidence-60-minutes/

AT&T says a data breach leaked millions of customers' information online. Were you affected?
AP | Wyatte Grantham-Philips
https://apnews.com/article/att-data-breach-was-i-affected-f0dda2b1d266a6068ffc607afd94b779

New $20 minimum wage for fast food workers in California is set to start Monday
AP | Terry Chea and Adam Beam
https://apnews.com/article/california-fast-food-minimum-wage-a04c2e559b09cbcd26dd5702e0755a83

AMERICAN OVERSIGHT

DC archbishop jabs Biden as 'cafeteria Catholic' who 'picks and chooses' for his 'political advantage'
FOX l Yael Halon
https://www.foxnews.com/media/dc-archbishop-jabs-biden-cafeteria-catholic-who-picks-chooses-political-advantage

Texas Appeals Court Upholds Temporary Block on Investigating Parents Who Allow Genital Surgery, Drugs for Gender Dysphoric Children
Epoch Times l Melanie Sun
https://www.theepochtimes.com/us/texas-appeals-court-upholds-temporary-block-on-investigating-parents-who-allow-genital-surgery-drugs-for-gender-dysphoric-children-5618780

El Paso Judge Orders Release Of Migrants Seen In Viral Video Overwhelming National Guard
Daily Caller l Hailey Gomez
https://dailycaller.com/2024/03/31/el-paso-judge-humberto-acosta-release-migrants-overwhelming-national-guard-texas/

Pennsylvania Court Upholds Right of Young People to Carry Guns in Public
Epoch Times l Patricia Tolson
https://www.theepochtimes.com/us/pennsylvania-court-upholds-right-of-young-people-to-carry-guns-in-public-5617559

Ex-CENTCOM Commander: ISIS Threat To U.S. Becoming Serious Because Of Biden's Foreign Policy
Daily Wire l Staff
https://www.dailywire.com/news/ex-centcom-commander-isis-threat-to-u-s-becoming-serious-because-of-bidens-foreign-policy

More vessels anticipated in North Carolina's two ports
The Center Square l Alan Wooten
https://www.thecentersquare.com/north_carolina/article_50d0bd88-edfb-11ee-b4f3-f7ef32a2338e.html

Judge Blocks Biden Administration's Attempt to Expand Lending Rules
Epoch Times l Zachary Stieber
https://www.theepochtimes.com/us/judge-blocks-biden-administrations-attempt-to-expand-lending-rules-5619126

Thousands Show Up for Fallen NYPD Officer Jonathan Diller's Funeral
Western Journal l Adelle Nazarian
https://www.westernjournal.com/watch-thousands-show-fallen-nypd-officer-jonathan-dillers-funeral/

How did April Fools' Day start and what are some famous pranks?
CBS News l Aliza Chasan
https://www.cbsnews.com/news/how-did-april-fools-day-start/

Thanks for reading and have a great day!

Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355 https://www.dailysignal.com/2024/02/22/exclusive-missouri-ag-orders-school-district-to-end-race-based-hiring/?utm_source=TDS_Email&utm_medium=email&utm_campaign=MorningBell&mkt_tok=ODI0LU1IVC0zMDQAAAGRdKhZkMfR-jZwUHcWMyo-zurcMV-673p3MBJiPPgKmsPkTtihkROFtBdJXYBZu6O_-xQQIRm1mIBfHkukWy_oLTKy6hiYLdj4o-FFNOLa1iEvfAWYqQ
Branden.Rathert@ago.mo.gov

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Goodwin, Gregory[Gregory.Goodwin@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; Hammond, Wyatt[Wyatt.Hammond@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Lewis, Jason[Jason.Lewis@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Woodard, Winderlyn[winderlyn.woodard@ago.mo.gov]
From: Rathert, Branden[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6862523A4FCB4692B7523E7B2723AB70-RATHERT, BRANDEN]
Sent: Wed 4/3/2024 8:59:20 AM (UTC-05:00)
Subject: Daily News/Media Roundup - Wednesday April 3rd, 2024

Good morning all,

Below is the relevant news relating to the AGO, Missouri, and Nation for today:

AGO News:

Hazelwood East fight victim still has 'significant cognitive impairment,' family says
St. Louis Post-Dispatch | Dana Rieck
https://www.stltoday.com/news/local/crime-courts/hazelwood-east-fight-victim-still-has-significant-cognitive-impairment-family-says/article_6756fbc0-f0f4-11ee-8a81-6b18e6e53185.html

- The teen severely beaten in an after-school fight near Hazelwood East High School is still "showing signs of significant cognitive impairment," her family said Monday evening. Kaylee Gain's family members also acknowledged the falsehood of their previous accusations that the teen suspect, Maurnice DeClue, "showed an utter lack of remorse" in social media posts in the hours after the fight. The post bragged about the fight, but a cursory investigation revealed that Maurnice could not have written it because she was already housed in juvenile detention. The family's latest statement came hours after a juvenile court hearing was held Monday for Maurnice, charged with first-degree assault in the fight. They said they were encouraged that those close to Maurnice said she wanted to apologize, but still insist the teen be tried as an adult in court — a decision which will be made by a judge at a May 10 hearing. Last week Missouri Attorney General Andrew Bailey launched an investigation into how the Hazelwood School District's diversity, equity and inclusion practices "contributed" to the fight, which appeared to involve a Black student beating a white student. Neither police nor the school district have said race was a factor in the fight, which happened about a quarter-mile from the school….. .

Teen accused of attacking Kaylee Gain 'wants to apologize' — as victim wakes from coma
NY Post | Yaron Steinbuch
https://nypost.com/2024/04/02/us-news/teen-accused-of-attacking-kaylee-gain-wants-to-apologize/

- The Missouri teen accused of bashing Kaylee Gain's head into the pavement in a viral after-school beatdown is prepared to apologize for the horrific attack, according to her family. The suspect, who has been identified as 15-year-old Maurnice DeClue, has been charged with assault for allegedly leaving Gain with a skull fracture and brain bleed in the March 8 attack near Hazelwood East High School in Spanish Lake. DeClue was "dismayed to hear" that Gain was in a coma for so long and "wants to apologize" to her peer, her parents, Consuela and Ronald DeClue, told KSDK in a phone call. On Monday, a lawyer for Gain's family said the teen showed "signs of significant cognitive impairment." She was repeating herself over and over after waking from the coma. She also has no recollection of the shocking brawl, attorney Bryan Kaemmerer said. Gain's family said they want DeClue charged as an adult "given the particularly violent nature of this assault, and also taking into account the devastating injuries that Kaylee has incurred," according to the news outlet….Consuela also reacted to an erroneous claim by Missouri Attorney General Andrew Bailey, who incorrectly assumed no guards were present at the school — and wrongly tried to link their absence and the fight to the school board's embrace of a diversity, equity and inclusion program.

REPOST: NewsBreak

ALTA, AARP Applaud Missouri AG on Lawsuit to Protect Homeowners
PR Newswire | American Land Title Association
https://www.prnewswire.com/news-releases/alta-aarp-applaud-missouri-ag-on-lawsuit-to-protect-homeowners-302106589.html

- The American Land Title Association (ALTA), AARP and the Missouri Land Title Association (MLTA) applaud Missouri Attorney General Andrew Bailey for his efforts to combat unfair and deceptive practices in the Missouri real estate market

OVERSIGHT

by filing a complaint against Florida-based real estate brokerage MV Realty and certain affiliates for filing unfair real estate fee agreements in property records, known as Non-Title Recorded Agreements for Personal Services (NTRAPS). This practice preys upon homeowners, offering small cash gifts in exchange for decades-long contracts for the exclusive rights to sell the property. "The property rights of American homebuyers must be protected," said ALTA Vice President of Government Affairs Elizabeth Blosser. "A home often is a consumer's largest investment, and we have to ensure there are no unreasonable restraints on a homebuyer's future ability to sell or refinance their property due to unwarranted transactional costs." "This is a great step taken by Attorney General Bailey to protect consumers and we urge the Missouri legislature to pass legislation to curb such predatory business, so that the judiciary and the legislature are aligned in protecting homeowners and their rights," said AARP Government Affairs Director Samar Jha. Attorney General Bailey is the 10th attorney general to sue MV Realty over its "Homeowner Benefit Program." Nine other attorneys general have filed lawsuits, including those in Georgia, New Jersey, Florida, Massachusetts, Ohio, Pennsylvania, North Carolina, California and Indiana. "We thank Attorney General Bailey for filing suit against MV Realty and its affiliates," said Cheryl Cowherd, President of the Missouri Land Title Association. "A home is often a consumer's most important asset, and we believe protecting them from these practices is of the utmost importance. This action puts companies using predatory business models on notice that the State of Missouri is serious about protecting its consumers."

Missouri AG leads 8-state coalition against robocall violator

KTTN/KGOZ l Staff

https://www.kttn.com/missouri-ag-leads-8-state-coalition-against-robocall-violator/#google_vignette

- To protect Missouri consumers, Missouri Attorney General Andrew Bailey and a coalition of seven other attorneys general filed a motion to ban John Caldwell Spiller II from engaging in all telephone-related services after Spiller violated permanent robocall and telemarketing bans. “As Attorney General, I will enforce the laws as written, which includes holding accountable those who blast Missourians with unwanted phone calls,” said Attorney General Bailey. “State law protects consumers from being taken advantage of by robocallers. My office will continue to work around the clock to halt this unlawful communication.” In March 2023, Attorney General Bailey obtained judgments shutting down a massive robocall operation involving Spiller and other defendants. As part of the judgment, Spiller was banned from making robocalls or engaging in telemarketing. But despite this permanent injunction, Spiller continued to harass people by making deceptive and abusive robocalls and by helping others make these calls. Spiller used aliases and falsified business records filed in various states and with the Federal Communications Commission to continue this illegal business. Further, since the attorneys general sued him and his co-defendants, Spiller has set up at least three new businesses through which he engaged in telemarketing and facilitated robocalls. The attorneys general are asking that the Court order Spiller to dissolve his existing telephone service companies and ban him from transmitting telephone calls over the U.S. telephone network, providing any VoIP services, engaging in text messaging services, and originating or facilitating ringless voicemail messages or any other electronic messages. They also ask that Spiller be ordered to pay $122,339,320 – the amount that would have otherwise been suspended if Spiller had followed the rules of the permanent injunction and the Court’s order. Since he failed to do so, he is obligated to pay the full amount. Attorney General Bailey is joined in filing this motion by the attorneys general of Arkansas, Indiana, Michigan, North Carolina, North Dakota, Ohio, and Texas. If you are receiving unwanted calls, you can fill out the form to be placed on both the federal and state No-Call List at ago.mo.gov or report violations of this list at 1-(800) 392-8222

Murthy v. Missouri Among Most Important First Amendment Cases of the Century: Jeff Landry (Note: story refers to previous Mo. AG)

Epoch Times l Melanie Sun and Jan Jekielek

https://www.theepochtimes.com/us/murthy-v-missouri-among-most-important-first-amendment-cases-of-the-century-jeff-landry-5617903

- All eyes have been on the Supreme Court, where justices have recently heard oral arguments in Murthy v. Missouri. This landmark case is about defining appropriate government powers in relation to Americans’ First Amendment rights on social media. Among those watching closely is Louisiana Gov. Jeff Landry, who, during his tenure as Louisiana’s attorney general, co-filed the initial challenge—originally named Missouri v. Biden—against the Biden administration alongside Missouri Attorney General Eric Schmitt. The case is now called Murthy v. Missouri. Mr. Landry told EpochTV’s American Thought Leaders program in a March 19 interview about the defining moment coming from the case. The former attorney general said that the outcome will determine “whether or not American citizens can express their views that may be contrary to the government’s position” without fear of the government pressuring social media platforms to take down their content. “I do believe it’s one of the most important First Amendment cases in the last 100 years,” he said….“We thought it [the internet] was free from government intervention. And what we’re finding is that the government—when it doesn’t like some of the things that you say or post when it’s contrary to what the rhetoric is that they believe in—have the ability to go in and pressure and coerce new social platforms to either take you down or put you in ‘Facebook jail,’ moderate your content, or simply just eviscerate you from that virtual public square.” This is why Mr. Landry joined Missouri v. Biden…

AMERICAN OVERSIGHT

"Sometimes the justices have a tendency to tip their hand," he explained. "Sometimes they're asking questions just to maybe vet something that was vexing them. It doesn't mean that that's the position they're taking," he said, hoping that the inquiries made into exemptions to the First Amendment will not be the future direction of the case. "I don't know. We'll see in June maybe when the court makes a decision, maybe sooner."

REPOST: Millennial Press

The Gender Machine: The Truth About Gender Clinics

Epoch Times l Jan Jekielek and Jeff Minick

https://www.theepochtimes.com/us/the-gender-machine-the-truth-about-gender-clinics-5599592?cmt=1

- In a recent episode of "American Thought Leaders," host Jan Jekielek talks with Jamie Reed, who worked as a case manager at a pediatric gender clinic. After witnessing the irreversible effect that "gender-affirming" care was having on children, she decided to speak out. She was recently instrumental in Missouri state legislation that extends the statute of limitations for those harmed by gender treatment. That fear of liability, claims Ms. Reed, was enough to close her former gender clinic. The state of Missouri passed a law to impose a four-year moratorium on any new pediatric patient starting a puberty blocker, cross-sex hormones, or having surgery. There was a grandfather clause, so anyone already on these treatments could continue….I read the affidavit you provided to the Missouri Attorney General. It's utterly shocking. You fully bought into the whole approach at one point. Please tell us how you got into this field: Ms. Reed: I've spent years in social work doing case management, working with individuals who are coming into their own, being a teen, and learning how to navigate adulthood. I was working with young adults who were HIV-positive. A lot of the individuals were trans-identified, so I became an expert in trans issues within that setting…..

"It Has Always Been About Power": Missouri AG Blasts the Biden Admin's Assault on Free Speech (Watch)

Louder With Crowder Podcast l Stephen Crowder

https://www.louderwithcrowder.com/bailey-free-speech

- Missouri Attorney General Andrew Bailey appeared on today's show to discuss the fight for free speech. Bailey filed a federal lawsuit with Louisiana in 2022, alleging the federal government colluded with social media platforms to suppress the right to freedom of speech. "I believe in the right to free speech. I believe in the Constitution. I believe that the rights codified in the Bill of Rights come from God, not man and I believe that those rights are inalienable," Bailey said. Last year, a federal judge said that the Biden administration engaged in "the most massive attack against free speech in United States history," and that the federal government has "blatantly ignored the First Amendment's right to free speech," because they believed they had a mandate "to control the process of acquiring knowledge." "The whole purpose is to protect us from the government and it's the role of the government to protect our rights. What I see from the Biden administration is the weaponization of the government to violate our rights," Bailey said. Bailey said this is not just related to free speech and that Biden has also weaponized the government to go after the Second Amendment. And that when the government has gone after the First Amendment, it has been exclusively regarding Conservative speech. "We have got to build a wall of separation between tech and the state to protect our First Amendment rights," Bailey said.

REPOST: Conservative Angle

Musk Gaining GOP Allies In Fending Off Criticism Of X And Hate Speech

First Amendment Coalition l Donal Brown

https://firstamendmentcoalition.org/2024/04/musk-gaining-gop-allies-in-fending-off-criticism-of-x-and-hate-speech/

- Missouri Attorney General Andrew Bailey is defending multi-billionaire Elon Musk and X by suing Media Matters for its investigations of hate speech on X. Bailey claims Media Matters fraudulently manipulated data to show that X placed ads for leading brands next to Nazi posts. Bailey's lawsuit seeks internal documents on its 2023 coverage of X and hate speech. It follows the move by Texas attorney general, Ken Paxton who is investigating Media Matters as a "radical anti-free speech organization." Media Matters contends that Musk is lining up Republicans to help him fight any attempts to criticize X for its extremism and hate speech content.

Missouri News:

Voters reject stadium tax for Royals and Chiefs, leaving future in KC in question

Columbia Missourian l Dave Skretta

https://www.columbiamissourian.com/sports/pro_sports/voters-reject-stadium-tax-for-royals-and-chiefs-leaving-future-in-kc-in-question/article_049d8747-9e6b-5187-b1f2-156d6b47d79a.html#tncms-source=Top%20Story

Senior property tax freeze passes in Boone County

Columbia Missourian l Paige Gerling

AMERICAN OVERSIGHT

https://www.columbiamissourian.com/news/senior-property-tax-freeze-passes-in-boone-county/article_1fc7e2fa-f073-11ee-9427-57d294dc142d.html#tncms-source=Top%20Story

Missouri Supreme Court denies marijuana company's appeal of denied license
Missouri Independent l Jason Hancock
https://missouriindependent.com/briefs/missouri-supreme-court-denies-marijuana-companys-appeal-of-denied-license/

Missouri Senate Considers Bill To Block Red Flag Gun Laws
Missourinet l Anthony Morabith
https://www.missourinet.com/2024/04/02/missouri-senate-considers-bill-to-block-red-flag-gun-laws/

A bill from Branson Rep. Brian Seitz would stop MO from investing with foreign adversaries
Springfield News-Leader l Kelly Dereuck
https://www.news-leader.com/story/news/politics/2024/04/03/bill-to-divest-from-foreign-adversaries-advances-missouri-house/73180285007/

Parkville Republican Talks Legislation That Penalizes Killing A Police Animal and Celebratory Gunfire (LISTEN)
Missourinet l Cameron Connor
https://www.missourinet.com/2024/04/03/parkville-republican-talks-legislation-that-penalizes-killing-a-police-animal-and-celebratory-gunfire-listen/

Missouri Representatives debate $50B state spending plan
FOX 2 STL l Emily Manley
https://fox2now.com/news/missouri/missouri-representatives-debate-50b-state-spending-plan/

Man sentenced for supplying fentanyl that killed 19-year-old
FOX 2 STL l Kevin S. Held and Joey Schneider
https://fox2now.com/news/missouri/man-sentenced-for-supplying-fentanyl-that-killed-19-year-old/

Schmitt and Hawley Defend Oppostion to Government Earmarks
Missourinet l Marshall Griffin
https://www.missourinet.com/2024/04/03/schmitt-and-hawley-defend-opposition-to-government-earmarks/

Chiefs WR Rashee Rice admits involvement in Dallas crash, TMZ reports
FOX 4 KC l Brian Dulle
https://fox4kc.com/news/chiefs-wr-rashee-rice-admits-involvement-in-dallas-crash-tmz-reports/

The end of the world as we know it? Myths about the solar eclipse
Newsnation l Steph Whiteside
https://www.newsnationnow.com/space/myths-solar-eclipse/

National News:

Strongest earthquake in 25 years rocks Taiwan, killing 9 people
AP l Christopher Bodeen and Johnson Lai
https://apnews.com/article/taiwan-earthquake-tsunami-f086aac0c3082036d1ca77c01828fb28

Wisconsin voters approve measures that will change the way elections are run in the battleground state
USA Today l Karissa Waddick
https://www.usatoday.com/story/news/politics/elections/2024/04/02/wisconsin-amendment-election-funding-administration/73168555007/?tbref=hp

Chinese nationals illegally entering U.S .in record numbers since 2021
The Center Square l Bethany Blankley
https://www.thecentersquare.com/national/article_f75b6a94-f11c-11ee-bd59-d36854b913d1.html

AMERICAN OVERSIGHT

Report of 919 gotaways in one day highlights ongoing border security crisis
Blaze Media l Alex Nitzberg

https://www.theblaze.com/news/919-reported-known-gotaways-one-day

Democrat Judge Exempts NRA Members From New Gun Rule
Newsweek | Maura Zurick
https://www.newsweek.com/democrat-judge-exempts-nra-members-new-gun-rule-1886261#:~:text=A%20Democratic%2Dappointed%20judge%20recently,as%20the%20appeals%20process%20continues.

Texas university clears DEI offices, fires employees in light of new state law: report
FOX | Joshua Q. Nelson
https://www.foxnews.com/media/texas-university-clears-dei-offices-fires-employees-light-new-state-law-report

Washington parents denied foster care license sue state over gender ideology
The Center Square | Carleen Johnson
https://www.thecentersquare.com/washington/article_67cba228-f11b-11ee-80ea-77aa39262123.html

Wisconsin governor vetoes transgender student-athlete bill
Jurist | Cooper Feiner
https://www.jurist.org/news/2024/04/wisconsin-governor-vetoes-transgender-student-athlete-bill/

Ohio attorney general concedes state abortion ban unconstitutional after recent referendum enshrining abortion access
Jurist | Caitlin Williams
https://www.jurist.org/news/2024/04/ohio-attorney-general-concedes-that-state-abortion-ban-is-unconstitutional-following-recent-abortion-referendum/

Supreme Court Won't Hear Whistleblower Complaint About Alleged IRS Misconduct
Epoch Times | Matthew Vadum
https://www.theepochtimes.com/us/supreme-court-wont-hear-whistleblower-complaint-about-alleged-irs-misconduct-5619934

Federal Judge Strikes Down Biden's Greenhouse Gas Emissions Rule
Epoch Times | Tom Ozimek
https://www.theepochtimes.com/us/federal-judge-strikes-down-bidens-greenhouse-gas-emissions-rule-5620222

GOP state AGs press Supreme Court to take up Hawaii climate change case they say is 'grave threat'
FOX | Brianna Herlihy
https://www.foxnews.com/politics/gop-state-ags-press-supreme-court-take-up-hawaii-climate-change-case-they-say-grave-threat

What electric vehicle shoppers want isn't what's for sale, and it's hurting sales: poll
USA Today | Medora Lee
https://www.usatoday.com/story/money/cars/2024/04/03/electric-car-ev-sales-slump-consumer-gap/73181707007/?tbref=hp

Docs Show Corporate Giants Are 'Colluding To Demonetize Conservative Platforms,' Judiciary Committee Says
Daily Wire | Luke Rosiak
https://www.dailywire.com/news/docs-show-corporate-giants-are-colluding-to-demonetize-conservative-platforms-judiciary-committee-says

Meta Allowed Netflix Access to Facebook Users' Private Messages, Court Documents Claim
Epoch Times | Katabella Roberts
https://www.theepochtimes.com/us/meta-allowed-netflix-access-to-facebook-users-private-messages-court-documents-claim-5620777

Thanks for reading and have a great day!

Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101

AMERICAN OVERSIGHT

(573) 751-8355 https://www.dailysignal.com/2024/02/22/exclusive-missouri-ag-orders-school-district-to-end-race-based-hiring/?utm_source=TDS_Email&utm_medium=email&utm_campaign=MorningBell&mkt_tok=ODI0LU1IVC0zMDQAAAGRdKhZkMfR-jZwUHcWMyo-zurcMV-673p3MBJiPPgKmsPkTtihkROFtBdJXYBZu6O_-xQQIRm1mIBfHkukWy_oLTKy6hiYLdj4o-FFNOLa1iEvfAWYqQ
Branden.Rathert@ago.mo.gov

AMERICAN OVERSIGHT

To: McCuien, Grace[Grace.McCuien@ago.mo.gov]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Sun 1/7/2024 5:38:10 PM (UTC-06:00)
Subject: FW: Dec 12. Media Matters and X space

Call me about these.

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

From: McCuien, Grace <Grace.McCuien@ago.mo.gov>
Sent: Friday, January 5, 2024 9:42 AM
To: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Subject: Dec 12. Media Matters and X space

Media Matters Interviews Dec. 12

Attorney General Bailey takes interviews with the press following the announcement of his office's investigations into Media Matters for fraudulent and misleading business practices.

X Space Dec. 12

Attorney General Bailey joins an X space talking about free speech and government censorship on social media. The X space was also joined by Tucker Carlson, Elon Musk and other proponents of free speech.

AMERICAN OVERSIGHT



AMERICAN OVERSIGHT



AMERICAN OVERSIGHT



AMERICAN OVERSIGHT



AMERICAN OVERSIGHT



AMERICAN OVERSIGHT



AMERICAN OVERSIGHT



AMERICAN OVERSIGHT

DRAFT DO NOT PUBLISH

Podcast

The Concept

Provide Missouri taxpayers with a weekly 10 minute podcast to keep them informed on impactful and news-worthy cases, litigation, etc. that comes from the Missouri Attorney General's Office.

Basic Outline

Initially, we'll start with a 10 minute time frame.

5-6 minutes with Andrew Bailey

3-4 minutes with someone else from the office with an interesting case or story to discuss

1-2 minutes of something less impactful but still of interest to Missourians. Maybe something a little 'lighter'

I would suggest these as loose guidelines…not set in stone…. especially when we first launch

Sample Topics

I think this will be easy as there is impactful news on a regular basis coming out of our office. However I would also suggest coming up with at least 20 topics that would carry us out for a few months. If we were doing a podcast this week, I would suggest the topic could have been the Daniel Riley case that's unfolding in St. Louis and how that ties in to the entire Kim Gardner story.

Other topics:

Mo. V. Biden.

- What kind of prep work goes into arguing this case at SCOTUS?
- How do you prep for ANY SCOTUS case?

How does the AGO decide which cases/issues to pursue

Why is Planned Parenthood a legal issue for the office and not a 'social partisan' issue

Why are transgender cases legal issues and not 'social partisan issues'

AMERICAN OVERSIGHT

- Some labeled this as “basing this case on a “non-existent” person. What does Mo. law say regarding this Project Veritas video and that it was an “imaginary” person

AGO is the ‘law firm’ for the state. What does that mean

Top Consumer Complaints

How does the Consumer Protection Section help Missourians

Why is the AGO involved in ESG issues

The importance and impact of SAKI

How can the application of quo warranto be beneficial to Missourians

Why is the Media Matters Case important

You had a chance to chat with Elon Musk re: Media Matters…what struck you most about him

Lake City Plant issue and….how cool is that plant?!?!?!

During your time as Warren County Prosecutor you worked under Kelly King. Now she works under you. What is that dynamic like

Get to know the AGO

- Why did you join the military
- Scariest moment in your 2 tours
- What were you awarded medals for
- Biggest takeaway from serving
- How has that experience shaped you professionally and personally
- Tell us about the moment you decided to become a foster parent
- How did you end up becoming AG
- Why did you choose law as a profession

Lindbergh, Parkway, Webster Groves….how exactly are they discriminating against Missouri students

Sunshine Laws….why should the public care about Sunshine laws

Roles of whistleblowers in our legal society

What about when you inherit a case from a predecessor

The work involved in coordinating with other states

<u>What We’ll Need</u>

I would suggest at least 3 microphones

AMERICAN OVERSIGHT

3 pairs of headphones

Mixer

Editing program (could actually be done through the podcast host, or Grace I think has one?)

A produced intro :15-:30 seconds in length

Outro music

We'll need a title. It would seem reasonable that we can't use 'BAILEY' in any title.

Some idea starters….

Show Me Law

Missouri Matters: Inside the AG Files

On the Record With AG Bailey

Something tied to a legal term….

Res Judicata Radio

Salus Populi

In the MO AG's Briefs

The MO AG Chronicles

The Chronicles of the MO AG

Time. We will need some of your time every week! Or, we can record more than 1 at a time to accommodate scheduling ''''''''''for various office personnel

Podcasting Host

We'll want to make sure it's uploaded at AGO website

A podcast hosting platform, site, or service stores (and in some cases, distributes) audio content to listeners. They work by creating an RSS feed for your podcast, which is a public URL that listening platforms use to gather show and episode details.

All hosting sites provide RSS feeds, but not all distribute them to listening platforms. If your host or hosting plan doesn't offer podcast distribution, you can do that manually. Submitting your podcast to major listening platforms such as Apple Podcasts and Spotify ensures you're making the show available to listeners, regardless of which platform they use to tune in.

AMERICAN OVERSIGHT

Free podcast hosting exists, but you will likely give up a few important things—like unlimited podcast publishing and the ability to monetize your show.

Frankly, unless you only plan to publish a few episodes and have no intention of trying to generate revenue, you'll want to pay for hosting. Paid services typically give deep audience insights and data, sufficient audio storage, monetization via podcast advertising, and distribution to major listening platforms.

That said, it's fairly easy to switch hosting platforms. So if you want to do a trial run with a free hosting platform and then move to a paid platform when things get serious, you can—just check your host's requirements for transferring shows first.

Weird question

What are you nerding out about

Recipe

Adam Laroche podcast re AHT

AMERICAN OVERSIGHT

To: McCuien, Grace[Grace.McCuien@ago.mo.gov]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Fri 4/5/2024 11:08:59 AM (UTC-05:00)
Subject: Fwd: Podcast Info
Mo. AG podcast groundwork.docx

FYI

Sent from my iPhone

Begin forwarded message:

From: "Rathert, Branden" <Branden.Rathert@ago.mo.gov>
Date: April 5, 2024 at 11:08:01 AM CDT
To: "Sieren, Madeline" <Madeline.Sieren@ago.mo.gov>
Subject: Podcast Info

Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355
Branden.Rathert@ago.mo.gov

AMERICAN OVERSIGHT

DRAFT DO NOT PUBLISH

Podcast

The Concept

Provide Missouri taxpayers with a weekly 10 minute podcast to keep them informed on impactful and news-worthy cases, litigation, etc. that comes from the Missouri Attorney General's Office.

Basic Outline

Initially, we'll start with a 10 minute time frame.

5-6 minutes with Andrew Bailey

3-4 minutes with someone else from the office with an interesting case or story to discuss

1-2 minutes of something less impactful but still of interest to Missourians. Maybe something a little 'lighter'

I would suggest these as loose guidelines…not set in stone…. especially when we first launch

Sample Topics

I think this will be easy as there is impactful news on a regular basis coming out of our office. However I would also suggest coming up with at least 20 topics that would carry us out for a few months. If we were doing a podcast this week, I would suggest the topic could have been the Daniel Riley case that's unfolding in St. Louis and how that ties in to the entire Kim Gardner story.

Other topics:

Mo. V. Biden.

- What kind of prep work goes into arguing this case at SCOTUS?
- How do you prep for ANY SCOTUS case?

How does the AGO decide which cases/issues to pursue

Why is Planned Parenthood a legal issue for the office and not a 'social partisan' issue

Why are transgender cases legal issues and not 'social partisan issues'

AMERICAN OVERSIGHT

- Some labeled this as “basing this case on a “non-existent” person. What does Mo. law say regarding this Project Veritas video and that it was an “imaginary” person

AGO is the ‘law firm’ for the state. What does that mean

Top Consumer Complaints

How does the Consumer Protection Section help Missourians

Why is the AGO involved in ESG issues

The importance and impact of SAKI

How can the application of quo warranto be beneficial to Missourians

Why is the Media Matters Case important

You had a chance to chat with Elon Musk re: Media Matters…what struck you most about him

Lake City Plant issue and….how cool is that plant?!?!?!

During your time as Warren County Prosecutor you worked under Kelly King. Now she works under you. What is that dynamic like

Get to know the AGO

- Why did you join the military
- Scariest moment in your 2 tours
- What were you awarded medals for
- Biggest takeaway from serving
- How has that experience shaped you professionally and personally
- Tell us about the moment you decided to become a foster parent
- How did you end up becoming AG
- Why did you choose law as a profession

Lindbergh, Parkway, Webster Groves….how exactly are they discriminating against Missouri students

Sunshine Laws….why should the public care about Sunshine laws

Roles of whistleblowers in our legal society

What about when you inherit a case from a predecessor

The work involved in coordinating with other states

<u>What We’ll Need</u>

I would suggest at least 3 microphones

AMERICAN OVERSIGHT

3 pairs of headphones

Mixer

Editing program (could actually be done through the podcast host, or Grace I think has one?)

A produced intro :15-:30 seconds in length

Outro music

We'll need a title. It would seem reasonable that we can't use 'BAILEY' in any title.

Some idea starters….

Show Me Law

Missouri Matters: Inside the AG Files

On the Record With AG Bailey

Something tied to a legal term….

Res Judicata Radio

Salus Populi

In the MO AG's Briefs

The MO AG Chronicles

The Chronicles of the MO AG

Time. We will need some of your time every week! Or, we can record more than 1 at a time to accommodate scheduling ''''''''''for various office personnel

Podcasting Host

We'll want to make sure it's uploaded at AGO website

A podcast hosting platform, site, or service stores (and in some cases, distributes) audio content to listeners. They work by creating an RSS feed for your podcast, which is a public URL that listening platforms use to gather show and episode details.

All hosting sites provide RSS feeds, but not all distribute them to listening platforms. If your host or hosting plan doesn't offer podcast distribution, you can do that manually. Submitting your podcast to major listening platforms such as Apple Podcasts and Spotify ensures you're making the show available to listeners, regardless of which platform they use to tune in.

AMERICAN OVERSIGHT

Free podcast hosting exists, but you will likely give up a few important things—like unlimited podcast publishing and the ability to monetize your show.

Frankly, unless you only plan to publish a few episodes and have no intention of trying to generate revenue, you'll want to pay for hosting. Paid services typically give deep audience insights and data, sufficient audio storage, monetization via podcast advertising, and distribution to major listening platforms.

That said, it's fairly easy to switch hosting platforms. So if you want to do a trial run with a free hosting platform and then move to a paid platform when things get serious, you can—just check your host's requirements for transferring shows first.

Weird question

What are you nerding out about

Recipe

Adam Laroche podcast re AHT

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: Rathert, Branden[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6862523A4FCB4692B7523E7B2723AB70-RATHERT, BRANDEN]
Sent: Fri 4/5/2024 11:08:01 AM (UTC-05:00)
Subject: Podcast Info
Mo. AG podcast groundwork.docx

Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355
Branden.Rathert@ago.mo.gov

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Goodwin, Gregory[Gregory.Goodwin@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; Hammond, Wyatt[Wyatt.Hammond@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Lewis, Jason[Jason.Lewis@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Woodard, Winderlyn[winderlyn.woodard@ago.mo.gov]
From: Rathert, Branden[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6862523A4FCB4692B7523E7B2723AB70-RATHERT, BRANDEN]
Sent: Tue 4/9/2024 9:15:44 AM (UTC-05:00)
Subject: Daily News/Media Roundup - Tuesday April 9th, 2024

Good morning all,

Below is the relevant news relating to the AGO, Missouri, and Nation for today:

AGO News:

7 more states sue to block Biden's student loan handout plan as lawsuits pile up
FOX Business | Anders Hagstrom
https://www.foxbusiness.com/politics/7-more-states-sue-block-bidens-student-loan-handout-plan-lawsuits-pile

- President Biden's administration faces yet another lawsuit as a growing number of states seek to block his student loan handout plan, with Missouri and six other states filing a complaint on Tuesday. Missouri Attorney General Andrew Bailey's lawsuit argues that Biden's "SAVE" plan, announced in February, is illegal and would cost American taxpayers $475 billion. Bailey's lawsuit comes just weeks after Kansas and 10 other states sued the Biden administration over the same plan. "With the stroke of his pen, Joe Biden is attempting to saddle working Missourians with a half trillion dollars in debt. The United States Constitution makes clear that the President lacks the authority to unilaterally 'cancel' student loan debt for millions of Americans without express permission from Congress," Bailey told Fox News Digital. "The President does not get to thwart the Constitution when it suits his political agenda. I'm filing suit to halt his embarrassing attempt to buy the 2024 election in direct violation of the law. The Constitution will continue to mean something as long as I'm Attorney General." Joining Bailey in the lawsuit are the attorneys general of Arkansas, Florida, Georgia, Ohio, Oklahoma and North Dakota. Missouri and Arkansas both participated in the lawsuit that ultimately brought an end to Biden's previous student loan plan last year. The Supreme Court decided 6-3 that Biden's plan was unconstitutional. "President Biden has already lost on this question once, and he is refusing to follow the law. The Supreme Court could not have been clearer: President Biden cannot unilaterally cancel student debt and force taxpayers to bear the multi-billion-dollar cost," Arkansas AG Tim Griffin told Fox News Digital. The lawsuit argues that Biden's SAVE plan is part of "a long but troubling pattern of the President relying on innocuous language from decades-old statutes to impose drastic, costly policy changes on the American people without their consent." The White House did not immediately respond to a request for comment from Fox News Digital, but the Biden administration previously defended the SAVE program against the lawsuit led by Kansas. "The Department does not comment on pending litigation. However, Congress gave the U.S. Department of Education the authority to define the terms of income-driven repayment plans in 1993, and the SAVE plan is the fourth time the Department has used that authority," an Education Department spokesperson said at the time. "The Biden-Harris Administration won't stop fighting to provide support and relief to borrowers across the country – no matter how many times Republican elected officials try to stop us." Tuesday's lawsuit lands just one day after Biden announced yet another plan to cancel student loan debt. This latest one focuses on cutting loans that have exceeded their principal amount due to interest. It would cut up to $20,000 in accrued interest for borrowers, but borrowers who make less than $120,000 or couples who make less than $240,000 would be allowed to cut all of their accrued interest beyond the principal amount. The result would see roughly 23 million Americans having their loans cut down to the principal amount. While Bailey has no legal action to announce regarding the interest cut, he said his office is monitoring it. "We beat his unlawful student loan plan in court last summer, so he quickly rolled out Plan B. Now that we're challenging that, he's panicked and is rolling out a Plan C. We will continue to watch him closely and take action whenever he's overstepped his authority," Bailey told Fox.

Missouri AG calls Biden's latest student loan plan 'illegal'
St. Louis Record | Kyla Asbury
https://stlrecord.com/stories/657548818-missouri-ag-calls-biden-s-latest-student-loan-plan-illegal

AMERICAN OVERSIGHT

- Missouri Attorney General Andrew Bailey announced his participation in a lawsuit against President Joe Biden for his most recent loan "cancelation" plan. Bailey joined the effort initially begun by Kansas as part of a multi-state effort. He is filing his own effort regarding the loan "cancelation" plan. “I’m extremely pleased to see Kansas is leading a multi-state coalition in challenging President Biden’s latest attempt to unlawfully transfer hundreds of thousands of dollars in Ivy League debt onto working Missouri families," Bailey said in a news release. "I’m pleased to share that my office is also leading a multi-state coalition and will be filing suit in Missouri in the coming days." Bailey said he believes the two coalitions will bring the matter before a judge quickly. "Between our two coalitions of states, we will get this matter in front of a judge even more quickly to deliver a win for the American people," Bailey said. "The Supreme Court sided with Missouri on this matter the first time. I look forward to bringing home yet another win for the Constitution and the rule of law." Bailey wants to challenge what he deemed an illegal attempt to shift Ivy League debt onto Missouri families. Arkansas Attorney General Tim Griffin, who was part of the original coalition that sued the Biden administration over a previous debt-cancellation plan, echoed Bailey's sentiments. "Arkansas was part of the original coalition that sued the Biden administration over its first unlawful debt-cancellation plan," Griffin said. "President Biden has already lost on this question once, and he is refusing to follow the law. The Supreme Court could not have been clearer: President Biden cannot unilaterally cancel student debt and force taxpayers to bear the multi-billion-dollar cost." Griffin criticized Biden for what he sees as a refusal to follow the law, highlighting the Supreme Court's stance from the previous decision by the Supreme Court of the United States. The Supreme Court had ruled in favor of Bailey's previous challenge to the Biden Administration's student loan plan, deeming it unconstitutional in a 6-3 decision. The court cited the plan's significant impact on the federal budget, exceeding $430 billion, without explicit approval from Congress. Central to the Supreme Court's decision was the recognition that Missouri's student loan servicing company, MOHELA, operates as an arm of the state government. This acknowledgment granted states the standing to challenge the student loan plan. Bailey expressed optimism about securing another legal victory for the Constitution and the rule of law, building on the Court's previous ruling in Missouri's favor. In the previous decision by the United States Supreme Court, the court ruled 6-3 in favor of Bailey's challenge against the Biden Administration's unilateral student loan debt repayment plan. The court found the plan, which aimed to transfer hundreds of billions of dollars in debt, unconstitutional due to its massive impact on the federal budget without explicit Congressional approval. Bailey said the previous decision prevented an abuse of power that would burden working Americans. The Attorney General's Office did not respond to requests for comment.

Biden to push student loan boundaries to connect with younger voters
Conservative News Daily l Haisten Willis
https://www.conservativenewsdaily.net/breaking-news/biden-will-again-test-the-limits-of-student-loans-to-reach-younger-voters/

- President Joe Biden is set to introduce a new plan for mass student loan forgiveness, igniting a political showdown with Republicans as he courts younger voters for the 2024 election. It will be Biden’s second attempt, following legal challenges to his previous initiatives. The upcoming proposal, expected to be more focused, aims to address specific borrower groups. President Joe Biden is poised to unveil a fresh initiative for widespread student loan forgiveness, sparking a political clash with Republicans while appealing to younger voters ahead of the 2024 election. This marks Biden’s second endeavor after facing legal obstacles with earlier efforts. The new proposal is anticipated to target specific borrower demographics. President Joe Biden is expected to announce a new attempt at mass student loan forgiveness, setting up another battle with Republicans as he looks to woo younger voters in the 2024 election. It will be his second, and in some respects his third, try to make good on a 2020 campaign promise to cancel student loans, with high political and financial stakes. “From day one of my administration, I promised to fix broken student loan programs and make sure higher education is a ticket to the middle class, not a barrier to opportunity,” Biden said on March 21. “I won’t back down from using every tool at my disposal to deliver student debt relief to more Americans and build an economy from the middle out and bottom up.” The range and power of those tools will be fiercely debated between now and Election Day. Biden’s original student loans plan would have written off up to $20,000 in debt per borrower but was ruled illegal by the Supreme Court. He’s since announced another $144 billion in cancellation and a plan to lower future repayments, which is now also

AMERICAN OVERSIGHT

the subject of lawsuits. Whatever Biden rolls out this time will probably wind up in court as well. “We beat Joe Biden’s unlawful student loan plan in court last summer, so he quickly rolled out Plan B,” Missouri Attorney General Andrew Bailey said in a statement to the Washington Examiner. “Now that we’re challenging that, he’s panicked and is rolling out a Plan C. We will continue to watch the federal government closely and take action whenever they’ve overstepped their authority.”…. Opponents point out that “forgiven” loans do not disappear but instead fall on the backs of taxpayers. The Penn Wharton Budget Model estimated that Biden’s Saving on a Valuable Education Plan alone could add $475 billion to the national debt over 10 years.

REPOST: Total News

Biden Will Again Test The Limits of Student Loans to Reach Younger Voters

George Magazine l Repost from Washington Examiner

https://georgemagazine.com/biden-will-again-test-the-limits-of-student-loans-to-reach-younger-voters/

- President Joe Biden is expected to announce a new attempt at mass student loan forgiveness, setting up another battle with Republicans as he looks to woo younger voters in the 2024 election. It will be his second, and in some respects his third, try to make good on a 2020 campaign promise to cancel student loans, with high political and financial stakes. “From day one of my administration, I promised to fix broken student loan programs and make sure higher education is a ticket to the middle class, not a barrier to opportunity,” Biden said on March 21. “I won’t back down from using every tool at my disposal to deliver student debt relief to more Americans and build an economy from the middle out and bottom up.” The range and power of those tools will be fiercely debated between now and Election Day. Biden’s original student loans plan would have written off up to $20,000 in debt per borrower but was ruled illegal by the Supreme Court. He’s since announced another $144 billion in cancellation and a plan to lower future repayments, which is now also the subject of lawsuits. Whatever Biden rolls out this time will probably wind up in court as well… “We beat Joe Biden’s unlawful student loan plan in court last summer, so he quickly rolled out Plan B,” Missouri Attorney General Andrew Bailey said in a statement to the Washington Examiner. “Now that we’re challenging that, he’s panicked and is rolling out a Plan C. We will continue to watch the federal government closely and take action whenever they’ve overstepped their authority.”… Opponents point out that “forgiven” loans do not disappear but instead fall on the backs of taxpayers. The Penn Wharton Budget Model estimated that Biden’s Saving on a Valuable Education Plan alone could add $475 billion to the national debt over 10 years.

Missouri to reduce risk of suffering if man requires surgical procedure at execution

FOX 2 STL via AP l Jim Salter

https://fox2now.com/news/missouri/missouri-to-reduce-risk-of-suffering-if-man-requires-surgical-procedure-at-execution/

- The Missouri Department of Corrections is taking measures to reduce Brian Dorsey 's risk of suffering during his execution scheduled for Tuesday, according to a settlement reached between the state and Dorsey’s attorneys. The settlement filed Saturday ends a federal lawsuit that said Dorsey could face tremendous pain if required to undergo what's known as a cutdown procedure to find a suitable vein for injection of the lethal dose of pentobarbital. Dorsey, 52, is awaiting execution for killing his cousin and her husband in 2006. Dorsey is described as obese, has diabetes and is a former intravenous drug user — all factors that could make it more difficult to find a vein for injection, his lawyers have said. A cutdown procedure involves an incision that could be several inches wide, then the use of forceps to pull apart tissue to get to a vein. Missouri's execution protocol includes no provision for anesthetics. Attorneys for Dorsey had argued that without a local anesthetic, Dorsey could be in so much pain that it would impede his right to religious freedom in his final moments by preventing him from having meaningful interaction with his spiritual adviser, including the administration of last rites. The settlement doesn't spell out the specific changes agreed to by the state, or if anesthetics would be used if a cutdown procedure is necessary. Messages were left Monday with the corrections department and the Missouri Attorney General's Office.

REPOST: KOMU, KESQ SFGate, FOX 59, MedPage Today, U.S. News & World Report, KSDK, KBIA, Washington Times, WFMZ, WOKV, The Hill, WFTV, Jefferson City News Tribune, MSN, Star Tribune, Yahoo, Newsday, WSIL,WTVA, Joplin Globe, KRCG, Bowling Green Daily News, Daily News Record, Daily Mail Online, The Independent, Northern Virginia Daily, Ottumwa Courier, The Canadian Press, AM 970 The Answer, Imperial Valley Press, Think Business Today,

Governor denies 70 prison staffers’ pleas to halt Brian Dorsey execution

Washington Post l Ben Brasch

Could crackdown on free speech in Brazil be U.S.’s future? Is Elon Musk our Tiananmen Square ‘Tank Man’?

The Heartlander l Michael Ryan

https://heartlandernews.com/2024/04/08/could-crackdown-on-free-speech-in-brazil-be-u-s-s-future-is-elon-musk-our-tiananmen-square-tank-man/

- Brazil is “on the brink” of shutting down free speech online – but may only be further down the same path President Biden is blazing in the U.S. Leading free speech activist Michael Shellenberger reported this weekend that a Brazilian Supreme

AMERICAN OVERSIGHT

Court justice had ordered a crackdown on posts and accounts on X/Twitter there. Justice Alexandre de Moraes, says Shellenberger, "illegally demanded that Twitter reveal private information about Twitter users who used hashtags he considered inappropriate. He demanded access to Twitter's internal data, violating the platform's policy. He censored, on his own initiative and without any respect for due process, posts on Twitter by parliamentarians from the Brazilian Congress. And Moraes tried to turn Twitter's content moderation policies into a weapon against supporters of then-president Jair Bolsonaro." Shellenberger claims "Google, Facebook, Uber, WhatsApp and Instagram" went along with the free speech crackdown, which "betrayed the people of Brazil. If such evidence is proven, the executives of these companies behaved like cowards: they provided the Brazilian government with personal registration data and telephone numbers without a court order and, therefore, [violated] the law." When X/Twitter owner Elon Musk openly defied the Brazilian judge and refused to hand over "private user information, including direct messages, the government attempted to sue Twitter's top Brazilian lawyer," Shellenberger reports. Shellenberger says the judge, Supreme Court Justice Alexandre de Moraes, subsequently opened a criminal investigation into Musk "for allegedly spreading disinformation, obstructing justice, and allowing people who De Moraes had banned from social media to freely express their views. De Moraes said he would fine X twenty thousand dollars per day for every banned person Musk allows to speak." "It is not an exaggeration to say that Brazil is on the brink of dictatorship at the hands of a totalitarian Supreme Court Justice named Alexandre de Moraes," Shellenberger argues. For his part, Musk writes that "we will probably lose all revenue in Brazil and have to shut down our office there. But principles matter more than profit." The question for Americans is whether they are immune from such government overreach….Missouri Attorney General Andrew Bailey, and his predecessor Eric Schmitt who filed the case alongside the Louisiana AG, maintain they have already shown a "vast censorship enterprise" by the Biden administration. If true, is it so different from Brazil's? "Brazil's present is our future if Democrats achieve their dream of packing the Supreme Court," warns tech entrepreneur David Sacks. Says Shellenberger: "The events of the last few weeks make clear that Elon Musk is the only thing standing in the way of global totalitarianism. Without free speech, there can be no democracy. "The fact that the future of free speech rests upon the shoulders of a single individual is not something any of us should want." Elon Musk, it appears, has become the free speech equivalent of Tiananmen Square's "Tank Man" – the lone civilian figure courageous enough to stand in front of government tyranny.

Access to abortion pills for South Dakotans could hinge on Supreme Court case

Siouxland Proud l Staff

https://www.siouxlandproud.com/news/south-dakota-news/access-to-abortion-pills-for-south-dakotans-could-hinge-on-supreme-court-case/

- The U.S. Supreme Court is weighing a case involving medication abortion that could change the way some South Dakota women access abortion services by crossing the border into neighboring states. Watching closely is South Dakota Attorney General Marty Jackley, who has joined other state AGs in saying that relaxed federal regulation of abortion pills makes it tougher for states to enforce their own laws. The Supreme Court's first abortion-related case since overturning Roe v. Wade in 2022 involves the Food and Drug Administration's oversight of mifepristone, the primary drug used for medication abortions….Jackley and South Dakota Gov. Kristi Noem have been outspoken about safety concerns with medication abortion. They point out that, if something goes wrong, such as excess bleeding or infection, there won't be emergency medical care available if a woman is taking the pills at home. Criminal charges against the person who helped procure the pills could be "much more serious" than a Class 6 felony if a woman suffers harm from taking the medication to end a pregnancy, Jackley said. He joined 19 other attorneys general in signing a letter last year from Missouri Attorney General Andrew Bailey that raised the possibility of coerced abortions occurring with less oversight. The letter also cited a 2015 study that found medication abortions were "5.96 times as likely to result in a complication as first-trimester aspiration abortions."

REPOST: Dickinson Press, Worthington Daily Globe, Jamestown Sun, Mitchell Daily Republic, KXLG, Sioux Falls Live, KELO,

Attorney General Bailey Warns of Baseball Ticket Scams as Season Begins

HTDS Content Services l Staff

https://www.htsyndication.com/us-fed-news/article/attorney-general-bailey-warns-of-baseball-ticket-scams-as-season-begins/1004741449

- Today, Missouri Attorney General Andrew Bailey issued guidance to Missouri baseball fans for avoiding ticket scams as the 2024 baseball season begins. "Now that the Kansas City Royals and St. Louis Cardinals have opened their seasons, I want to educate Missourians on potential ticket scams," said Attorney General Bailey. "With ticket sales rising as our Missouri baseball teams begin their regular season, the Attorney General's Office wants to ensure that consumers have the right tools at their disposal. We will pursue anyone who attempts to rip off Missourians' hard-earned dollars." Attorney General Bailey provides the following tips to be vigilant when buying tickets to baseball games:
- KNOW YOUR VENDOR – Make sure you are buying your tickets from a trustworthy website, especially before you provide any personal financial information.
- DO YOUR RESEARCH – If you are unfamiliar with a particular ticket seller, research the seller on the Attorney General's or

AMERICAN OVERSIGHT

Better Business Bureau's website for any complaints.

- USE A CREDIT CARD – If you purchase tickets online, especially through an online auction site, it is recommended that you complete your transaction with a credit card. Purchasing tickets with a credit card often provides you with protections that you would not otherwise have if you purchase the tickets using cash, check, debit card, or apps like Cash App or Venmo.
- SHOP ON SECURED SITES – Always double check your URL before purchasing tickets online. If a website's address begins with "https", the "s" will not appear in the web address until you access the order page of the site, where you will be asked to enter your personal information. Secure websites should also display a closed lock graphic in the browser, generally located to the left of the URL in the address bar.
- INSPECT YOUR TICKETS – Physically inspect your tickets to reduce your risk of being turned away at the venue. Check the date, time and location listed on the tickets to ensure that this information matches the accurate event details. Also review the listed seating assignments.
- REMEMBER – If it sounds too good to be true, it probably is.
- "I encourage any Missouri baseball fan with complaints regarding a potential ticket scam to contact the Missouri Attorney General's Consumer Complaint Hotline at 800-392-8222 or ago.mo.gov," said Attorney General Bailey. "Let's all take steps to protect ourselves as we watch our baseball teams dominate this season." ...

Missouri News:

Missouri governor denies clemency for man scheduled for execution on Tuesday
AP l Jim Salter
https://apnews.com/article/missouri-execution-brian-dorsey-0ed06e1b5ce4d7d8b45088b0b7c86cb3

Kansas City, Missouri police officer shot during traffic stop, expected to recover
KMBC l Michael Gant
https://www.kmbc.com/article/kcpd-officer-shot-during-traffic-stop/60439281

Senate committee hears omnibus crime bill
Columbia Missourian l Quinn S. Coffman
https://www.columbiamissourian.com/news/state_news/senate-committee-hears-omnibus-crime-bill/article_9afcc226-f5df-11ee-b82e-87885819ea37.html#tncms-source=Top%20Story

Legislative Pitch to Help Missouri Hazing Victims in Critical Moments of Need
Missourinet l Alisa Nelson
https://www.missourinet.com/2024/04/09/legislative-pitch-to-help-missouri-hazing-victims-in-critical-moments-of-need/

State warns social-equity marijuana licenses applicants of 'predatory practices'
Missouri Independent l Rebecca Rivas
https://missouriindependent.com/2024/04/08/state-warns-social-equity-marijuana-licenses-applicants-of-predatory-practices/

Brown & Crouppen co-founder's son sues firm over claims of unpaid profits
St. Louis Post-Dispatch l Katie Kull
https://www.stltoday.com/news/local/crime-courts/brown-crouppen-co-founders-son-sues-firm-over-claims-of-unpaid-profits/article_df2b701c-f5c8-11ee-870e-173c6952acb6.html#tracking-source=home-top-story

Judge rules St. Charles County political dispute should play out in public
St. Louis Post-Dispatch l Jack Suntrup
https://www.stltoday.com/news/local/government-politics/judge-rules-st-charles-county-political-dispute-should-play-out-in-public/article_27169336-f5fe-11ee-b30f-3776739fea77.html

Immigration reform can't pass Congress. Here's how that's hurting Kansas, Missouri farmers.
YAHOO via KC Star l Daniel Desrochers
https://www.aol.com/immigration-reform-t-pass-congress-100000374.html?guccounter=1

Suspects in two multiple-fatality DWI crashes in the Ozarks will take cases to trial
Springfield News-Leader l Ryan Collingwood
https://www.news-leader.com/story/news/crime/2024/04/09/suspects-in-two-deadly-missouri-dwi-vehicle-crashes-will-go-to-trial/73219003007/

AMERICAN OVERSIGHT

Here's what you should do with your used eclipse viewing glasses

KSDK | Melissa Hernandez De La Cruz
https://www.ksdk.com/article/news/world/solar-eclipse/solar-eclipse-glasses-how-to-recycle-donate/507-f45efefc-1ce1-432a-baf2-4575b9e46059

National News:

Congressman: Latest Biden student loan details are a 'complete scam'
The Center Square | Alan Wooten
https://www.thecentersquare.com/north_carolina/article_8ba288ca-f5ed-11ee-a95e-9f3e566cf588.html

Prominent Las Vegas attorney, wife killed by another attorney in law firm shooting: report
FOX | Stepheny Price
https://www.foxnews.com/us/prominent-las-vegas-attorney-wife-killed-another-attorney-law-firm-shooting-report

DC attorney general closes investigation into left-wing dark money network tied to his office
Washington Examiner | Gabe Kaminksky
https://www.washingtonexaminer.com/news/2957376/dc-attorney-general-closes-investigation-left-wing-dark-money-network/

Filmmaker releases 'Killing America' after YouTube pulled trailer amid cease and desist
FOX | Brian Flood
https://www.foxnews.com/media/filmmaker-releases-entire-killing-america-youtube-pulled-trailer-amid-cease-desist

CBP officials stop another way to smuggle in fentanyl: hamburgers
The Center Square | Bethany Blankley
https://www.thecentersquare.com/texas/article_103e79be-f5a7-11ee-9ef3-4309ccf0d22f.html

California House race ends in tie setting up historic three-way battle in November
Washington Examiner | Rachel Schilke
https://www.washingtonexaminer.com/news/campaigns/2958108/california-house-election-tie-history-three-way-race/

West Virginia cracks down on major banks over environmental activism
FOX Business | Thomas Catenacci
https://www.foxbusiness.com/politics/west-virginia-cracks-down-on-major-banks-over-environmental-activism

Michigan school shooter's parents to be sentenced for manslaughter
NewsNation | Kelsey Kernstine
https://www.newsnationnow.com/crime/michigan-school-shooter-parents-sentencing/

Democrats Urge Supreme Court to Uphold Ban on Punishing Homeless for Public Camping
Epoch Times | Matthew Vadum
https://www.theepochtimes.com/us/democrats-urge-supreme-court-to-uphold-ban-on-punishing-homeless-for-public-camping-5624011

'Let The American People Decide': Newt Gingrich Breaks Down Trump Abortion Stance, Says It's Comparable To RBG's Views
Daily Caller | Hailey Gomez
https://dailycaller.com/2024/04/09/newt-gingrich-trump-abortion-stance/

'Get a warrant': The flashpoint in push to renew FBI spy tool
Washington Examiner | Ashley Oliver
https://www.washingtonexaminer.com/news/2958762/get-a-warrant-flashpoint-in-push-renew-fbi-spy-tool/

NAIA's new policy bans transgender women from playing women's sports
The Center Square | Tom Gantert
https://www.thecentersquare.com/national/article_385bc498-f5ec-11ee-be25-8b8c8e2cc30b.html

Pizza chain closes California locations before minimum wage law took effect
FOX Business | Daniella Genovese
https://www.foxbusiness.com/lifestyle/pizza-shop-closes-california-locations-before-minimum-wage-law-took-effect

AMERICAN OVERSIGHT

Thanks for reading and have a great day!

Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355 https://www.dailysignal.com/2024/02/22/exclusive-missouri-ag-orders-school-district-to-end-race-based-hiring/?utm_source=TDS_Email&utm_medium=email&utm_campaign=MorningBell&mkt_tok=ODI0LU1IVC0zMDQAAAGRdKhZkMfR-jZwUHcWMyo-zurcMV-673p3MBJiPPgKmsPkTtihkROFtBdJXYBZu6O_-xQQIRm1mIBfHkukWy_oLTKy6hiYLdj4o-FFNOLa1iEvfAWYqQ
Branden.Rathert@ago.mo.gov

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Goodwin, Gregory[Gregory.Goodwin@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; Hammond, Wyatt[Wyatt.Hammond@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Lewis, Jason[Jason.Lewis@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Woodard, Winderlyn[winderlyn.woodard@ago.mo.gov]
From: Rathert, Branden[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6862523A4FCB4692B7523E7B2723AB70-RATHERT, BRANDEN]
Sent: Wed 4/17/2024 8:59:27 AM (UTC-05:00)
Subject: Daily News/Media Roundup -Wednesday April 17th, 2024

Good morning all,

Below is the relevant news relating to the AGO, Missouri, and Nation for today:

AGO News:

Missouri Attorney General, responds to a court decision requiring Planned Parenthood to turn over documents relevant to his investigation into their alleged gender treatment procedures on minors. (Watch 28:00 in)
Washington Watch l Tony Perkins
https://www.frc.org/wwlivewithtonyperkins/lindsey-graham-ohad-tal-andrew-bailey-dr-greg-murphy

- Missouri Attorney General, responds to a court decision requiring Planned Parenthood to turn over documents relevant to his investigation into their alleged gender treatment procedures on minors.

'Rather Despicable': John Eastman Speaks Out After Bank Of America, USAA Shut Down His Accounts
Daily Caller l Reagan Reese
https://dailycaller.com/2024/04/16/john-eastman-donald-trump-attorney-debanked-bank-of-america-usaa/

- One of the left's biggest political targets recently found himself "de-banked" with no warning and little avenue for recourse, the Daily Caller has learned. John Eastman, once an attorney for former President Donald Trump, was de-banked twice in the span of several months by two prominent financial institutions, Bank of America and USAA, he told the Daily Caller. His accounts were closed as he faced substantial backlash for his work advising Trump around the time of the 2020 election. Eastman said he had switched most of his banking from Bank of America to USAA, a company that provides financial services exclusively to military veterans as well as their families, due to the former's "wokeness." Both corporations are federally insured, and Bank of America was bailed out with billions of dollars in taxpayer funds during the global financial crisis. Bank of America alerted Eastman in September of 2023 that it would be closing his accounts, a letter obtained by the Daily Caller shows. Shortly thereafter, USAA notified Eastman in November that his two bank accounts with the company would be closed, a separate letter shows. "And then two months later, we get a similar letter from USAA saying that they've decided that they're going to close your account and they did like three weeks later," Eastman told the Daily Caller. "And so that was where all of our automatic payments were coming out of, all our automatic deposits. So it was a real pain to shift everything. We had to get a new bank account opened and shift everything over."… "De-banking contradicts the very character of our nation, as elites wrongfully use their power to punish their political opponents. Here's the bottom line: If financial institutions are punishing consumers who don't fall in line with their political beliefs, that could constitute a violation of both state and federal law," Missouri Attorney General Andrew Bailey told the Daily Caller….

Finance Dems accuse Republican AGs of abusing authority to get records of transgender minors
The Hill l Brooke Migdon
https://thehill.com/homenews/lgbtq/4597992-finance-dems-accuse-republican-ags-of-abusing-authority-to-get-records-of-transgender-minors/

- Republican attorneys general in at least four states have abused their oversight authorities to demand the private medical records of transgender minors and adults as part of a broader effort to restrict access to gender-affirming health care nationwide, according to a Senate Finance Committee report released Tuesday. Investigations launched by Attorneys General Ken Paxton of Texas, Todd Rokita of Indiana, Jonathan Skrmetti of Tennessee and Andrew Bailey of Missouri into

AMERICAN OVERSIGHT

seekers and providers of transition-related care "demand a host of invasive items" such as lists of individuals referred for care and unredacted physical and mental health records, according to a report by the committee's majority Democratic staff. "Framed as civil investigations seeking to determine if there has been misuse of Medicaid funds (Tennessee) or violations of consumer protection laws (Indiana and Missouri), these campaigns investigate medical providers on their provision of transgender medical care," the report states, adding that the investigations are motivated by "ideological and political goals."… The attorneys general of Missouri and Indiana have similarly cited consumer protection laws to justify investigations into transgender clinics. A short-lived emergency rule issued by Bailey, the Missouri attorney general, last year claimed gender-affirming treatments were already banned in the state under an existing law governing "unfair, deceptive, and unconscionable business practices…..

REPOST: Yahoo

Several attorneys general made 'abusive legal demands' to get trans patients' medical records, senators allege

NBC l Jo Yurcaba

https://www.nbcnews.com/nbc-out/out-news/several-attorneys-general-made-abusive-legal-demands-get-trans-patient-rcna147910

- Four attorneys general in conservative states have abused their authority to investigate transgender patients and their health care, and hospitals must do more to protect them, a new Senate Finance Committee report argues. The report, titled "How State Attorneys General Target Transgender Youth and Adults by Weaponizing the Medicaid Program and their Health Oversight Authority," investigates how attorneys general in Tennessee, Missouri, Indiana and Texas have opened investigations into hospitals for alleged Medicaid fraud or violations of consumer protection laws. They opened the investigations, the report argues, "in order to further ideological and political goals," and there has been "significant variation in hospitals' responses to such requests and their approaches to safeguarding the privacy of one of their most vulnerable patient populations—LGBTQIA+ people."… The Finance Committee report found that two hospitals, in contrast to VUMC, made a variety of efforts to avoid providing transgender patients' records to state attorneys general. Washington University School of Medicine in St. Louis refused to share records with Missouri Attorney General Andrew Bailey in February 2023 when Bailey filed a civil investigative demand citing a state consumer protection law. The university cited concerns about privacy and the Health Insurance Portability and Accountability Act, which protects patient information, and it filed a petition in state court questioning whether Bailey had the authority to investigate. "As a father of four, this fight is personal for me. There is no more important court battle than to ensure Missouri is the safest state in the nation for children," Bailey said in an emailed statement. "My team will get to the bottom of how this clandestine network of clinics has subjected children to puberty blockers and irreversible surgery, often without parental consent," he said, mischaracterizing how transition-related care is provided to minors. State laws require physicians to obtain parental permission to provide any care to minors, and widely used standards of care also do not recommend surgery for minors except in rare circumstances. Madeline Sieren, a spokesperson for Bailey, said that his office is awaiting a court ruling on the Washington University demand but that judges have ruled in the attorney general's favor in similar cases involving Children's Mercy Hospital in St. Louis, Planned Parenthood of the St. Louis Region and Southwest Missouri and Planned Parenthood Great Plains…..

REPOST: AOL, Yahoo, Internet Newscast

Planned Parenthood 'stonewalling' probe into peddling puberty blockers to minors: state AG

Democratic Accent via FOX l Adam Sabes

https://www.democraticaccent.com/planned-parenthood-stonewalling-probe-into-peddling-puberty-blockers-to-minors-state-ag/

- Missouri Attorney General Andrew Bailey is now permitted to access patient documents from Planned Parenthood that could potentially expose whether the clinic has offered puberty blockers and transgender surgeries to children. St. Louis Circuit Judge Michael Stelzer determined last week that Missouri's Merchandising Practices Act allows Bailey to obtain patient documents because they do not fall under Health Insurance Portability and Accountability Act (HIPAA) protections, otherwise known as a federal law protecting patient privacy. Bailey told Fox News Digital the court ruling is "a huge win" in his series of investigations into how transgender health clinics have offered services to minors. However, of the three clinics Bailey has won against in court, only one has handed over documents: Children's Mercy Hospital in Kansas City. The other clinic – a Planned Parenthood in Great Plains – has filed an appeal to keep the documents private. The Planned Parenthood in St. Louis, which the judge has ordered to hand over files to the attorney general, has yet to send any of its patient documents…

Planned Parenthood Resists Probe Into Transing Kids.

The National Pulse l Jack Montgomery

https://thenationalpulse.com/2024/04/16/planned-parenthood-resists-probe-into-transing-kids/

- Planned Parenthood in Missouri is stonewalling an investigation into its "treatment" of transgender kids, refusing to comply with a court order to release treatment records. Missouri Attorney General Andrew Bailey won a court battle

AMERICAN OVERSIGHT

against Planned Parenthood, with St. Louis Circuit Judge Michael Stelzer ruling the abortion provider cannot use Health Insurance Portability and Accountability Act (HIPAA) regulations to avoid revealing whether it has subjected minors to transgender therapies. Bailey described the judgment as significant for his investigation into transgender health clinics' "treatment" of minors in Missouri. However, only the Children's Mercy Hospital in Kansas City has surrendered documents following legal victories over three clinics. Planned Parenthood Great Plains has appealed to maintain its document privacy, and Planned Parenthood St. Louis, which was ordered to release files, has yet to comply. Bailey has expressed concerns over Planned Parenthood's non-compliance and promised continued legal actions to protect children and bring clarity….

DoubleVerify Apologizes for Misreporting X/Twitter's Brand-Safety Rates for More Than Four Months

Yahoo via Variety l Todd Spangler

https://malaysia.news.yahoo.com/doubleverify-apologizes-misreporting-x-twitter-174358052.html

- DoubleVerify, which provides brand-safety measurement ratings for digital platforms to major advertisers, incorrectly displayed X's Brand Safety Rate — a measure of how frequently ads appeared adjacent to content that met advertiser-approved criteria — on the DoubleVerify dashboard for nearly five months. From Oct. 24, 2023, to March 14, 2024, DoubleVerify's dashboard provided the wrong data for X to advertisers. In some cases, the measurement firm showed scores as low as 70%, whereas X's Brand Safety Rates were in fact 99.99%. DoubleVerify CEO Mark Mark Zagorski, in a message to customers April 12, apologized for the error and said the company's dashboard now correctly shows X's brand-safety rates. "We apologize for any confusion this may have caused to X and to our customers in the course of reviewing your campaign performance on X," Zagorski wrote in the message to customers. "DV remains committed to maintaining the highest standards of accuracy and transparency in our data." It's unclear how the error occurred. Reps for X and DoubleVerify said the companies are continuing to investigate the issue. DoubleVerify is "conducting a thorough review of our processes and systems to ensure this issue does not occur in the future," according to Zagorski…X/Twitter and Musk have aggressively pushed back against claims that the social network is unsafe for brand advertising. Last November, X sued liberal watchdog group Media Matters, alleging the group "knowingly and maliciously manufactured" research that showed neo-Nazi and white-nationalist posts on X next to ads for Apple, Bravo, IBM, Oracle and Comcast's Xfinity. Following the Media Matters report and Musk's seeming endorsement of an anti-Semitic conspiracy theory, several large advertisers including Disney said they were halting their spending on X — either because of the Media Matters reports, Musk's post or a combination of both. Last month, Missouri Attorney General Andrew Bailey filed a lawsuit against Media Matters seeking to force the nonprofit to turn over documents related to the AG's investigation "into its fraudulent business practices," citing X's allegations that Media Matters "deceitfully manipulated X's algorithm to place advertisers' content next to contrived controversial posts." In a statement, Media Matters president Angelo Carusone said: "Far from the free-speech advocate he claims to be, Elon Musk has actually intensified his efforts to undermine free speech by enlisting Republican Attorneys General across the country to initiate meritless, expensive, and harassing investigations against Media Matters in an attempt to punish critics. This [Missouri] investigation is the latest in a transparent endeavor to squelch the First Amendment rights of researchers and reporters; it will have a chilling effect on news reporters."

Biden Administration Proposes Sweeping Student Loan Forgiveness Rules: What To Know

Forbes l Cailey Gleeson

https://www.forbes.com/sites/caileygleeson/2024/04/16/biden-administration-proposes-sweeping-student-loan-forgiveness-rules-what-to-know/?sh=ddf7b8b66928

- The Department of Education unveiled its first draft rules Tuesday of President Joe Biden's newest plan to shrink the balances of millions of federal student loan borrowers, with a separate rule aimed at forgiveness for borrowers experiencing financial hardship set to be proposed "in the coming months." The first draft includes nine proposed rules that closely follow the April 8 announcement of the new forgiveness plan, including two separate provisions on canceling accrued interest, eliminating debt for borrowers who began making payments at least 20 years ago and different avenues of debt cancellation for borrowers eligible under various forgiveness plans—such as the Saving on a Valuable Education (SAVE) plan—who have not successfully applied "due to paperwork requirements, bad advice, or other obstacles." Additionally, the department proposed forgiveness for borrowers who took out a commercial loan under the Federal Family Education Loan (FFEL) Program, which ended in 2010, and began making payments on or before July 1, 2000. The separate rule for borrowers experiencing hardship will include "proposals to authorize the automatic forgiveness of loans for borrowers at a high risk of future default," according to a press release, and will also cover borrowers indicating hardship for reasons other than student loans, including "high medical and caregiving expenses." Tuesday's draft will be published in the Federal Register on Wednesday, which will open a 30-day public comment period as part of the federal rule-making process. If the rules—including the yet-to-be-released plan for those experiencing financial hardship—are implemented as proposed, it would bring the total number of borrowers granted relief by the administration to more than 30 million, according to the release…. Seven states—Missouri, Arkansas, Florida, Georgia, North Dakota, Ohio and Oklahoma—filed a lawsuit on April 9 against Biden, Secretary of Education Miguel Cardona and the Department of

AMERICAN OVERSIGHT

Education over the SAVE plan. The lawsuit, spearheaded by Missouri Attorney General Andrew Bailey, alleges the president is "unilaterally trying to impose an extraordinarily expensive and controversial policy that he could not get through Congress" through the program. The lawsuit follows a separate suit over the same forgiveness program filed by 11 states in late March.

REPOST: MSN

Joe Biden Sued by Multiple States Over Student Loan Forgiveness Plan
Newsweek | Aliss Higham
https://www.newsweek.com/joe-biden-sued-multiple-states-student-loan-forgiveness-1890840

- Joe Biden's administration is facing two separate lawsuits from Republicans over plans to reduce student loan debt across the country. The president's major plans to reduce and cancel federal student loan debts has irked Republicans, and two groups of GOP-led states are now taking legal action against both him and the Education Department…The second lawsuit has been filed by Missouri attorney general Andrew Bailey in conjunction with Arkansas, Florida, Georgia, North Dakota, Ohio and Oklahoma. It makes a similar case to the first lawsuit, but also argues that Missouri-based student loan contractor MOHELA stands to face an "imminent loss of revenue" thanks to Biden's plans…"As Attorney General, I will protect the Constitution, which involves fighting back against the crooked Biden bailout," said Bailey. "There is no such thing as cancelling a debt, there is only shifting who will bear its weight. As a combat veteran, I paid for my education in blood, sweat, and tears, so this unconstitutional redistribution of wealth is personal for me….

Missouri survivors of childhood sex abuse demand action from attorney general and lawmakers
KCUR via Missouri Independent | Annelise Hanshaw
https://www.kcur.org/politics-elections-and-government/2024-04-16/missouri-survivors-of-childhood-sex-abuse-demand-action-from-attorney-general-and-lawmakers

- A group is demanding Missouri Attorney General Andrew Bailey begin investigating facilities accused of abuse, like Agape School in Stockton, Circle of Hope Ranch in Humansville and Kanakuk Kamps in Branson. The group is also advocating to extend the statute of limitations. A group including survivors of childhood sexual abuse is hoping Missouri lawmakers will change state law to give victims more time to sue their assailants and that the attorney general will provide more oversight of boarding schools and camps. Douglas Lay, assistant director of Missouri Survivors Network of those Abused by Priests, told reporters Monday afternoon that he was abused at school as a child and didn't tell his story for 40 years…Monday, he testified in a Missouri Senate committee in favor of extending the statute of limitations to give survivors more time to share. In town for the committee hearing, the group also delivered a letter to Missouri Attorney General Andrew Bailey demanding he begin investigating camps and boarding schools that have been accused of abuse….

REPOST: KSMU, Lincoln News Now, Salem News Online, Phelps County Focus, KFEQ, KJO 105.5, myqcountry.com, Joetown 1075

Trail Dates Set for Two in 2022 Hannibal Beating Death
WTAD | Scott Hardy
https://www.wtad.com/trial-dates-set-for-two-in-2022-hannibal-beating-death.html

- Two Hannibal residents, among four people charged in connection with the October 2022 beating death of a Hannibal man, will go on trial this fall in the St. Louis area. Both Jason Anderson and Tiara Bonner were in St. Charles County Circuit Court Monday, where for now, both will have 5-day trials starting September 23rd. Their cases were moved to St. Charles County after an agreement was reached earlier this year between the pair's lawyers and prosecutors. A hearing on motions filed last week by Anderson's lawyer, asking that his case be tried separately from Bonner's, will be held May 10th. Anderson claims his case would be prejudiced if he was tried with Bonner. Both face charges of 2nd Degree Murder and 1st Degree Assault, which were re-filed in January by the Missouri Attorney General's Office. The pair are accused of taking part in the October 9th, 2022 beating death of Dusty Wilson, outside a bar in the 100 block of North Main Street. Bonner and Anderson are held in the Marion County Jail without bond.

Missouri News:

States race to restrict deepfake porn as it becomes easier to create
A Missouri bill banning political deepfakes has cleared the state House, but a bill targeting pornography has not gotten as much traction
Missouri Independent | Madyson Fitzgerald
https://missouriindependent.com/2024/04/16/states-race-to-restrict-deepfake-porn-as-it-becomes-easier-to-create/

AMERICAN OVERSIGHT

Normandy Middle School teacher accused of sex crimes with student
FOX 2 | Chris Regnier

https://fox2now.com/news/missouri/normandy-middle-school-teacher-accused-of-sex-crimes-with-student/

Crawford County School District pays molestation victim $3.1M after hiring convicted sex offender as bus driver
KSDK | Christine Byers
https://www.ksdk.com/article/news/investigations/missouri-school-district-pays-molestation-victim-3-1-million-hired-convicted-sex-offender-school-bus-driver/63-93ec0e38-e293-47ba-a91d-d50814c8710e

8-year-old found driving car in downtown St. Louis while mom slept in backseat: Police
FOX 2 | Kevin S. Held
https://fox2now.com/news/missouri/8-year-old-found-driving-car-in-downtown-st-louis-while-mom-slept-in-backseat-police/

One dead in southern Boone County plane crash
ABC17 | Matthew Sanders and Nia Henson
https://abc17news.com/news/top-stories/2024/04/16/one-dead-in-southern-boone-county-plane-crash/

Missouri Senate Considers Education Bill About Prejudice and 'Dehumanization'
Missourinet | Anthony Morabith
https://www.missourinet.com/2024/04/17/missouri-senate-considers-education-bill-about-prejudice-and-dehumanization/

Media literacy bill gets hearing in Missouri legislature
Missouri Independent | Molly Miller
https://missouriindependent.com/2024/04/16/media-literacy-bill-gets-hearing-in-missouri-legislature/

Weedkiller manufacturer seeks lawmakers' help to squelch claims it failed to warn about cancer
Columbia Missourian | Hannah Fingerhut
https://www.columbiamissourian.com/news/state_news/weedkiller-manufacturer-seeks-lawmakers-help-to-squelch-claims-it-failed-to-warn-about-cancer/article_2d63c2fe-ee0e-507e-b649-864fb5aeb112.html

Washington University Settles with Feds Over Discrimination Claim
Missourinet | Alisa Nelson
https://www.missourinet.com/2024/04/17/washington-university-settles-with-feds-over-discrimination-claim/

Legendary Cardinals manager Whitey Herzog dies at 92
KSDK | Rob Rains and Same Clancy
https://www.ksdk.com/article/sports/mlb/stl-cardinals/cardinals-manager-whitey-herzog-dies-92-st-louis/63-d3b211b9-dc19-46a4-8234-5079d31b8ae3

Patrick Mahomes a 2024 cover star for TIME's 100 most influential people list
KMBC | Connor Hills
https://www.kmbc.com/article/time-magazine-patrick-mahomes-cover-2024/60511651

Missouri, Illinois saw surge in economic activity for solar eclipse
KMOV | Staff
https://www.firstalert4.com/2024/04/17/missouri-illinois-saw-surge-economic-activity-solar-eclipse/

National News:

House delivers Mayorkas impeachment articles to Senate, trial uncertain
The Center Square | Bethany Blankley
https://www.thecentersquare.com/national/article_e3eff896-fc2d-11ee-beba-13eb877d87af.html

LA mayor pleads for wealthy to help buy housing for the homeless: 'Unprecedented partnership'
FOX | Kristine Parks
https://www.foxnews.com/media/la-mayor-pleads-wealthy-help-buy-housing-homeless-unprecedented-partnership

AMERICAN OVERSIGHT

Johnson risks his job over Israel, Ukraine votes

The Center Square | Casey Harper
https://www.thecentersquare.com/national/article_c40105ae-fc12-11ee-b11a-339751511969.html

Excused juror reveals selection process for Trump's hush money trial: 'Not a fan'
FOX | Emma Colton
https://www.foxnews.com/politics/excused-juror-reveals-selection-process-trumps-hush-money-trial

GOP senator eyes legislation to defund 'propagandist' NPR after suspension of whistleblower
FOX | Julia Johnson
https://www.foxnews.com/politics/gop-senator-eyes-legislation-defund-propagandist-npr-suspension-whistleblower

Parents sue California for 'misleading' branding of parental notification policy on November ballot: report
FOX | Staff
https://www.foxnews.com/media/parents-sue-california-misleading-branding-parental-notification-policy-november-ballot-report

Government Attorney Says Peaceful Protesters Could Face Jan. 6 Charge That Carries up to 20 Years in Prison
Epoch Times | Savannah Hulsey Pointer
https://www.theepochtimes.com/us/government-attorney-says-peaceful-protesters-could-face-jan-6-charge-that-carries-up-to-20-years-in-prison-5630676

Supreme Court Rules 7-2 for Veteran Seeking Education Benefits
Epoch Times | Matthew Vadum
https://www.theepochtimes.com/us/supreme-court-rules-7-2-for-veteran-seeking-education-benefits-5630836

NC Governor's Pandemic Rule Closing Bars 'Illogical', Appeals Court Rules
Epoch Times | Caden Pearson
https://www.theepochtimes.com/us/nc-governors-pandemic-rule-closing-bars-illogical-appeals-court-rules-5630925

Make blocking traffic a federal crime
Washington Examiner | Staff
https://www.washingtonexaminer.com/opinion/2967951/make-blocking-traffic-a-federal-crime/

House Oversight Committee hearing to showcase China's 'political warfare' against US
Washington Examiner | Rachel Silke
https://www.washingtonexaminer.com/news/house/2968591/oversight-committee-hearing-showcase-china-political-warfare-us/

X Says It Lost Advertisers After 'Anti-Misinformation' Firm Peddled Misinformation
Daily Wire | Luke Rosiak
https://www.dailywire.com/news/x-says-it-lost-advertisers-after-anti-misinformation-firm-peddled-misinformation?topStoryPosition=5

Thanks for reading and have a great day!

Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355

AMERICAN OVERSIGHT

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

MEDIA MATTERS FOR AMERICA, ERIC HANANOKI,

Plaintiffs,

v.

WARREN KENNETH PAXTON JR., in his official capacity as Attorney General of the State of Texas,

ANDREW BAILEY, in his official capacity as Attorney General of the State of Missouri

Defendants.

No. 24-cv-147
Oral Hearing Requested

MISSOURI ATTORNEY GENERAL ANDREW BAILEY'S OPPOSITION TO TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

AMERICAN OVERSIGHT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... **ii**

INTRODUCTION **1**

BACKGROUND **3**

I. Factual background 3

II. The Missouri Attorney General launched an investigation based on well-established statutory authority. 5

III. Media Matters began exercising its legal rights in Missouri state court. 7

SUMMARY OF ARGUMENT **7**

ARGUMENT **10**

I. *Younger* Abstention Applies and Dismissal is Required **10**

A. The second *Younger* category applies. 11

B. The third *Younger* category also applies. 14

C. The ongoing proceeding in Missouri state court implicates important state interests and affords Media Matters an adequate opportunity to raise its federal claims. 16

D. Media Matters has waived the issue whether any exception to abstention applies, and in any event, no exception applies. 18

E. Media Matters consented to personal jurisdiction in Missouri state court. 22

F. Fundamental limits on federal equity reinforce the need to abstain. 23

II. There is No Personal Jurisdiction and, Therefore, the Case Should Be Dismissed. **23**

A. Plaintiffs have not satisfied the long-arm statute. 24

B. Personal jurisdiction here would violate the Due Process Clause. 26

C. Media Matters' jurisdictional argument is self-defeating. 28

III. Media Matters Cannot Establish a Justiciable, Ripe Injury, Nor the Absence of an Adequate Remedy at Law. **29**

IV. There Is No Likelihood of Success on the Merits. **32**

A. Media Matters is unlikely to succeed on its retaliation claim. 32

B. Media Matters' other claims are likewise unlikely to succeed. 34

V. Media Matters Will Not Suffer Irreparable Harm. **36**

VI. The Balance of Equities and Public Interest Decisively Favor Missouri. **37**

CONCLUSION **38**

CERTIFICATE OF COMPLIANCE **39**

CERTIFICATE OF SERVICE **39**

AMERICAN OVERSIGHT

TABLE OF AUTHORITIES

Page(s)

Cases

Aaron v. Target Corp., 357 F.3d 768 (8th Cir. 2004) 16, 19

ADR Tr. Corp. v. Thornton, 41 F.3d 1539 (D.C. Cir. 1994) 35

AMAF Int'l Corp. v. Ralston Purina Co., 428 A.2d 849 (D.C. 1981) 25

Americans for Prosperity Found. v. Bonta, 141 S. Ct. 2373 (2021) 35

Arpaio v. Obama, 797 F.3d 11 (D.C. Cir. 2015) 31

Associated Producers, LTD v. Vanderbilt U., 76 F. Supp. 3d 154 (D.D.C. 2014) 27

**Backpage.com, LLC v. Hawley*, No. 4:17-CV-1951, 2017 WL 5726868 (E.D. Mo. Nov. 28, 2017) 1, 13, 14, 15

Belle Fourche Pipeline Co. v. United States, 751 F.2d 332 (10th Cir. 1984) 31

Berrada Properties Mgt. Inc. v. Romanski, 608 F. Supp. 3d 746 (E.D. Wis. 2022) 14, 18

Bland v. IMCO Recycling, Inc., 67 S.W.3d 673 (Mo. App. S.D. 2002) 22

Cameron v. Johnson, 390 U.S. 611 (1968) 34

Cedar Rapids Cellular Tel., L.P. v. Miller, 280 F.3d 874 (8th Cir. 2002) 13, 16

Chaplaincy of Full Gospel Churches v. England, 454 F.3d 290 (D.C. Cir. 2006) 36

CityFed Fin. Corp. v. Office of Thrift Supervision, 58 F.3d 738 (D.C. Cir. 1995) 36

Credit One Bank, N.A. v. Hestrin, 60 F.4th 1220 (9th Cir. 2023) 16

Dyson v. Dutko Ragen Homes & Investments, No. 21- CV-02280 (APM), 2022 WL 1294484 (D.D.C. Apr. 27, 2022) 26

Everett v. Vance, 685 S.W.3d 495 (Mo. App. W.D. 2023) 22

Ex parte Young, 209 U.S. 123 (1908) 23

Exponential Biotherapies, Inc. v. Houthoff Buruma N.V., 638 F. Supp. 2d 1 (D.D.C. 2009) 27

Food & Water Watch, Inc. v. Vilsack, 808 F.3d 905 (D.C. Cir. 2015) 10

AMERICAN OVERSIGHT

Ford Motor Co. v. Montana Eighth Jud. Dist. Ct., 141 S. Ct. 1017 (2021) 27

Forras v. Rauf, 812 F.3d 1102 (D.C. Cir. 2016) 26

Geier v. Missouri Ethics Comm'n, 715 F.3d 674 (8th Cir. 2013) 17

Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915 (2011) 26

Google, Inc. v. Hood, 822 F.3d 212 (5th Cir. 2016) 14, 31

GTE New Media Servs. Inc. v. BellSouth Corp., 199 F.3d 1343 (D.C. Cir. 2000) 23

Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408 (1984) 27

Holder v. Haarman & Reimer Corp., 779 A.2d 264 (D.C. 2001) 24

Houston Community College System v. Wilson, 595 U.S. 468 (2022) 32, 34

Huffman v. Pursue, Ltd., 420 U.S. 592 (1975) ..... passim

Int'l Shoe Co. v. State of Wash., Off. of Unemployment Comp. & Placement, 326 U.S. 310 (1945) 24

J. & W. Seligman & Co. Inc. v. Spitzer, No. 05CIV.7781, 2007 WL 2822208 (S.D.N.Y. Sept. 27, 2007) 10, 14

JMM Corp. v. District of Columbia, 378 F.3d 1117 (D.C. Cir. 2004) 10, 16

Johnson v. TheHuffingtonPost.com, Inc., 21 F.4th 314 (5th Cir. 2021) 5

Jones v. District of Columbia, 177 F. Supp. 3d 542 (D.D.C. 2016) 36

**Juidice v. Vail*, 430 U.S. 327 (1977) 14, 15, 17, 20

Kim v. Fin. Indus. Regul. Auth., Inc., No. 1:23-CV-02420 (ACR), 2023 WL 6538544 (D.D.C. Oct. 6, 2023) 37

Lewis v. Mutond, 62 F.4th 587 (D.C. Cir. 2023) 27

Lupin Pharmaceuticals, Inc. v. Richards, No. 15-1281, 2015 WL 4068818 (D. Md. July 2, 2015) 15

Mazurek v. Armstrong, 520 U.S. 968 (1997) 10

Middlesex Cnty. Ethics Comm. v. Garden State B. Ass'n, 457 U.S. 423 (1982) 13

Missouri v. Media Matters, 24AC-CC02291 (Apr. 18, 2024) 7

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000444

Moncrief v. Lexington Herald-Leader Co., 807 F.2d 217 (D.C. Cir. 1986) 26, 27

Moore v. Sims, 442 U.S. 415 (1979) 18

Mouzavires v. Baxter, 434 A.2d 988 (D.C. Cir. 1981) 23

Music Makers Holdings v. Sarro, No. RWT-09-cv1836,
2010 WL 2807805 (D. Md. July 15, 2010) 28

Natl. Farmers Union Ins. Companies v. Crow Tribe of Indians, 471 U.S. 845 (1985) 29, 31

Natl. Park Hosp. Ass'n v. Dept. of Int., 538 U.S. 803 (2003) 29

New Eng. Carpenters Pension Fund v. Haffner, 391 S.W.3d 453 (Mo. App. S.D. 2012) 7

Nieves v. Bartlett, 139 S. Ct. 1715 (2019) 9, 32

PDX N., Inc. v. Commr. New Jersey Dept. of Lab. and Workforce Dev.,
978 F.3d 871 (3d Cir. 2020) 13

**Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987) 17, 20, 30

Perez v. Ledesma, 401 U.S. 82 (1971) 19

Ports Petroleum Co., Inc. of Ohio v. Nixon, 37 S.W.3d 237 (Mo. 2001) 6

Potrero Hills Landfill, Inc. v. Cnty. of Solano, 657 F.3d 876 (9th Cir. 2011) 17

Power Co. of Am., L.P. v. FERC, 245 F.3d 839 (D.C. Cir. 2001) 19

Reisman v. Caplin, 375 U.S. 440 (1964) 9, 29

Rollins Burdick Hunter of Utah, Inc. v. Bd. of Trustees of Ball State U.,
665 N.E.2d 914 (Ind. App. 1996) 22

Safari Club Int'l v. Salazar, 852 F. Supp. 2d 102 (D.D.C. 2012) 38

Save Jobs USA v. U.S. Dep't of Homeland Sec., 105 F. Supp. 3d 108 (D.D.C. 2015) 36

Slate v. Kamau, No. 20-CV-3732 (BAH), 2021 WL 3472438 (D.D.C. Aug. 6, 2021) 26

**Sprint Commun., Inc. v. Jacobs*, 571 U.S. 69 (2013) ..... passim

State ex rel. Ashcroft v. Goldberg, 608 S.W.2d 385 (Mo. 1980) 17, 34

State ex rel. Koster v. Charter Communications, Inc.,
461 S.W.3d 851 (Mo. App. W.D. 2015) 7, 12, 15

AMERICAN OVERSIGHT

State ex rel. Nixon v. Telco Directory Pub., 863 S.W.2d 596 (Mo. 1993) 20

State ex rel. Rogers v. Cohen, 262 S.W.3d 648 (Mo. 2008) 3

State v. Shaw, 847 S.W.2d 768 (Mo. 1993) 20

Steel Co. v. Citizens for a Better Envt., 523 U.S. 83 (1998) 10

Stroman Realty v. Wercinski, 513 F.3d 476 (5th Cir. 2008) 28

State ex rel. Antoine v. Sanders, 724 S.W.2d 502 (Mo. 1987) 22

**Twitter, Inc. v. Paxton*, 56 F.4th 1170 (9th Cir. 2022) 9, 30, 31

United States v. Kulukundis, 329 F.2d 197 (2d Cir. 1964) 31

United States v. Morton Salt Co., 338 U.S. 632 (1950) 3

Walden v. Fiore, 571 U.S. 277 (2014) 25, 26, 28

Weitzel v. Div. of Occupational and Prof. Licensing of Dept. of Com. of State of Utah, 240 F.3d 871 (10th Cir. 2001) 18

Whole Woman's Health v. Jackson, 595 U.S. 30 (2021) 23

Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7 (2008) 10, 37

Wisc. Gas Co. v. FERC, 758 F.2d 669 (D.C. Cir. 1985) 37

X Corp. v. Media Matters for America, No. 4:23-cv-1175 (N.D. Tex. Nov. 20, 2023) 4, 33

Yelp Inc. v. Paxton, No. 23-CV-04977-TLT, 2024 WL 413464 (N.D. Cal. Feb. 1, 2024) 14, 16, 21

**Younger v. Harris*, 401 U.S. 37 (1971) 1, 10, 19

Other Authorities

Todd Spangler, *DoubleVerify Apologizes for Misreporting X/Twitter's Brand-Safety Rates for More Than Four Months*, Variety (Apr. 15, 2024) 4, 33

Vesper Henry & Ari Drennen, *Seen but not heard: The New York Times Failed to Quote Trans People in Two-Thirds of Stories on Anti-Trans Legislation in a One-Year Period* (March 26, 2024) 34

Wright & Miller, Federal Practice and Procedure 10, 19

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000446

INTRODUCTION

How shocking it would be if the Missouri Attorney General asked a state court to issue an order preventing *this* Court from hearing this case. Yet Media Matters seeks exactly that extreme remedy, just in reverse. Media Matters does not dispute that it can raise all its claims and defenses in the ongoing proceeding in Missouri state court. It has already begun doing so. It filed a motion to exercise legal rights guaranteed by Missouri law, which the state court granted. Nevertheless, Media Matters now asks a federal court in the District of Columbia to enter an order that would force the courts of the State of Missouri to stop adjudicating an ongoing case. That is not only a transparent attempt to get two bites at the apple; it is also an astonishing attack on federalism.

The Supreme Court has not minced words, saying that the very thing Media Matters tries here imposes "evils" on federal courts. *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 608 (1975). It is thus no wonder that other federal courts regularly reject attempts by parties like Media Matters to challenge state subpoenas in federal court when a state proceeding is already ongoing. *E.g.*, *Backpage.com, LLC v. Hawley*, No. 4:17-CV-1951, 2017 WL 5726868 (E.D. Mo. Nov. 28, 2017) (citing *Younger v. Harris*, 401 U.S. 37 (1971)). And rightly so. As the Supreme Court has long made clear, including recently, federal courts lack equity jurisdiction to issue orders that have the effect of shutting down existing state court proceedings. Media Matters can raise every one of its arguments in Missouri state court.

Nor can Media Matters prevail on any of the four traditional factors for equitable relief to obtain a temporary restraining order or preliminary injunction.

First, Media Matters' contention that it will be harmed if the civil investigative demand for information and materials is enforced fails because there is no immediate enforcement right now. There is only an enforcement *proceeding*. The civil investigative demand—with which Media

AMERICAN OVERSIGHT

Matters has refused to comply—will not be enforced until Media Matters has had a full and fair opportunity to raise all its claims in state court. Unlike Media Matters' attempt to litigate here at breakneck speed, the Missouri Attorney General has not filed any emergency motion. There is no current injury at all, much less one imminently impending.

No better is Media Matters' assertion that it is injured by having to litigate the questions at all. Media Matters is going to litigate these questions in one forum or another. The only question is where. Media Matters asserts that Missouri courts "obviously lack personal jurisdiction" over Media Matters, and so any lawsuit filed in Missouri harms Media Matters. ECF 49-1 at 35. But Media Matters has already consented to personal jurisdiction in Missouri state court by seeking (and obtaining) relief under state law. And Media Matters' argument is self defeating. In insists that *this* Court has jurisdiction over the Missouri Attorney General simply because he mailed something into the District. *Id.* at 23. Yet Media Matters does much more than that in Missouri. It writes articles about events in Missouri and circulates those articles in Missouri. *Id.* at 12 n.11. It distributes newsletters to the email addresses of residents of Missouri. And it solicits donations from residents of Missouri. If this Court has jurisdiction over the Attorney General because he mailed one document, then Missouri courts have jurisdiction over Media Matters ten times over.

Even stranger is Media Matters' retaliation claim. Media Matters bases its lawsuit on its contention that the Attorney General decided to "retaliat[e]" against Media Matters because Media Matters wrote one single article criticizing him. *Id.* at 12. That allegation is not just wrong; it is not even plausible. Like other statewide officials, the Missouri Attorney General is regularly criticized by other media outlets, and Media Matters cannot identify even a single instance where the Missouri Attorney General has responded with a civil investigative demand for information and materials. The reason is simple: the Attorney General filed the civil investigative demand not

AMERICAN OVERSIGHT

because Media Matters criticized him once, but to investigate whether Media Matters committed fraud or deception in soliciting donations from residents of Missouri. There is nothing illegal about investigating business deception or fraud, something the Attorney General does routinely as authorized by law. If Media Matters thinks otherwise, it is free to raise its arguments in the ongoing state court proceeding, rather than asking this Court to enter an extreme order preventing the State of Missouri, statutorily represented by the Attorney General, from litigating in its own courts.

BACKGROUND

I. Factual background

Although Media Matters presents itself as a charitable news organization, there is reason to believe it has engaged in fraud and deception to solicit donations from Missourians. Ex. A, Declaration of Steven Reed ¶¶ 6–11. Because investigations necessarily require some level of secrecy, the State of Missouri is not required to show its hand. As the Supreme Court has long held, the point of a pre-complaint investigation is to seek "information from those who best can give it and who are most interested in not doing so." *United States v. Morton Salt Co.*, 338 U.S. 632, 642 (1950). So courts routinely stress the need for investigations to "be conducted in secret"; indeed, the "person being investigated may not be aware of the proceedings." *State ex rel. Rogers v. Cohen*, 262 S.W.3d 648, 652–53 (Mo. 2008). Nevertheless, the State is able to discuss accusations and evidence that have already been made public.

Media Matters is credibly accused of defaming the social media platform X (formerly Twitter) by falsely representing that X routinely populates advertisements for brands like Apple, IBM, and Xfinity next to extremist, fringe content. Reed decl. ¶¶ 6–11. According to a lawsuit filed by X, Media Matters' statements were entirely and maliciously false. "Media Matters knowingly and maliciously manufactured side-by-side images depicting advertisers' posts on X Corp.'s social media platform beside Neo-Nazi and white-nationalist fringe content and then

AMERICAN OVERSIGHT

portrayed these manufactured images as if they were what typical X users experience on the platform." Complaint, *X Corp. v. Media Matters for America*, No. 4:23-cv-1175, ECF 1 ¶ 1 (N.D. Tex. Nov. 20, 2023). Media Matters did this by "manipulat[ing] the algorithms … to bypass safeguards." *Id.* ¶¶ 7–8. While Media Matters insisted that paid advertisements regularly "appeared alongside the fringe content," in fact that was true "for *only one* viewer (out of more than 500 million) on all of X: *Media Matters*." *Id.* ¶ 13 (emphasis in original); Reed decl. ¶¶ 8–10. Yet Media Matters' false "reporting" had the desired effect: advertisers withdrew from X in droves.

The brand-safety organization DoubleVerify recently debunked Media Matters' assertion, confirming that the allegation that X was regularly populating advertisements next to fringe content is false. The organization, "which provides brand-safety measurement ratings for digital platforms to major advertisers," recently stated that X's "Brand Safety Rates" were nearly perfect—99.99%—during the very time when Media Matters accused X of regularly posting brand advertisements next to fringe content. Todd Spangler, *DoubleVerify Apologizes for Misreporting X/Twitter's Brand-Safety Rates for More Than Four Months*, Variety (Apr. 15, 2024);[1] Reed decl. ¶ 10.

Similarly, the federal district court overseeing the X lawsuit against Media Matters recently previewed that the court believes X's lawsuit should proceed toward trial. In rejecting Media Matters' request to stay discovery, the court held that, on a preliminary view, "it appears that Plaintiff [X Corp.] sufficiently pleads facts supporting its claims." *X Corp.*, Order denying motion

[1] https://variety.com/2024/digital/news/x-twitter-brand-saftey-rate-doubleverify-apology-1235971603/

AMERICAN OVERSIGHT

to stay discovery, ECF 54 at 8.[2] The court further noted that Media Matters' argument on the merits was the "weakest" argument it had presented. *Id.*

II. The Missouri Attorney General launched an investigation based on well-established statutory authority.

Media Matters has substantial connections with Missouri. As Media Matters acknowledges, it writes articles about events in Missouri. ECF 49-1 at 12 n.11. It distributes a newsletter to thousands of readers in Missouri. *Cf. Johnson v. TheHuffingtonPost.com, Inc.*, 21 F.4th 314, 318 (5th Cir. 2021) (prohibiting exercising jurisdiction when a website is merely available in a venue, but permitting exercising jurisdiction when a media organization does more, such as "interact[ing] with its visitors" in that venue). And though it denies "specifically targeting Missouri" in its nationwide fundraising drives, it implicitly concedes that it solicits donations fro m Missourians. ECF 49-3 ¶¶ 24–25.

"The Missouri Attorney General's Office discovered that Media Matters not only distributes its newsletter in Missouri, but engages in internet and email solicitations, phone solicitations, and in-person solicitations for fundraising." Reed decl. ¶ 7. In its public financial disclosures, Media Matters identifies Missouri "as a state in which it 'is registered or licensed to solicit contributions or has been notified it is exempt from registration.'" *Id.* (quoting Form 990, Media Matters (2021)).[3] Because of Media Matters' extensive activities in Missouri, it "specifically communicated with the Missouri Attorney General's Office to seek an exemption from registration for its fundraising in Missouri." Reed decl. ¶ 7. Missouri law permits 501(c)(3) organizations to solicit donations without registering. Mo. Rev. Stat. § 407.456.2(6).

---

[2] https://storage.courtlistener.com/recap/gov.uscourts.txnd.383454/gov.uscourts.txnd.383454.54.0.pdf

[3] https://cloudfront.mediamatters.org/static/D8File/2023/11/20/fy21-mmfa-form-990-public-disclosure.pdf?VersionId=7yQZc6sgNQflOrjdO1GHlsPMHmzi6HWD

AMERICAN OVERSIGHT

The Missouri Attorney General grew concerned about the representations that Media Matters provides to Missourians as it solicits donations and whether those representations are unlawfully deceptive. For example, if Media Matters misrepresents what it intends to do with donations or misrepresents the nature of the company as it solicits donations, that is a hand-in-glove violation of Missouri's consumer protection statute, which forbids "[t]he act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose." Mo. Rev. Stat. § 407.020. This statute is broad. Its words "cover every practice imaginable and every unfairness to whatever degree." *Ports Petroleum Co., Inc. of Ohio v. Nixon*, 37 S.W.3d 237, 240 (Mo. 2001).

So the State of Missouri, through the Attorney General, launched an investigation into whether Media Matters violated Missouri law when soliciting donations from Missourians. Reed decl. ¶ 11. The Missouri Attorney General "routinely" investigates potential violations of Missouri's consumer protection statutes, and begins those investigations with a civil investigative demand for information and materials "dozens" of times each year. *Id.* ¶¶ 4, 11. Missouri's statute gives the State authority to investigate (1) whenever "it appears to the attorney general that a person has engaged in or is engaging in any method, act, use, practice or solicitation declared to be unlawful by this chapter" or (2) whenever "he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in or is engaging in any such method, act, use, practice or solicitation." Mo. Rev. Stat. § 407.040.

Using this authority, the State issued a "civil investigative demand, or "CID" to Media Matters by mail. *Id.* ¶ 12. A CID is an administrative subpoena. *State ex rel. Koster v. Charter*

AMERICAN OVERSIGHT

Communications, Inc., 461 S.W.3d 851, 855–57 (Mo. App. W.D. 2015). Then, because Media Matters had already made its position clear that it would not comply with any CID related to its in-state solicitations and false statements about X unless forced by a court to do so, the State of Missouri filed an enforcement action in state court. *Id.* ¶ 14. Missouri law permits a party in litigation to avoid waiting to take action when doing so would be futile. *E.g.*, *New Eng. Carpenters Pension Fund v. Haffner*, 391 S.W.3d 453, 460 (Mo. App. S.D. 2012).

III. Media Matters began exercising its legal rights in Missouri state court.

Media Matters has already begun defending itself in Missouri state court. For example, Missouri law grants any party the legal right to exercise one peremptory strike against a judge. *State ex rel. Manion v. Elliott*, 305 S.W.3d 462, 464 (Mo. 2010) ("Rule 51.05 grants a party the absolute right to disqualify a judge once without cause or any showing of prejudice."). The very first thing Media Matters chose to do in the litigation in state court was not to contest personal jurisdiction, but instead to exercise this legal right. On the same day an attorney for Media Matters entered its appearance in state court, the company moved to transfer the case to a new judge in state court. Motion, *Missouri v. Media Matters*, 24AC-CC02291 (Apr. 18, 2024).[4] Then Media Matters scheduled a hearing on the motion.[5] The motion was granted.

SUMMARY OF ARGUMENT

I. The Court should abstain under *Younger* and dismiss. *Younger* is jurisdictional and, except in extraordinary circumstances, requires federal courts to dismiss federal lawsuits that would have the practical effect of enjoining state court proceedings. Here, there is an ongoing enforcement proceeding in state court. Binding Supreme Court precedent requires this Court to

[4] https://www.courts.mo.gov/fv/c/Application%20for%20Change%20of%20Judge.PDF?courtCode=19&di=3131776

[5] https://www.courts.mo.gov/fv/c/Notice%20of%20Hearing.PDF?courtCode=19&di=3131778

AMERICAN OVERSIGHT

presume that forum is adequate, and Media Matters does not deny that it will receive a full and fair opportunity to present its defenses in state court. Indeed, Media Matters has already consented to personal jurisdiction in state court. Missouri law requires a defendant to object to personal jurisdiction at the "first opportunity." Media Matters declined, instead opting to first exercise other legal rights. It has already filed, and received, legal relief in the ongoing enforcement proceeding.

The Supreme Court has said there are some (exceedingly narrow) exceptions to *Younger*, but Media Matters does not plead or argue that those apply here. As Media Matters bears the burden, the issue is waived. In any event, the "bad-faith" exception applies only to accusations of bad faith about state court judges, not prosecutors. Similarly, Media Matters does not and cannot contend that Missouri's statute is "patently invalid." It has been in place for 60 years and has repeatedly survived legal challenges under federal law. No exception to *Younger* applies.

II. Media Matters has not established personal jurisdiction over the Missouri Attorney General. The D.C. long-arm statute does not extend to merely using a process-server to serve a lawsuit. And personal jurisdiction here would violate the Due Process Clause. Courts regularly conclude that a defendant does not "purposefully avail" themselves of a forum merely by sending mail into that forum. Media Matters' argument is also deeply ironic. It contends that merely sending mail into D.C. subjects the Missouri Attorney General to personal jurisdiction, but then it flatly states that Missouri courts "obviously" lack jurisdiction over Media Matters even though Media Matters' contacts with Missouri are far more substantial. Media Matters admits, for example, that it solicits donations from residents in Missouri.

III. Other jurisdictional issues similarly doom Media Matters' case. Media Matters seeks prospective injunctive relief, but to do that, it must establish that it lacks an adequate remedy other than an injunction by this Court. It cannot do so. The Supreme Court has already held that there

AMERICAN OVERSIGHT

exists an adequate remedy when a party is able to challenge a request for documents in state court. *Reisman v. Caplin*, 375 U.S. 440 (1964). Unlike under Texas law, which this Court determined did not permit Media Matters to challenge the CID, Missouri law expressly authorizes Media Matters to challenge the CID in state court.

Media Matters also has not established ripeness. As the Ninth Circuit concluded, where a CID is not self-executing and a party can raise its defenses in state court, an action in federal court challenging the CID is not ripe. *Twitter, Inc. v. Paxton*, 56 F.4th 1170 (9th Cir. 2022).

IV. Media Matters is unlikely to succeed on the merits. Under binding Supreme Court precedent, a retaliation claim can proceed only if the government action could not be justified by any legitimate motive. For example, the existence of probable cause necessarily defeats a claim of retaliatory arrest—no matter the arresting officer's motive. *Nieves v. Bartlett*, 139 S. Ct. 1715 (2019). Here, there is probable cause that Media Matters has been deceptive. Moreover, the Supreme Court has held that adverse actions are not actionable if they are "immaterial." Merely having to litigate in state court instead of federal is not a material injury.

The other claims by Media Matters—which this Court declined to accept with respect to Texas—are similarly meritless. The First Amendment case law cited by Media Matters expressly *permits* using subpoenas to seek this kind of information; the state shield laws do not apply extraterritorially; and while a court's alleged inability to exercise personal jurisdiction is grounds for a motion to dismiss, a plaintiff does not commit a constitutional tort by suing somebody in that venue. Media Matters has also failed to develop many of these arguments. They are thus waived.

V. Media Matters has no irreparable harm because it has an adequate remedy in state court.

VI. The balance of equities favors Missouri. Media Matters' harms are self-inflicted, and its attempt to enjoin state courts from proceeding would impose grave harms to federalism.

AMERICAN OVERSIGHT

ARGUMENT

"[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (quoting 11 Wright & Miller, Federal Practice and Procedure § 2948, pp. 129–130 (2d ed. 1995)). The preliminary injunction factors are well established: plaintiffs must show (1) they are "likely to succeed on the merits"; (2) they are "likely to suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of equities tips in [their] favor"; and (4) "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (citations omitted). The first factor—success on the merits—includes demonstrating a likelihood of establishing jurisdiction. *See Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 913–14 (D.C. Cir. 2015). Here, Media Matters cannot establish jurisdiction or any of the other factors for a preliminary injunction.

I. *Younger* Abstention Applies and Dismissal is Required.

The claim against the Missouri Attorney General is crucially different from the claim against the Texas Attorney General in a dispositive respect: there is an ongoing proceeding to enforce the CID in state court. When a public official initiates a proceeding in state court, federal courts must, "except in extraordinary circumstances," abstain from suits that would interfere with that ongoing state proceeding. *JMM Corp. v. District of Columbia*, 378 F.3d 1117, 1120 (D.C. Cir. 2004). This doctrine is "treated as jurisdictional." *Steel Co. v. Citizens for a Better Envt.*, 523 U.S. 83, 100 n.3 (1998) (citing *Younger v. Harris*, 401 U.S. 37 (1971)). And "[w]here the *Younger* requirements are met, the appropriate remedy is dismissal." *J. & W. Seligman & Co. Inc. v. Spitzer*, No. 05CIV.7781, 2007 WL 2822208, at *3 (S.D.N.Y. Sept. 27, 2007).

The reason for abstention is both practical and compelled by foundational concepts of federalism. On the practical side, when a state proceeding is already ongoing, abstention "avoid[s]

AMERICAN OVERSIGHT

a duplication of legal proceedings." *Sprint Commun., Inc. v. Jacobs*, 571 U.S. 69, 77 (2013). More importantly, abstention ensures "a proper respect for state functions." *Id.* "[I]nterference with a state judicial proceeding prevents the state not only from effectuating its substantive policies, but also from continuing to perform the separate function of providing a forum competent to vindicate any constitutional objections interposed against those policies." *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975). This interference also "can readily be interpreted 'as reflecting negatively upon the state courts' ability to enforce constitutional principles.'" *Id.* (citation omitted).

Although the doctrine originally was announced in the criminal context, it has been clear for 50 years that a lawsuit in federal court that would interfere with a civil action in state court also poses a "threat to our federal system," so *Younger* "is thus applicable to a civil proceeding such as this quite as much as it is to a criminal proceeding." *Id.* at 604; *see also id.* ("offense to the State's interest"). The most recent Supreme Court case on *Younger* abstention identified three categories of state proceedings warranting abstention. "First, *Younger* precluded federal intrusion into ongoing state criminal prosecutions. Second, certain civil enforcement proceedings warranted abstention. Finally, federal courts refrained from interfering with pending civil proceedings involving certain orders uniquely in furtherance of the state courts' ability to perform their judicial functions." *Sprint*, 571 U.S. at 78 (internal citations and quotation marks omitted). Here, the enforcement action in Missouri state court fits within both the second and third categories.

A. The second *Younger* category applies.

The enforcement proceeding in Missouri is a "civil enforcement proceeding[ ]" within the scope of *Younger* abstention. *Sprint* defines the subset of civil enforcement proceedings that satisfy *Younger* as those civil proceedings that are "'akin to a criminal prosecution' in 'important respects.'" *Id.* at 79. The "important respects" are that the ongoing proceeding is initiated by the State (rather than a private party) and seeks to enforce state law against a private actor. *Id.*

AMERICAN OVERSIGHT

Specifically, "[i]n cases of this genre, a state actor is routinely a party to the state proceeding and often initiates the action," "[i]nvestigations are commonly involved," and "[s]uch enforcement actions are characteristically initiated to sanction the federal plaintiff, *i.e.*, the party challenging the state action, for some wrongful act." *Id.* The ongoing action in Missouri meets these indicia.

First, the enforcement action was "initiated by 'the State in its sovereign capacity.'" *Id.* at 80 (citation omitted). The caption of that case is *State of Missouri, ex rel. Andrew Bailey v. Media Matters*. ECF 39-6. The Missouri Attorney General is authorized by state law to "institute, in the name and on the behalf of the state, all civil suits and other proceedings at law or in equity requisite or necessary to protect the rights and interests of the state, and enforce any and all rights, interests or claims against any and all persons, firms or corporations." Mo. Rev. Stat. § 27.060. The Missouri Attorney General has done so on behalf of the State here.

Second, Media Matters acknowledges that the case initiated by the State involves an investigation. Missouri law specifically authorizes "the AG to issue CIDs in its investigation of possible violations of the Missouri Merchandising Practices Act." *Charter Communications*, 461 S.W.3d at 856 (citing Mo. Rev. Stat. § 407.040); *see also* Reed decl. ¶ 4.

And third, the enforcement action was brought to enforce state law against "the party challenging the state action, for some wrongful act." Specifically, Media Matters, as a company that solicits donations from residents of Missouri, is required to "comply with the terms [of the CID] unless otherwise provided by an order of a court" in Missouri. Mo. Rev. Stat. § 407.080. The enforcement action was undertaken to force Media Matters to abide by its legal duty and reverse its illegal refusal to comply.

Other courts have abstained in similar circumstances. For example, the Supreme Court invoked *Younger* "to bar a federal court from entertaining a lawyer's challenge to a New Jersey

AMERICAN OVERSIGHT

state ethics committee's pending investigation of the lawyer." *Sprint*, 571 U.S. at 81 (citing *Middlesex Cnty. Ethics Comm. v. Garden State B. Ass'n*, 457 U.S. 423, 433–35 (1982)). Similarly, the Supreme Court invoked *Younger* when Ohio opened a proceeding to enforce a state nuisance law. *Huffman*, 420 U.S. at 595. Lower courts also regularly apply *Younger* when a party files a federal lawsuit to challenge application of a state's consumer-protection law. *E.g.*, *Cedar Rapids Cellular Tel., L.P. v. Miller*, 280 F.3d 874, 882 (8th Cir. 2002) (abstaining from a lawsuit seeking to "enjoin the Attorney General from taking any action ... to enforce" Iowa consumer-protection law); *cf. PDX N., Inc. v. Commr. New Jersey Dept. of Lab. and Workforce Dev.*, 978 F.3d 871, 881–82 (3d Cir. 2020) ("The trial court correctly dismissed PDX's case but erred in dismissing SLS's case because, for SLS, there was no ongoing judicial proceeding.").

Even more on point, courts regularly abstain when a state has issued CIDs or other subpoenas and then opened a state court proceeding to enforce the subpoena. The *Backpage* case, which involved the Missouri Attorney General, is on all fours with this one. There, the Missouri Attorney General served a CID on a company, Backpage, and then filed a state lawsuit to enforce the CID. Just like here, Backpage filed a federal lawsuit several weeks later, "asking the Court to 'enjoin and declare unlawful' AG Hawley's efforts to investigate." *Backpage*, 2017 WL 5726868, at *3. And just like here, Backpage argued that the investigation violated the First, Fourth, and Fourteenth Amendments, as well as Missouri's consumer-protection statute (the MMPA). *Id.* The court ruled that abstention was required because of the existing proceeding in state court, so the court dismissed the case. *Id.* at *1, 13.

Many other cases apply the same analysis and abstain. While Texas did not initiate a proceeding to enforce its CID this time, when Texas does so, courts abstain. A court did so just three months ago in a suit brought against the Texas Attorney General, because Texas initiated a

AMERICAN OVERSIGHT

proceeding in state court, meaning that "federal action would have the practical effect of enjoining the state proceedings." *Yelp Inc. v. Paxton*, No. 23-CV-04977-TLT, 2024 WL 413464, at *3 (N.D. Cal. Feb. 1, 2024); *see also, e.g.*, *Berrada Properties Mgt. Inc. v. Romanski*, 608 F. Supp. 3d 746, 750 (E.D. Wis. 2022) (abstaining in action "to quash the CIDs" even though state court action was filed later than the federal action); *Seligman*, 2007 WL 2822208, at *6 ("*Younger*'s 'ongoing proceeding' requirement was 'clearly satisfied' when a state agency charged with investigating and administratively prosecuting violations of New York's lobbying laws issued subpoenas").

The critical fact is whether a state enforcement proceeding exists. For example, in *Google, Inc. v. Hood*, the Fifth Circuit determined that *Younger* abstention was improper largely because Mississippi CIDs are "non-self-executing" and yet the Mississippi Attorney General had "*not* moved to enforce the administrative subpoena in any state court." 822 F.3d 212, 223 (5th Cir. 2016) (emphasis added). Missouri CIDs also "are not self-enforcing," *Backpage*, 2017 WL 5726868, at *6, but unlike in *Google*, the Missouri Attorney General has filed an action in state court to enforce the CID. *Younger* abstention thus applies. *Sprint*, 134 S. Ct. at 593.

B. The third *Younger* category also applies.

The Missouri state court action also falls within the third category identified by *Sprint*. Citing its prior decision in *Juidice v. Vail*, 430 U.S. 327 (1977), the *Sprint* Court explained that *Younger* abstention applies to state proceedings that "touch on a state court's ability to perform its judicial function." *Sprint*, 134 S. Ct. at 592. *Vail* involved a federal action challenging a state-court proceeding to enforce a subpoena. 430 U.S. at 329–30. The Supreme Court held that the federal district court was required to abstain under *Younger* because the plaintiff, by challenging the ability of a state court to enforce a subpoena, attacked the "process[ ] through which [the state] vindicates the regular operation of its judicial system." *Id.* at 335. "Moreover," the Court

AMERICAN OVERSIGHT

explained, a federal-court lawsuit challenging such proceedings "unduly interferes with the legitimate activities of the State." *Id.* at 336 (quotation and brackets omitted).

So too here. Like in *Vail*, Media Matters attacks the ability of Missouri courts to enforce subpoenas. The state-court action here involves an attempt to enforce a subpoena issued under state law. *See Charter Communications*, 461 S.W.3d at 855–57 (explaining that CIDs constitute administrative subpoenas). Indeed, this case strikes closer to the core concerns of *Younger*, because while the subpoena in *Vail* was issued by a private litigant, 430 U.S. at 329, the subpoena here was issued by the State acting in its sovereign law-enforcement capacity.

The federal court in *Backpage* squarely held that federal actions seeking to block Missouri CIDs fall within the third *Younger* category. *Backpage*, 2017 WL 5726868, at *6. As the court there recognized, Missouri "state courts play a significant role in the investigation and prosecution of unlawful merchandising practices." *Id.* at *7. In Missouri, "CIDs are not self-enforcing." *Id.* at *6. Instead, the Attorney General must rely on courts to enforce CIDs. *Id.* at *7 ("If the recipient of a CID fails to comply with its demands, the attorney general may file in state court a petition 'for an order of such court for the enforcement' of the CID,' …. Mo. Rev. Stat. § 407.090."). Because a "request that the Court enjoin AG [Bailey]'s efforts to investigate and prosecute potential violations of the MMPA necessarily affects functions performed by the state court … the third *Sprint* category also requires this Court to abstain." *Id.* at *8.

Similarly, *Lupin Pharmaceuticals, Inc. v. Richards*, No. 15-1281, 2015 WL 4068818 (D. Md. July 2, 2015), is directly on point. In *Lupin*, the target of a CID served by the Alaska Attorney General filed a federal-court action challenging the CID. *Id.* at *2. The Alaska Attorney General, in turn, filed a state-court action to enforce the CID under Alaska Stat. § 45.50.592(g), which is nearly identical to Mo. Rev. Stat. § 407.090. *Id.* Applying the *Sprint* framework, the district court

AMERICAN OVERSIGHT

concluded that the state-court enforcement proceeding "clearly" warranted abstention under *Younger*. *Id.* at *3.

C. The ongoing proceeding in Missouri state court implicates important state interests and affords Media Matters an adequate opportunity to raise its federal claims.

Once a court has determined that one of the three *Younger* categories applies, the Supreme Court has said the court may consider three "additional factors": whether there is "(1) an ongoing state judicial proceeding, which (2) implicates important state interests, and (3) provides an adequate opportunity to raise federal challenges." *Sprint*, 571 U.S. at 81 (alterations accepted; internal quotation marks and emphasis omitted). All three are met here.

The first factor is obviously met. Media Matters brought this suit to *stop* the ongoing state-court proceeding. The state-court matter was filed before Media Matters sued the Missouri Attorney General, but even if Media Matters had sued first, the D.C. Circuit has concluded that a state action need not be filed first. *JMM*, 378 F.3d at 1126 (abstaining under *Younger* even though the local action was filed "two months after" the federal action); *see also Aaron v. Target Corp.*, 357 F.3d 768, 775 (8th Cir. 2004) ("no fixed requirement in the law that a state judicial proceeding must have been initiated before the federal case was filed for abstention to be appropriate").

The second factor similarly is met. It is well recognized that a state "has an important interest in enforcing its consumer protection statutes." *Cedar Rapids Cellular*, 280 F.3d at 879–80; *Credit One Bank, N.A. v. Hestrin*, 60 F.4th 1220, 1232 (9th Cir. 2023) ("Hestrin's state action seeks to enforce the state's consumer protection laws, undoubtedly an important interest."); *Yelp*, 2024 WL 413464, at *3 ("Texas has an interest in protecting its consumers from 'deceptive trade practices.'"). In addition, "[w]here the state is in an enforcement posture in the state proceedings, the 'important state interest' requirement is easily satisfied, as the state's vital interest in carrying out its executive functions is presumptively at stake." *Potrero Hills Landfill, Inc. v. Cnty. of*

AMERICAN OVERSIGHT

Solano, 657 F.3d 876, 883–84 (9th Cir. 2011). The State is both "in an enforcement posture" and is "enforcing its consumer protection statutes," so the second factor is "easily satisfied." *Id.* The ongoing proceeding also "implicates important state interests" because enforcing CIDs is part of "a state court's ability to perform its judicial function." *Sprint*, 134 S. Ct. at 592; *see also Vail*, 430 U.S. at 335 ("the regular operations of its judicial system … is surely an important interest").

Likewise, the third factor is easily met: Media Matters has "an opportunity to present [its] federal claims in the state proceedings." *Vail*, 430 U.S. at 337. Media Matters "carries the burden of demonstrating that the Missouri proceedings do not provide 'an adequate o pportunity' for it to raise constitutional claims." *Geier v. Missouri Ethics Comm'n*, 715 F.3d 674, 678–79 (8th Cir. 2013). But Media Matters has not disputed that it has that opportunity. In fact, it has already successfully moved in state court to exercise its legal rights under Missouri law. And "a federal court should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 15 (1987).

The Missouri Merchandising Practices Act specifically provides Media Matters an opportunity to petition "to modify or set aside the civil investigative demand." Mo. Rev. Stat. § 407.070. The deadline to do so was April 15, 2024. ECF 39-6 at 8. The statute also gives Media Matters the opportunity to seek extension of that deadline. Mo. Rev. Stat. § 407.070. And of course, Media Matters can assert its claims defensively in response to the State's enforcement action. CID recipients routinely raise challenges under federal law in proceedings involving Missouri's consumer protection statute. *E.g.*, *State ex rel. Ashcroft v. Goldberg*, 608 S.W.2d 385, 388 (Mo. 1980) (Fourth, Fifth, and Fourteenth Amendments).

Abstention is especially necessary "to avoid unwarranted determination of federal constitutional questions." *Pennzoil*, 481 U.S. at 11. Media Matters disputes the Missouri Attorney

AMERICAN OVERSIGHT

General's interpretation of Missouri law. Supp. Compl. ¶¶ 27, 30. If Media Matters prevails, it would render the federal constitutional claims moot. "*Younger* abstention in situations like this 'offers the opportunity for narrowing constructions that might obviate the constitutional problem and intelligently mediate federal constitutional concerns and state interests.'" *Pennzoil*, 481 U.S. at 12 (citation omitted). In other words, if Media Matters prevails on its statutory arguments, constitutional issues would disappear. Failure to abstain, in contrast, might result in "a reading of the statute that is not binding on state courts and may be discredited at any time—thus essentially rendering the federal-court decision advisory." *Moore v. Sims*, 442 U.S. 415, 428 (1979); *see also Berrada Properties*, 608 F. Supp. 3d at 751 (federal intervention is "doubly offensive" because "it requires the Court to make the first pass at several Wisconsin statutory provisions"). Because the controversy between the State of Missouri and Media Matters involves disputed issues of state law, state courts should have the first opportunity to adjudicate the controversy.

D. Media Matters has waived the issue whether any exception to abstention applies, and in any event, no exception applies.

The Supreme Court has recognized "narrow exceptions to the doctrine that federal courts should not interfere with state" proceedings. *Huffman*, 420 U.S. at 602. But "[i]t is the plaintiff's 'heavy burden' to overcome the bar of *Younger* abstention." *Weitzel v. Div. of Occupational and Prof. Licensing of Dept. of Com. of State of Utah*, 240 F.3d 871, 877 (10th Cir. 2001).[6] Media Matters, however, tellingly has not even mentioned *Younger* abstention, much less pleaded or argued that an exception applies, even though Texas, in its opposition to Media Matters' motion to supplement the complaint, explained that "adding Attorney General Bailey as a defendant in

[6] *See also Diamond "D" Const. Corp. v. McGowan*, 282 F.3d 191, 198 (2d Cir. 2002); *Gates v. Strain*, 885 F.3d 874, 881 (5th Cir. 2018); *FreeEats.com, Inc. v. Indiana*, 502 F.3d 590, 596 (7th Cir. 2007); *Plouffe v. Ligon*, 606 F.3d 890, 893 (8th Cir. 2010); *Leonard v. Alabama State Bd. of Pharm.*, 61 F.4th 902, 908 (11th Cir. 2023).

AMERICAN OVERSIGHT

this case would require this Court to consider the relevance of the existing Missouri proceedings. *Cf. Younger v. Harris*, 401 U.S. 37 (1971)." ECF 40 at 3. Media Matters has thus waived this issue. *Power Co. of Am., L.P. v. FERC*, 245 F.3d 839, 845 (D.C. Cir. 2001) ("This argument was not raised in PCA's opening brief and is therefore waived.").

In any event, Media Matters could not establish any exception. *Younger* recognized that there might be narrow exceptions to abstention in criminal cases for "bad faith, harassment, or a patently invalid state statute." *Sprint*, 571 U.S. at 77. But these are very "narrow exceptions." *Huffman*, 420 U.S. at 602. And none applies here.

Consider "bad faith" and "harassment." Courts and treatises typically treat these together as one exception, not two. *E.g.*, *Perez v. Ledesma*, 401 U.S. 82, 97 (1971) (Brennan, J., concurring) ("bad-faith harassment"); Wright & Miller, 17B Fed. Prac. & Proc. Juris. § 4255 (3d ed.) (same); *id.* n.6 ("one cannot readily imagine either good-faith harassment or bad-faith without harassment" (citation omitted)). This exception is incredibly narrow. So narrow, in fact, that "the universe of bad-faith harassment claims that can be established is virtually empty." *Id.* § 4255 (citation omitted). "There is no case since *Younger* was decided in which the [Supreme] Court has found that the exception for bad faith or harassment was applicable." *Id.* It is not even clear the exception applies in civil cases at all. "While the Supreme Court has not ruled out use of the bad faith exception in civil cases, it has never directly applied the exception in such a case and we have only recognized it in the criminal context." *Aaron*, 357 F.3d at 778 (internal citation omitted).

One reason it is narrow is because it "requires a showing of bad faith on the part of the *state court judges*," not the state officials who brought the enforcement action. Wright & Miller, § 4255 n.11 (emphasis added). Specifically, the Supreme Court in *Vail* held that the bad-faith harassment exception did not apply even though "some paragraphs of the complaint could be

AMERICAN OVERSIGHT

construed to make such allegations as to the" parties who brought the state action. *Vail*, 430 U.S. at 338. The reason, the Supreme Court said, is because "there are no comparable allegations with respect to [the state court] justices" in that state court proceeding. *Id.* The Supreme Court immediately went on to say, "This exception *may not be utilized* unless it is alleged and proved that they [state judges] are enforcing the contempt procedures in bad faith or are motivated by a desire to harass." *Id.* (emphasis added).

The requirement that the "bad-faith harassment" exception is triggered only when *judges* act in bad faith makes sense. Our federalist system presumes that state courts are adequate to the job, *Pennzoil*, 481 U.S. at 15, so even if an executive official could be shown to have brought an action in bad faith, our system presumes that state courts will be able to adjudicate all defenses to that action just as well as if the action were brought in federal court, *see id.* Media Matters has not, and cannot, establish bad faith by Missouri court judges—who have so far made no rulings in the ongoing state court proceeding other than to *grant* Media Matters' motion to change judges.

The same is true with the "patently invalid statute" exception. Media Matters has not alleged, and cannot allege, that Missouri's consumer-protection statute is "patently invalid." The statute has been in place for 60 years and has repeatedly survived constitutional challenge. *E.g.*, *State ex rel. Nixon v. Telco Directory Pub.*, 863 S.W.2d 596, 600 (Mo. 1993); *State v. Shaw*, 847 S.W.2d 768, 776 (Mo. 1993). In any event, even "facial invalidity of a statute is not itself an exceptional circumstance justifying federal interference." *Huffman*, 420 U.S. at 602. The statute must "be flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it." *Id.* (citation omitted). Media Matters plainly cannot satisfy this arduous standard.

AMERICAN OVERSIGHT

The closest Media Matters gets to asserting any exception is to assert that the CID was not issued for "any good-faith investigative reason" because the CID and the lawsuit "apparently" do not "identif[y] any new facts" discovered since November. ECF 49-1 at 11–12 (emphasis omitted). But as Media Matters acknowledges right before that, state law does not require a CID to state these things. *Id.* at 10 ("[T]he Missouri Attorney General is not required by statute to show probable cause or establish jurisdiction before issuing a civil investigative demand.").

Similarly, Media Matters asserts there is no "good-faith investigative purpose" because Missouri moved to enforce the CID on the same day that Missouri issued the CID. *Id.* at 12–13. But that was permitted by Missouri law because waiting would have been futile; Media Matters had already made clear in its public statements and position in the lawsuit against Texas that it would not comply with any CID served by Missouri. Reed decl. ¶ 14. Media Matters' actions since have proven Missouri correct. In any event, the timing of Missouri's complaint in state court is irrelevant to the validity of the underlying investigation.

Neither of these accusations is against the courts of Missouri, and so even if the Court credited them, they would fail as a matter of law. But even setting aside that issue, other courts have repeatedly stressed that the "burden" of establishing bad faith "is heavy, as these exceptions are narrow." *Yelp*, 2024 WL 413464, at *4 (quotation omitted). In *Yelp*, for example, the court abstained even after determining that "Yelp's allegations of bad faith tell a persuasive story": the State had conducted only a "thin investigation," had entirely flipped its position, and was pursuing an enforcement action over a statement "even though it conceded that the [statement] is accurate." *Id.* at *5–6. The court said it was "not convinced that Paxton acted entirely in good faith," but all the evidence of bad faith was still insufficient to meet the arduous, narrow exception to *Younger*—so narrow that the Supreme Court has never found the exception satisfied.

AMERICAN OVERSIGHT

E. Media Matters consented to personal jurisdiction in Missouri state court.

Abstention is especially warranted here because Media Matters already consented to personal jurisdiction in Missouri courts. Media Matters asserts repeatedly that Missouri courts "obviously lack personal jurisdiction" over it. *E.g.*, ECF 49-1 at 35. That was always wrong, but it is especially wrong following Media Matters' filings in that case.

Missouri law is clear that a defendant waives personal jurisdiction if the defendant does "not immediately raise any objection to personal jurisdiction." *Everett v. Vance*, 685 S.W.3d 495, 502 (Mo. App. W.D. 2023). "Personal jurisdiction 'is waived if not raised at the *first* opportunity.'" *Id.* (citation omitted) (emphasis added). The only exceptions are for entries of appearance and motions for extensions of time. *E.g.*, *State ex rel. Antoine v. Sanders*, 724 S.W.2d 502, 505 (Mo. 1987).

Media Matters did not challenge personal jurisdiction at its "first opportunity." Instead, it exercised its legal right under Missouri law to exercise a peremptory strike against a state court judge. It filed a motion to do so, which was granted, and it scheduled a court hearing on that motion. Media Matters was of course entitled to avail itself of that legal right under Missouri law, but its decision to do so before challenging personal jurisdiction necessarily waived the issue because it is well settled that a party "waive[s] its right to contest personal jurisdiction by seeking affirmative relief from the trial court." *Bland v. IMCO Recycling, Inc.*, 67 S.W.3d 673, 678 (Mo. App. S.D. 2002). As relevant here, "[t]he filing of a motion for change of judge constitutes seeking affirmative relief from the court," so Media Matters "has voluntarily submitted himself to the court's jurisdiction and is estopped from challenging the lack of personal jurisdiction." *Rollins Burdick Hunter of Utah, Inc. v. Bd. of Trustees of Ball State U.*, 665 N.E.2d 914, 919 (Ind. App. 1996).

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000468

F. Fundamental limits on federal equity reinforce the need to abstain.

Failure to abstain would run headlong into foundational limits on federal court equity jurisdiction. As the Supreme Court reiterated recently, equity "does not normally permit federal courts to issue injunctions against state-court judges or clerks." *Whole Woman's Health v. Jackson*, 595 U.S. 30, 39 (2021). "As *Ex parte Young* put it, 'an injunction against a state court' or its 'machinery' 'would be a violation of the whole scheme of our Government.'" *Id.* (quoting *Ex parte Young*, 209 U.S. 123, 163 (1908)). Abstention is required because granting Media Matters relief would have the same effect as an injunction against the state courts of Missouri.

To be sure, Media Matters has not named a state court as a party, but the effect is the same. No abstention case the Supreme Court has decided has involved a suit against a court, and yet the Supreme Court has repeatedly stressed that abstention is necessary to avoid federal interference with a state court's "function of providing a forum competent to vindicate any constitutional objections." *Huffman*, 420 U.S. at 604. Regardless of who the party is, the effect is the same: Media Matters seeks an order here that would shut down the courts of Missouri.

II. There is No Personal Jurisdiction and, Therefore, the Case Should Be Dismissed.

This Court also lacks personal jurisdiction over the Missouri Attorney General. For personal jurisdiction, the court "must first examine whether jurisdiction is applicable under the state's long-arm statute and then determine whether a finding of jurisdiction satisfies the constitutional requirements of due process." *GTE New Media Servs. Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1347 (D.C. Cir. 2000). "The District of Columbia 'long-arm statute' enumerates the various acts of a nonresident defendant which support the assertion of personal jurisdiction." *Mouzavires v. Baxter*, 434 A.2d 988, 990 (D.C. Cir. 1981). Personal jurisdiction comports with due process only when the defendant has "minimum contacts with the forum state such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"

AMERICAN OVERSIGHT

Int'l Shoe Co. v. State of Wash., Off. of Unemployment Comp. & Placement, 326 U.S. 310, 316 (1945).

A. Plaintiffs have not satisfied the long-arm statute.

Here, Plaintiffs have not met the personal jurisdiction threshold under the District of Columbia long-arm statute. The applicable long-arm statute, D.C. Code § 13-423, provides in relevant part:

> (a) A District of Columbia court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's –
> . . .
> (1) transacting any business in the District of Columbia;
> . . .
> (3) causing tortious injury in the District of Columbia by an act or omission in the District of Columbia[.]

Id. Plaintiffs assert personal jurisdiction under both (a)(1) and (a)(3).[7]

Subsection (a)(1) does not support jurisdiction. Missouri, acting through its Attorney General, has not transacted business in the District merely by hiring a process server to *serve a lawsuit*. If that were the case, then parties, including sovereign states, could never sue an out-of-state entity with sufficient minimum contacts but without a registered agent in the state, without subjecting themselves to a corresponding retaliatory lawsuit filed in the state of service. This is not purposefully engaging in "some type of commercial or business-related activity directed at District residents." *Holder v. Haarman & Reimer Corp.*, 779 A.2d 264, 270–71 (D.C. 2001). Nor

[7] The State of Missouri, like Texas, asserts that the State does not fall under the D.C. long-arm statute, because it is not a "person," as provided in the statute.

Media Matters briefly suggests that another provision, subsection (a)(4), is also satisfied because the Missouri Attorney General is a party to a proceeding in the D.C. Circuit, but Media does not press that argument "for present purposes." ECF 49-1 at 18 n.13. In any event, it is wrong. The Missouri Attorney General does not subject himself to permanent jurisdiction in D.C. merely by participating in an unrelated lawsuit that is required to be filed in the D.C. Circuit.

AMERICAN OVERSIGHT

is it "any continuing corporate presence in the forum state directed at advancing the corporation's objectives." *AMAF Int'l Corp. v. Ralston Purina Co.*, 428 A.2d 849, 851 (D.C. 1981).

There is also no personal jurisdiction under subsection (a)(3) because Plaintiffs fail to establish that the Missouri Attorney General's alleged tortious conduct occurred in D.C. The CID was prepared in Missouri and relates to conduct of Media Matters in Missouri. Missouri did not hire a process server in D.C. for the CID, but instead mailed it from Missouri. And the Missouri lawsuit served in D.C. is merely the statutorily-authorized process provided for seeking enforcement because of Media Matters' refusal to respond to a request for information. Further, the investigation is occurring in Missouri and is inquiring into potential violations of *Missouri consumers'* rights. That is not alleged tortious conduct in D.C., but an investigation of unlawful conduct in Missouri.

Media Matters cannot get around these stubborn facts by misrepresenting state law and Supreme Court precedent. Media Matters says that Missouri's law simply authorizes "inspection" of documents and asserts that the Attorney General "would likely need to travel to the District of Columbia for such inspection." ECF 49-1 at 19. But Missouri law says that documents shall be "produce[d]," not inspected, and must be produced at the "place as may be stated in the civil investigative demand," which is Missouri. Mo. Rev. Stat. § 407.040. Media Matters also misstates Supreme Court precedent as holding that any mailing satisfies personal jurisdiction. ECF 49-1 at 23. But the case cited merely states that sending something through the mail is "a relevant contact," not a sufficient contact. *Walden v. Fiore*, 571 U.S. 277, 285 (2014). A mail-order business may satisfy sufficient contacts, but D.C. courts have repeatedly held that merely "mailing a letter or other material into Washington, DC from outside of the District does not qualify as an 'act . . . in the District of Columbia within the meaning of subsection (a)(3)." *Slate v. Kamau*, No.

AMERICAN OVERSIGHT

20-CV-3732 (BAH), 2021 WL 3472438, at *6 (D.D.C. Aug. 6, 2021) (internal citations omitted); *accord Moncrief v. Lexington Herald-Leader Co.,* 807 F.2d 217, 219–22 (D.C. Cir. 1986) (holding that "no act occurred within the District of Columbia" when "the libelous article was printed, and the newspapers were mailed, outside of the District of Columbia.").

Media Matters suggests there is a chill caused by receiving a CID in the mail inquiring about conduct in another state. Not so. The D.C. Circuit explicitly rejects the theory that the "injury is part of the tort" for the purpose of the long-arm statute "because such a theory would obliterate subsection (3)'s careful distinction between injury' and act." *Forras v. Rauf*, 812 F.3d 1102, 1107 (D.C. Cir. 2016) (internal quotation marks omitted); *see also Dyson v. Dutko Ragen Homes & Investments*, No. 21- CV-02280 (APM), 2022 WL 1294484, at *4 (D.D.C. Apr. 27, 2022) (noting that "limited communications initiated from outside the District of Columbia to a District resident do not qualify as an act 'in the District' for purposes of § 13-423(a)(3)").

Media Matters' "chilling" argument also proves far too much. Under that argument, Media Matters could sue in D.C. even if the State of Missouri had served the CID and lawsuit on Media Matters *outside* D.C. Media Matters has not provided any support for its idea that there is personal jurisdiction against the defendant wherever the allegedly injured *plaintiff* might reside. That would turn personal jurisdiction on its head. "[T]he plaintiff cannot be the only link between the defendant and the forum." *Walden*, 571 U.S. at 286.

B. Personal jurisdiction here would violate the Due Process Clause.

Personal jurisdiction in this case also does not meet the requirements of Due Process because the Missouri Attorney General, on behalf of the State of Missouri, does not have minimum contacts. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923 (2011). There is neither general jurisdiction—where a defendant is "essentially at home" in the forum state—nor specific jurisdiction, based on the contacts between the defendant, the forum state, and the

AMERICAN OVERSIGHT

controversy. *See Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 415–16 (1984); *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024–25 (2021). Media Matters does not contend that the Court has general jurisdiction.

Nor is there specific jurisdiction. Missouri did not "purposefully direct" conduct at the forum state "such that [it] should reasonably anticipate being haled into court there." *Lewis v. Mutond*, 62 F.4th 587, 591 (D.C. Cir. 2023) (citation omitted). "[A] plaintiff's claims must "aris[e] out of or relat[e] to the defendant's contacts with the forum." *Id.* (citation omitted). But Media Matters alleges no such thing.

Indeed, Media Matters alleges even *fewer* contacts by Missouri than the already minimal contacts alleged of Texas. While this Court found it meaningful that Texas delivered its CID through a process server, ECF 37 at 26, Missouri delivered its CID through the mail. If "email and telephone communications sent into the District of Columbia are not sufficient" for personal jurisdiction, *Associated Producers, LTD v. Vanderbilt U.*, 76 F. Supp. 3d 154, 165 (D.D.C. 2014), then neither is snail mail. *E.g.*, *Exponential Biotherapies, Inc. v. Houthoff Buruma N.V.*, 638 F. Supp. 2d 1, 9 (D.D.C. 2009) ("HB's telephone calls, emails, facsimiles and mailings, including invoices, to EBI's D.C. office are insufficient to subject it to this Court's personal jurisdictio n."). To be sure, Missouri used a process server for its state enforcement action, but Media Matters challenges much more than that. And if using a process server to serve a lawsuit is sufficient (it is not), then Media Matters has subjected itself to personal jurisdiction in Missouri by using a process server to serve its complaint on the Missouri Attorney General. ECF 48.

First Amendment concerns do not change or even enter into the personal jurisdiction analysis. *See Moncrief*, 807 F.2d at 222–24. To the extent Media Matters believes it experienced a heightened chill because the State of Missouri exercised its sovereign authority, that similarly

AMERICAN OVERSIGHT

does not affect the personal jurisdiction analysis. The default rule is that state agencies should not "have to defend [their] attempt to enforce [state] laws"—much less mere investigations under those laws—"in courts throughout the nation." *Stroman Realty v. Wercinski*, 513 F.3d 476, 487 (5th Cir. 2008); *accord Music Makers Holdings v. Sarro*, No. RWT-09-cv1836, 2010 WL 2807805, at *5 (D. Md. July 15, 2010) ("[R]ecent out-of-circuit court of appeals decisions have analyzed the issue in a variety of contexts and have uniformly held that cease-and-desist letters alone do not establish personal jurisdiction."). For these reasons, there is no personal jurisdiction.

C. Media Matters' jurisdictional argument is self-defeating.

A critical lynchpin of Media Matters' entire lawsuit is its bold assertion that Missouri courts "obviously lack personal jurisdiction" over Media Matters. ECF 49-1 at 35. Yet Media Matters' arguments for jurisdiction over the Missouri Attorney General would necessarily subject Media Matters to jurisdiction in Missouri. Media Matters contends, for example, that merely mailing something into D.C. subjects the Missouri Attorney General to jurisdiction. Yet Media Matters regularly emails newsletters to countless residents of Missouri. Jurisdiction is proper when an organization "circulat[es] magazines to deliberately exploit a market in the forum state." *Walden*, 571 U.S. at 285 (quotation marks omitted; brackets adopted). Media Matters also solicits (and receives) donations from Missourians. *E.g.*, Reed decl. ¶ 7. And Media Matters admits it writes articles about public figures in Missouri.

Media Matters' sole response to all this is to assert that the Missouri Attorney General—nearly 20 years ago—responded to a Media Matters inquiry and opined that the organization was exempt from registering under Missouri law. ECF 49-1 at 37; ECF 39-11. But Media Matters neglects to mention that under Missouri law, *all* 501(c)(3) organizations are exempt from registration. Mo. Rev. Stat. § 407.456.2(6). That law states that an organization seeking to solicit donations in Missouri must register with the Secretary of State unless the organization is, for

AMERICAN OVERSIGHT

example, religious, educational, or a 501(c)(3). *Id.* Exemption from registration says nothing about the organization's contacts with Missouri.

In fact, Media Matters' 2007 outreach to the Missouri Attorney General undermines Media Matters' contentions. Media Matters would not have reached out to the Missouri Attorney General in the first place unless it were soliciting donations in the State. (Its most recent public financial disclosure shows that it is still soliciting donations from Missouri. Reed decl. ¶ 7.) And the letter confirms Media Matters was in fact engaging in substantial contacts with Missouri, which is why the Attorney General's Office at the time invited Media Matters "to be included on the Missouri Attorney General's Office charity web page." ECF 39-11.

III. Media Matters Cannot Establish a Justiciable, Ripe Injury, Nor the Absence of an Adequate Remedy at Law.

To establish a justiciable controversy, Media Matters must establish not only the regular three elements of standing, but also that the dispute is "ripe" and—because Media Matters seeks a prospective injunction—that there is no adequate remedy at law. *Natl. Park Hosp. Ass'n v. Dept. of Int.*, 538 U.S. 803, 807 (2003) (ripeness); *Natl. Farmers Union Ins. Companies v. Crow Tribe of Indians*, 471 U.S. 845, 856 n.22 (1985) (adequate remedy). Media Matters has not done so.

The Supreme Court's decision in *Reisman v. Caplin*, 375 U.S. 440 (1964), makes clear that Media Matters cannot establish the lack of an adequate remedy at law. There, the Supreme Court held that an agency's non-self-executing request for documents is not reviewable until the agency tries to enforce it. The recipient of an administrative request for documents was not obligated to produce anything until after the agency brought an "enforcement action" where the recipient would be afforded "a judicial determination" of the lawfulness of the request and the viability of any of his defenses. *Id.* at 446. That "opportunity for judicial review before any coercive sanctions may be imposed" was an adequate "remedy"; and the court would not permit the recipient of the request

AMERICAN OVERSIGHT

to short-circuit this process by preemptively seeking an injunction in federal court. *Id.* at 450. That is exactly the opportunity being afforded Media Matters in Missouri state court, and it is taking advantage of that opportunity.

In granting a preliminary injunction against the Texas Attorney General, this Court concluded that *Reisman* did not apply because, unlike in *Reisman*, "[t]he Texas Code contains no equivalent remedies for a non-resident challenging a CID" as Texas law refers only to *in-state* defendants contesting a CID in state court. ECF 37 at 30. But Missouri law is different. Missouri law *does* include an equivalent remedy and expressly states that a person may challenge a CID in the "county where the parties reside *or* in the circuit court of Cole County." Mo. Rev. Stat. § 407.070 (emphasis added). Cole County contains Missouri's capital city, is an open venue for all out-of-state parties, and is the venue for the existing state proceeding. *Id.* Similarly, this Court faulted Texas for not citing "any authority holding that an exclusive remedy in foreign state court is an adequate remedy at law." ECF 37 at 30. But Missouri has cited relevant authority. The Supreme Court has repeatedly held that federal courts must presume that a state's courts are an adequate forum. *E.g.*, *Pennzoil*, 481 U.S. at 15 ("[A] federal court should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary.").

This Court also noted that *Reisman* did not involve the First Amendment, ECF 37 at 30, but that makes no difference because Media Matters seeks prospective relief. This Court noted that where a party asserts a First Amendment chill, an injury may have already occurred, unlike in *Reisman*. *Id.* (citing *Twitter, Inc. v. Paxton*, 56 F.4th 1170, 1178 (9th Cir. 2022)). But Media Matters has not sought any relief to rectify a *past* injury; Media Matters instead seeks relief to enjoin "*further* action to enforce" the CID. ECF 39-2 (supplemental complaint) ¶ 74 (emphasis

AMERICAN OVERSIGHT

added). It is axiomatic that when a plaintiff "seeks prospective declaratory and injunctive relief, he must establish an ongoing or future injury that is 'certainly impending'; he may not rest on past injury." *Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015). *Reisman* forecloses Media Matters from suing because Media Matters' ability to raise its defenses to future injury in state court means Media Matters has an adequate remedy at law, and "[i]t is a fundamental principle of long standing that a request for an injunction will not be granted as long as an adequate remedy at law is available." *Natl. Farmers Union*, 471 U.S. at 856 n.22.

Media Matters also cannot establish ripeness. Even if there were no adequate remedy at law, the *Twitter* case holds that where a recipient of a CID "can raise its First Amendment defense" in state court, then a federal challenge is not ripe. *Twitter*, 56 F.4th at 1177. "[U]nlike the analysis of *Reisman*, [the] ripeness analysis does not rely on the lack of an adequate remedy at law," and so it serves as an independent bar to judicial relief. *Id.* at 1179. Here, there is an enforcement action in Missouri state court and Media Matters is not only participating but will also have a full opportunity to raise its federal claims. As such, this case should be dismissed for ripeness.

These decisions are consistent with the routine conclusion by courts that "pre-enforcement review of investigative subpoenas" is strongly disfavored. *See, e.g., Belle Fourche Pipeline Co. v. United States*, 751 F.2d 332, 334 (10th Cir. 1984); *see also United States v. Kulukundis*, 329 F.2d 197, 199 (2d Cir. 1964) (Friendly, J.) (explaining *Reisman* "seems to destroy the basis underlying decisions of this court which authorized applications to vacate [non-self-executing subpoenas] (and appeals from their denial) in advance of any judicial proceeding by the Government for their enforcement"). This is true even if there is an assertion of First Amendment claims. *See, e.g., Google*, 822 F.3d at 226 (concluding, in the First Amendment context, that "administrative subpoena is not ripe for review" because it is not "self-executing").

AMERICAN OVERSIGHT

IV. There Is No Likelihood of Success on the Merits.

In addition to the foregoing reasons, the extraordinary relief Plaintiffs seek against the State of Missouri and its judicial proceedings should be denied because there is no likelihood of success on the merits.

A. Media Matters is unlikely to succeed on its retaliation claim.

To assert a First Amendment retaliation claim, Media Matters "must show, among other things, that the government took an 'adverse action' in response to [its] speech that 'would not have been taken absent the retaliatory motive.'" *Houston Community College System v. Wilson*, 595 U.S. 468, 477 (2022) (quoting *Nieves v. Bartlett*, 139 S. Ct. 1715, 1722 (2019)).

This is an exceptionally heavy burden, which requires Media Matters to prove there was no legitimate ground to investigate at all. In *Nieves*, the Supreme Court concluded that a plaintiff must also establish that "non-retaliatory grounds are in fact insufficient to provoke the adverse consequences." *Nieves*, 139 S. Ct. at 1722. Specifically, the Supreme Court concluded that a retaliatory-arrest claim automatically fails if there is probable cause for the arrest, regardless of the individual officer's subjective motivation. *Id.* at 1728 ("Because there was probable cause to arrest Bartlett, his retaliatory arrest claim fails as a matter of law."). That rule is necessary because of the "presumption of regularity underlying the prosecutor's [enforcement] decision—a presumption [courts] 'do not lightly discard.'" *Id.* at 1723 (citation omitted).

Media Matters cannot establish that there was no probable cause at all to launch an investigation. Here, X Corp.'s lawsuit lays out a fact pattern that shows conduct not only "likely" to deceive consumers, but deliberately designed to do so. DoubleVerify, "which provides brand-safety measurement ratings for digital platforms to major advertisers," recently debunked the allegations that X was regularly populating advertisements next to fringe content, concluding instead that X's "Brand Safety Rates" were nearly perfect—99.99%—during the very time when

AMERICAN OVERSIGHT

Media Matters accused X of regularly posting brand advertisements next to fringe content. Todd Spangler, *DoubleVerify Apologizes for Misreporting X/Twitter's Brand-Safety Rates for More Than Four Months*, Variety (Apr. 15, 2024). And the district court overseeing that lawsuit has preliminarily concluded that X's allegations are likely sufficient to overcome a motion to dismiss. *X Corp.*, ECF 54 at 8.

A mere investigation is of course much less intrusive and disruptive than an arrest. Just as probable cause defeats a retaliatory arrest claim as a matter of law, so too probable cause for an investigation must defeat Media Matters' claim here. That is especially true because Media Matters' assertion is implausible on its face. It asserts that the Missouri Attorney General chose to retaliate because Media Matters wrote a single article criticizing him. ECF 49-1 at 12 ("Bailey has, like Paxton, been the subject of critical reporting from Media Matters. Bailey's Demand, much like Paxton's, thus reeks of opportunistic retaliation.') (citing a single article). But the Missouri Attorney General is regularly criticized by other media outlets, and Media Matters has not identified a single example of any other outlet receiving a CID at all—much less after writing a critical article. Contrary to Media Matters' distorted reality, the Attorney General filed the civil investigative demand to assess whether Media Matters has been dishonest with Missourians when soliciting donations from Missourians.

Media Matters also cannot establish any chill. Declarations notwithstanding, Media Matters' website reveals no chill at all. Media Matters identifies one article critical of the Missouri Attorney General published last August. *Id.* But on March 26 of this year—the day *after* the Missouri Attorney General publicly filed suit—Media Matters wrote a story criticizing the Missouri Attorney General. Vesper Henry & Ari Drennen, *Seen But Not Heard: The New York Times Failed to Quote Trans People in Two-Thirds of Stories on Anti-Trans Legislation in a One-*

AMERICAN OVERSIGHT

Year Period (March 26, 2024).[8] And a quick search reveals that Media Matters has published at least 20 articles about Elon Musk since its allegedly defamatory November 2023 article.[9]

Media Matters' retaliation claim fails for yet another reason: as a matter of law, "immaterial adverse actions" do not violate the First Amendment. *Houston Community College System*, 595 U.S. at 477 (courts "distinguish material from immaterial adverse actions"). Media Matters does not dispute that it is going to have to litigate its claims in one forum or another: either this one or Missouri state court. But it repeatedly states that it is "injured" by the prospect of litigating in Missouri. *E.g.*, ECF 49-1 at 36–37. That is not a material adverse action. This Court must presume that the state courts in Missouri are adequate, and Media Matters litigating there is simply the same "injury incidental to every proceeding." *Cameron v. Johnson*, 390 U.S. 611, 618 (1968).

B. Media Matters' other claims are likewise unlikely to succeed.

In the lawsuit against Texas, this Court rightly declined to grant Media Matters relief on any of its other counts. The Court should do the same here.

First and Fourth Amendments. At the outset, there is nothing "imminent" about the argument that the CID seeks information beyond what is permitted by the First and Fourth Amendments. Media Matters can litigate that issue under a standard timeline because no documents will be turned over until Media Matters has a full and fair chance to raise its defenses. Courts in Missouri regularly address these claims through ordinary litigation. *State ex rel. Ashcroft v. Goldberg*, 608 S.W.2d 385, 388 (Mo. 1980) (Fourth, Fifth, and Fourteenth Amendments).

In any event, Media Matters' claims easily fail. On the First Amendment, Media Matters asserts that the CID falls afoul of *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373

[8] https://www.mediamatters.org/new-york-times/seen-not-heard-new-york-times-failed-quote-trans-people-over-60-2023-stories-anti

[9] https://www.mediamatters.org/search?search=%22elon+musk%22

AMERICAN OVERSIGHT

(2021), but that case involved a California mandate for every nonprofit organization to disclose donor information automatically each year, without judicial process, rather than in response to a subpoena. Indeed, the Supreme Court expressly rejected California's mandate because there were "alternative means of obtaining [the] information—such as a subpoena." *Id.* at 2386.

On the Fourth Amendment issue, it is well settled that "the Fourth Amendment generally presents little obstacle to the enforcement of administrative subpoenas." *ADR Tr. Corp. v. Thornton*, 41 F.3d 1539, 1548 (D.C. Cir. 1994). Media Matters makes no attempt to develop its Fourth Amendment argument, other to say that it "often overlap[s]" with First Amendment concerns. ECF 49-1 at 32. Media Matters' argument is thus both waived and wrong.

State shield laws. No stronger is the contention that the CID violates Maryland and DC law. Those laws do not apply extraterritorially to Media Matters' conduct in Missouri. Media Matters also again fails to develop its argument. It notes, for example, that the statutes provide only "qualified protection against compelled disclosure" but makes no effort to state why that "qualified" protection applies here. *Id.* at 35. This issue, too, is waived.

Due Process. Finally, Media Matters strangely tries to escalate a jurisdictional issue into its own § 1983 violation. Media Matters asserts that the "legal process against them in Missouri violates due process." ECF 49-1 at 36. If in fact Media Matters were correct, that would be a good argument for the Missouri courts to dismiss the CID enforcement action. But it is not an independent constitutional tort for a party to sue somebody else in a forum that ultimately concludes it lacks personal jurisdiction, and Media Matters fails to cite any authority otherwise. Indeed, it is the state courts of Missouri, not the Missouri Attorney General, that exercise coercive power in the context of Due Process challenges. Media Matters' argument also proves way too much. Under that logic, Media Matters will have committed a tort against the State of Missouri if

AMERICAN OVERSIGHT

this Court (or the D.C. Circuit) concludes that *Younger* abstention is appropriate or the Court lacks personal jurisdiction here.

The Due Process argument is especially unavailing because, as discussed in more depth above, Media Matters has already consented to personal jurisdiction in Missouri. Rather than comply with Missouri requirements to object to personal jurisdiction in the first instance, Media Matters has filed a motion (which was granted) availing itself of legal rights in Missouri.

V. Media Matters Will Not Suffer Irreparable Harm.

"The basis of injunctive relief in the federal courts has always been irreparable harm." *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 747 (D.C. Cir. 1995). Accordingly, the "failure to show any irreparable harm is ... grounds for refusing to issue a preliminary injunction, even if the other three factors entering the calculus merit such relief." *Jones v. District of Columbia*, 177 F. Supp. 3d 542, 545 (D.D.C. 2016) (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006) and citing *Save Jobs USA v. U.S. Dep't of Homeland Sec.*, 105 F. Supp. 3d 108, 112 (D.D.C. 2015) ("the movant must always show irreparable harm or injury, and if a party makes no showing of irreparable injury, the court may deny the motion for injunctive relief without considering the other factors")). Here, there cannot be irreparable harm because there is an avenue for relief—an avenue Media Matters is engaged in—before any supposed harm is ever experienced.[10]

The D.C. Circuit "'has set a high standard for irreparable injury.'" *Id.* (quoting *Chaplaincy*, 454 F.3d at 297). "[T]he injury 'must be both certain and great; it must be actual and not theoretical.' " *Id.* (quotations omitted). Indeed, the "injury must also be 'of such imminence that

[10] Plaintiffs suggest they are experiencing an irreparable chilling effect. But, as Texas pointed out, Media Matters has continued its same criticisms and coverage. And in any event, it would have no application with respect to the State of Missouri's CID, which came months after the supposed harm was experienced. The chill is at best "theoretical." *Jones*, 177 F. Supp. 3d at 545.

AMERICAN OVERSIGHT

there is a 'clear and present' need for equitable relief to prevent irreparable harm." *Id.* (quoting *Wisc. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). Moreover, the injury must be "beyond remediation." *Id.* (quoting *Chaplaincy*, 454 F.3d at 297). As has been said many times, there is a remedy in this case; there is alternative relief before any supposed harm. And it is a remedy or relief that Plaintiffs have already engaged in—the State of Missouri's enforcement action in state court.

Even setting that issue aside, there is no imminent—much less irreparable—injury at all because Media Matters will not have to hand over any documents until it has had a full and fair opportunity to raise its defenses. Missouri's CIDs are not self-executing. Nothing will happen to Media Matters until resolution of judicial proceedings.

VI. The Balance of Equities and Public Interest Decisively Favor Missouri.

Finally, in *Winter v. NRDC, Inc.*, 555 U.S. 7, 24, (2008), the Supreme Court "held that 'proper consideration' of the balance of equities and public interest 'factors alone [would have] require[d] denial of the requested injunctive relief,' 'even if [the] plaintiffs [had] shown irreparable injury' and a likelihood of success on the merits." *Kim v. Fin. Indus. Regul. Auth., Inc.*, No. 1:23-CV-02420 (ACR), 2023 WL 6538544, at *16 (D.D.C. Oct. 6, 2023). "Importantly, this body of case law shows that a court can deny preliminary injunctive relief solely on the balance of equities and public interest factors even in cases, like this, involving constitutional claims." *Id.*

In this case, the balance of equities and public interest decisively favor the State of Missouri. The importance and need to protect consumers is indisputable. Missouri consumer protections laws have been in force for decades and have provided the legal and regulatory backbone of tens of thousands of actions, enforcements, and investigations to protect consumers. Further, the ability of a sovereign state, through its constitutionally and statutorily authorized Attorney General, to conduct investigations into potential violations of consumer protections laws

AMERICAN OVERSIGHT

is paramount—as is the ability of state courts in Missouri to resolve disputes over the exercise of that authority. If, at every turn, a federal court injunction is sought for routine investigations of potential violations of state law, then vital public interests and federalism will be defeated.

Because Media Matters not only has the opportunity, but has invoked the right, to challenge the investigation in Missouri courts, the balance of equities and the public interest unquestionably favor the denial of a TRO or preliminary injunction.

The equities especially disfavor Media Matters (and Media Matters also lacks standing) because it could have avoided any harm. "It is well-settled that a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted." *Safari Club Int'l v. Salazar*, 852 F. Supp. 2d 102, 123 (D.D.C. 2012) (quotations omitted). "In analogous circumstances, plaintiffs who decline the opportunity to avail themselves of a regulatory scheme to avoid the very harm for which they seek injunctive relief have been denied the [injunctive] relief." *Id.* Media Matters here has run to federal court rather than take advantage of the availability of relief in Missouri state court.

CONCLUSION

For the foregoing reasons, the motion for a TRO and a Preliminary Injunction should be denied.

AMERICAN OVERSIGHT

Date: May 8, 2024

Respectfully submitted,

ANDREW BAILEY
Attorney General of Missouri

/s/ *Joshua M. Divine*
JOSHUA M. DIVINE, #69875MO
Solicitor General

JEREMIAH J. MORGAN, #50387MO
Deputy Attorney General – Civil

OFFICE OF THE ATTORNEY GENERAL
Supreme Court Building
207 West High Street
P.O. Box 899
Jefferson City, Missouri 65102
Tel. (573) 751-1800
Fax (573) 751-0774
josh.divine@ago.mo.gov
jeremiah.morgan@ago.mo.gov

Counsel for Defendant Missouri Attorney General

CERTIFICATE OF COMPLIANCE

I certify that the foregoing document contains 38 pages, exclusive of matters designated for omission, and satisfies the typesetting requirements.

/s/ *Joshua M. Divine*
Counsel for Missouri Attorney General

CERTIFICATE OF SERVICE

I certify that on May 8, 2024, a true and accurate copy of the foregoing document was electronically filed through the Court's CM/ECF System and that a copy of the foregoing will be sent via email to all parties by operation of the Court's electronic filing system, all consistent with Federal Rule of Civil Procedure 5(b).

/s/ *Joshua M. Divine*
Counsel for Missouri Attorney General

AMERICAN OVERSIGHT

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

MEDIA MATTERS FOR AMERICA, ERIC HANANOKI, Plaintiffs, v. WARREN KENNETH PAXTON JR., in his official capacity as Attorney General of the State of Texas, ANDREW BAILEY, in his official capacity as Attorney General of the State of Missouri Defendants.	No. 24-cv-147

DECLARATION OF ASSISTANT ATTORNEY GENERAL STEVEN REED

I, Steven Reed, declare as follow:

1. My name is Steven Reed and I am a lawyer duly licensed and in good standing in the State of Missouri. I am over the age of 21 and fully competent to make this declaration. I make this declaration based on my personal knowledge.

2. I am the Chief Counsel for the Consumer Protection Section of the Missouri Attorney General's Office and am one of the attorneys responsible for the State of Missouri's investigation into consumer protection violations by Media Matters for America (Media Matters).

3. The Consumer Protection Section is responsible for administering and enforcing Chapter 407, the Missouri Merchandising Practices Act, of the Missouri Revised Statutes (RSMo.).

4. The Consumer Protection Section of the Missouri Attorney General's Office issues dozens of Civil Investigative Demands (CID's) under Section 407.040 RSMo. every year in an

AMERICAN OVERSIGHT

effort to investigate the "act, use or employment by any person of deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce *or the solicitation of any funds for any charitable purpose*…." Section 407.010 RSMo. (emphasis added).

5. Under Section 407.040, RSMo., the Missouri Attorney General, on behalf of the State of Missouri, may issue a CID "when it appears to the attorney general that a person has engaged in or is engaging in any method, act, use practice or solicitation declared to be unlawful by this chapter or when he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in or is engaging in any such method, act, use, practice or solicitation …."

6. In November 2023, the Missouri Attorney General's Office became aware of potential violations of the Missouri Merchandising Practices Act by Media Matters, an organization that purports to solicit funds for charitable purposes, and began to look into the matter.

7. The Missouri Attorney General's Office discovered that Media Matters not only distributes its newsletter in Missouri, but engages in internet and email solicitations, phone solicitations, and in-person solicitations for fundraising–listing Missouri in its public financial disclosures as a state in which it "is registered or licensed to solicit contributions or has been notified it is exempt from registration." Indeed, Media Matters has specifically communicated with the Missouri Attorney General's Office to seek an exemption from registration for its fundraising in Missouri. *See* Exhibit 1.

8. The Missouri Attorney General's Office further discovered that Media Matters was credibly accused of defaming the social media platform X (formerly Twitter) by falsely

AMERICAN OVERSIGHT

representing that X routinely populates advertisements for brands like Apple, IBM, and Xfinity next to extremist, fringe content.

9. The Missouri Attorney General's Office learned that, according to credible allegations, Media Matters had "knowingly and maliciously manufactured side-by-side images depicting advertisers' posts on X Corp.'s social media platform beside Neo-Nazi and white-nationalist fringe content and then portrayed these manufactured images as if they were what typical X users experience on the platform." Complaint, *X Corp. v. Media Matters for America*, No. 4:23-cv-1175, ECF 1 ¶ 1 (N.D. Tex. Nov. 20, 2023). Media Matters did this by "manipulat[ing] the algorithms … to bypass safeguards." *Id.* ¶¶ 7–8. According to credible allegations, while Media Matters insisted that paid advertisements regularly "appeared alongside the fringe content," in fact that was true "for only one viewer (out of more than 500 million) on all of X: *Media Matters*." *Id.* ¶ 13 (emphasis in original). Yet, according to reports and allegations, Media Matters' false "reporting" had the desired effect: advertisers withdrew from X in droves.

10. In confirmation of these allegations involving Media Matters, the Missouri Attorney General's Office has since learned from DoubleVerify, an organization "which provides brand-safety measurement ratings for digital platforms to major advertisers," that allegations that X was regularly populating advertisements next to fringe content is false. DoubleVerify stated that X's "Brand Safety Rates" were nearly perfect—99.99%—during the very time when Media Matters accused X of regularly posting brand advertisements next to fringe content. *See* Exhibit 2 (Todd Spangler, DoubleVerify Apologizes for Misreporting X/Twitter's Brand-Safety Rates for More Than Four Months, Variety (Apr. 15, 2024)).

11. Having identified potential violations of the Missouri Merchandising Practices Act, the Missouri Attorney General's Office determined to further investigate the matter. The Missouri

AMERICAN OVERSIGHT

Attorney General's Office did not simply file a complaint against Media Matters for violations of the Missouri Merchandising Practices Act; instead, the Missouri Attorney General's Office determined to gather more information by issuing a CID to Media Matters. This is something routinely done by the Missouri Attorney General's Office.

12. On March 25, 2024, the Office of the Missouri Attorney General, through the Consumer Protection Section that I lead as Chief Counsel, sent by certified mail, Civil Investigative Demand No. 24-10 to Media Matters, a true and accurate copy of which is attached as Exhibit 3 (CID No. 24-10). *See* Exhibit 4 (Certified mail cards and receipts).

13. Pursuant to section 407.040, the CID identifies the statute of the suspected violation and the general subject matter of the investigation. Specifically, the CID requests information relevant to whether Media Matters has engaged in or is engaging in any merchandising practices declared to be unlawful by section 407.020 with regard to Media Matters' fraudulent manipulation of data on X.com.

14. The Missouri Attorney General's Office had also learned that Media Matters would refuse, and had refused, to comply with any investigative demand, including CID No. 24-10, as it had with similar investigative demands. Accordingly, Missouri determined it would seek enforcement of its CID sent to Media Matters in Missouri state court as authorized by Missouri law. *See* Section 407.090, RSMo.

15. As anticipated, Media Matters refused, and continues to refuse, to comply with CID No. 24-10, and has provided no information or materials to the State of Missouri for its investigation under the Missouri Merchandising Practices Act.

16. After the CID to Media Matters was served, the State of Missouri filed its Petition for Order to Enforce Civil Investigative Demand. *See State of Missouri, ex rel. Andrew Bailey,*

AMERICAN OVERSIGHT

Attorney General v. Media Matters for America, Case No. 24AC-CC02291 (Circuit Court of Cole County, Missouri). I am a signatory to that Petition.

17. Media Matters appeared in the Missouri state court proceeding after service of the Petition and filed a motion for change of judge.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 8, 2024

/s/ Steven Reed

Steven Reed, Chief Counsel
Consumer Protection Section
Missouri Attorney General's Office

AMERICAN OVERSIGHT

Exhibit 1

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

JAY NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. BOX 899
(573) 751-3321

July 12, 2007

Copilevitz & Canter, LLC
Attention: Megan B. Allen
310 W. 20th Street, Suite 300
Kansas City, MO 64108

RE: Charitable Organization & Solicitation Law, 407.450 -- 407.478 RSMo, 2000
Registration and Exemption for **Media Matters for America**
Registration No .**CO-181-07**

Dear Ms. Allen:

Attorney General Jeremiah W. (Jay) Nixon has asked me to respond to your recent letter regarding the above.

Based on the facts submitted to our office, it appears that your organization is exempt from registration under the Charitable Organizations & Solicitations Law, Sections 407.450 to 407.478 RSMo 2000

The initial registration statement and letter noting your statement of exemption has been retained for our files. **In addition**, we invite your organization to be included on the Missouri Attorney General's Office charity web page. The web page will offer a profile of each organization, including a description of its charitable purpose, contact information and basic financial information about the organization with a focus on the program-spending ration. Consumers will be able to easily access information that will assist in evaluating solicitations and choosing wisely when responding to charitable appeals.

To be included on the Attorney Generals charity web page please complete the enclosed forms which certify the accuracy of the information provided. Please mail your information to:

Missouri Attorney General's Office
Attn: Judy Murray
P.O. Box 899
Jefferson City, MO 65102-0899

AMERICAN OVERSIGHT

Thank you for your continued cooperation. If you have further questions please contact the undersigned or visit us at www.ago.mo.gov.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Rhonda Johnson

Rhonda Johnson
Registration Specialist
Consumer Protection Division

Enclosure

AMERICAN OVERSIGHT

Exhibit 2

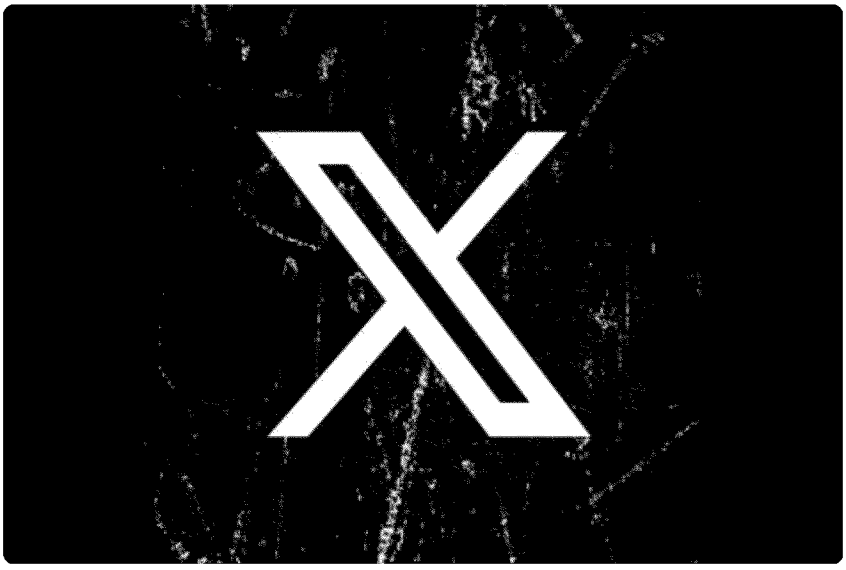
AMERICAN OVERSIGHT

Better quotes, more news, smarter tools. Welcome to the future of finance. Discover What's New

VARIETY

DoubleVerify Apologizes for Misreporting X/ Twitter's Brand-Safety Rates for More Than Four Months

Todd Spangler
Mon, Apr 15, 2024 • 4 min read



DoubleVerify, which provides brand-safety measurement ratings for digital platforms to major advertisers, incorrectly displayed X's Brand Safety Rate — a measure of how frequently ads appeared adjacent to content that met advertiser-approved criteria — on the DoubleVerify dashboard for nearly five months.

From Oct. 24, 2023, to March 14, 2024, DoubleVerify's dashboard provided the wrong data for X to advertisers. In some cases, the measurement firm showed scores as low as 70%, whereas X's Brand Safety Rates were in fact 99.99%. DoubleVerify CEO Mark Mark Zagorski, in a message to customers April 12, apologized for the error and said the company's dashboard now correctly shows X's brand-safety rates.

AMERICAN OVERSIGHT

More from Variety

- Elon Musk's X Loses Lawsuit Against Research Group That Reported Rise in Hate Speech, Racist Content on Social Network
- Don Lemon Says Elon Musk Canceled His X Talk Show Deal Shortly After Interview: The Tech Billionaire 'Is Mad at Me'
- Elon Musk Posts Crying-Laughing Emoji in Response to $128 Million Lawsuit by Fired Twitter Executives

"We apologize for any confusion this may have caused to X and to our customers in the course of reviewing your campaign performance on X," Zagorski wrote in the message to customers. "DV remains committed to maintaining the highest standards of accuracy and transparency in our data."

It's unclear how the error occurred. Reps for X and DoubleVerify said the companies are continuing to investigate the issue. DoubleVerify is "conducting a thorough review of our processes and systems to ensure this issue does not occur in the future," according to Zagorski.

"X remains dedicated to ensuring a safe and transparent platform for our valued advertisers and users," the X Business account posted on Friday. "We are deeply troubled by this gross misrepresentation of our Brand Safety performance and have taken immediate action to rectify the situation with DoubleVerify."

Elon Musk, the tech billionaire who owns X, wrote in a post April 12, "Thank you DoubleVerify for correcting your mistake regarding brand safety on this platform. When measured accurately, brand safety on 𝕏 is extremely good."

DoubleVerify's reporting error caused dozens of large brands to pull back advertising spending and stop campaigns on X, according to the social-media company. For example, the DoubleVerify dashboard said that a Molson Coors campaign delivered poorly with a brand-suitability rate in the mid-90s — when it was actually 99.99%. Account teams at Publicis Spark, which manages campaigns for such brands as Campbell's and Conagra, became aware of the erroneous DoubleVerify metric and then said they were hesitant to partner with X, according to Joe Benarroch, X's head of business operations. (A spokesman for Campbell's said that its brands have not advertised on X or Twitter since 2020; that decision was tied to consumer behavior and performance and wasn't related at all to any brand-safety issues.)

Monique Pintarelli, head of Americas for X, in remarks delivered Monday to the Mobile Marketing Association's Board of Global Advertisers, noted that the social network's tools for sensitivity settings and keyword adjacencies — and its partnerships with Integral Ad Science (IAS) and DoubleVerify to allow for third-party verification — were not available prior to Musk's acquisition of Twitter.

Pintarelli also noted that the DoubleVerify reporting error affected only X. She asked advertisers to "please connect with your agencies and measurement partners to ensure you have the most accurate information."

"We are proud of the work we are doing, to ensure our customers have the tools needed to ensure brand safety across our platform," Pintarelli said. "We are now at or above industry standards, in all metrics and capabilities."

X/ Twitter and Musk have a[illegible]ressively pushed back against claims that the social network is unsafe for brand advertising. Last November, X sued liberal watchdog group Media Matters, alleging the group "knowingly and maliciously manufactured" research that showed neo-Nazi and white-nationalist posts on X next to ads for Apple, Bravo, IBM, Oracle and Comcast's Xfinity. Following

AMERICAN OVERSIGHT

the Media Matters report and Musk's seeming endorsement of an anti-Semitic conspiracy theory, several large advertisers including Disney said they were halting their spending on X — either because of the Media Matters reports, Musk's post or a combination of both. Last month, Missouri Attorney General Andrew Bailey filed a lawsuit against Media Matters seeking to force the nonprofit to turn over documents related to the AG's investigation "into its fraudulent business practices," citing X's allegations that Media Matters "deceitfully manipulated X's algorithm to place advertisers' content next to contrived controversial posts." In a statement, Media Matters president Angelo Carusone said: "Far from the free-speech advocate he claims to be, Elon Musk has actually intensified his efforts to undermine free speech by enlisting Republican Attorneys General across the country to initiate meritless, expensive, and harassing investigations against Media Matters in an attempt to punish critics. This [Missouri] investigation is the latest in a transparent endeavor to squelch the First Amendment rights of researchers and reporters; it will have a chilling effect on news reporters."

Read Zagorski's message to DoubleVerify customers about the reporting error for X's Brand Safety Rates:

resulted in displaying an incorrect, lower rate. Specifically, DoubleVerify's dashboard incorrectly mirrored the Brand Suitability Rate for your campaign onto the Brand Safety Rate in the summary graphic in Pinnacle. The underlying data available in DV Pinnacle was accurate; only the graphical visualization was not representative of the Brand Safety Rate. This display error occurred over four and a half months from October 24, 2023 to March 14th, 2024, when it was corrected by DV. All current and retroactive Brand Safety data for X is now correctly represented in Pinnacle. The display error was not present in any other area in the UI, including the Incident Reporting and the Rollover Data Detail.

Based on DoubleVerify's metrics, X's Brand Safety Rate across all campaigns we measured exceeded 99.99% from October 2023 to the present. This means that X's Brand Safety Rate exceeds global benchmarks for brand safety, based on DV's global industry data.

DoubleVerify takes measurement accuracy and reporting seriously. We take full responsibility for the inaccurate visual representation of X's Brand Safety Rate within our dashboard that displayed an inaccurate and lower Brand Safety Rate.

We apologize for any confusion this may have caused to X and to our customers in the course of reviewing your campaign performance on X. DV remains committed to maintaining the highest standards of accuracy and transparency in our data.

DoubleVerify is working closely with X to ensure that all future reports reflect the accurate Brand Safety performance of campaigns run on X's platform. We also are conducting a thorough review of our processes and systems to ensure this issue does not occur in the future.

Should you wish to have a direct conversation with X regarding your reporting, we would be happy to relay your contact information to your X account lead and facilitate a meeting. Our team at DoubleVerify remains committed to maintaining trust and confidence in our platform, and would welcome a direct follow up with you should you wish to discuss further.

Best regards,

Mark Zagorski
CEO
DoubleVerify

Best of Variety

- New Movies Out Now in Theaters: What to See This Week
- From 'The Sympathizer' to 'Three-Body Problem': The Best Book-to-Screen Adaptations to Read This Year
- What's Coming to Disney+ in April 2024

AMERICAN OVERSIGHT

Exhibit 3

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

In the Matter of:

Media Matters for America

CID NO. 24-10
Date: March 25, 2024

INVESTIGATIVE DEMAND

THE ATTORNEY GENERAL TO:

Served: U.S. Postal Service
Certified Mail

Media Matters for America
PO Box 44811
Washington, DC 20026

The Attorney General of the State of Missouri believes it to be in the public interest that an investigation be made to ascertain whether Media Matters for America (Subject) has engaged in or is engaging in practices declared unlawful by § 407.020, RSMo.

The investigation will inquire into the activities of Subject in connection with the solicitation of funds for a charitable purpose, or the sale or advertisement of merchandise, §§ 407.020, 407.453, RSMo.

The Attorney General has reason to believe that the Subject has used deception, fraud, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of material fact in connection with the soliciting of funds for a charitable purpose or the sale or advertisement of merchandise in or from the State of Missouri, § 407.020, RSMo. Independently, the Attorney General also believes it to be in the public interest to investigate whether such acts have occurred.

The Attorney General believes you have information, documentary material or physical evidence relevant to the above-mentioned conduct.

AMERICAN OVERSIGHT

DEFINITIONS

As used in this Demand, the following terms have the meanings described below:

"Communication" means any expression, statement, conveyance, or dissemination of any words, thoughts, statements, ideas, or information regardless of form, format, or kind. "Communication" includes but is not limited to oral or written communications of any kind, such as telephone conversations, discussions, meetings, notes, letters, agreements, emails or other electronic communications, facsimiles, and other forms of written or oral exchange that are recorded in any way, including video recordings, audio recordings, written notes, or otherwise. Any "Communication" that also falls within the definition of "Document" shall constitute both a Document and a Communication for purposes of this civil investigative demand.

"Document" means all written, printed, typed, and recorded matter of every kind and description, originals and copies, and all attachments and appendices thereto. Without limiting the foregoing, "documents" include all agreements, contracts, correspondence and other communications including notes, memoranda and marginal notations, records, reports, books, manuals, instructions, statistical data and data compilations, drafts, charts, graphs and tables, bills, statements and invoices, advertising, surveys, transcripts, microfilm and microfiche, electronic records that can be reproduced in paper form, recordings, film, tapes, photographs, electronic mail and Web pages, and all other computer-generated, computer-stored, or electronically-stored matter, however and by whomever produced, prepared, reproduced, disseminated, or made.

"Identify", when used with respect to a person or entity, means information sufficient to allow employees of the Attorney General to ascertain the name, address, telephone number, and if not a natural person, the contact person of the entity or facility to be identified, as well as the relationship of that person or entity to you.

"Identifying", when used with respect to a fact or event, means information sufficient to allow employees of the Attorney General to ascertain the fact or event with reasonable particularity, and to identify each person believed to have knowledge with respect to the fact or event and each document that refers or relates to the fact or event.

AMERICAN OVERSIGHT

"Relating to", "related to", "relate to" means to be relevant in any way to the subject matter in question, including without limitation all information that directly or indirectly contains, records, reflects, summarizes, evaluates, refers to, is pertinent to, indicates, comments upon, or discusses the subject matter; or that states the background of, or was the basis for, or that records, evaluates, comments, was referred to, relied upon, utilized, generated, transmitted, or received in arriving at any conclusion, opinion, estimate, position, decision, belief, policy, practice, course of business, course of conduct, procedure, or assertion concerning the subject matter.

"You", including your, means Media Matters for America, subsidiaries, partnerships, or any other entities related to Media Matters for America.

DEMAND FOR INFORMATION

Demand is hereby made upon you, under the authority granted by Section 407.040, RSMo, to produce in person or via mail to Michelle Starke, P.O. Box 899, Jefferson City, Missouri 65102 by April 15, 2024, the following documentary material and information that may be in your possession, custody or control, and permit the inspection and copying thereof:

1. A list or information identifying any and all donations of funds from donors located in the state of Missouri from January 01, 2023 through March 25, 2024.

   The list of donations should include, but is not limited to:
   - Identity of each individual or organization who donated funds;
   - Address of each individual or organization who donated funds;
   - Total amount spent per donation;
   - Date and time of each donation;
   - Payment method for each donation;
   - Identity of financial institution where funds were sent;
   - Contracts and/or agreements governing or related to each donation;

For each Demand for Information, you shall type the Demand and type your corresponding response. If you do not know the answer to a Demand for Information, you shall identify in your response the individual or business entity that has the answer to the Demand for Information. The document on

AMERICAN OVERSIGHT

which you type each Demand and your corresponding response shall be executed by you before a Notary Public.

DEMAND FOR DOCUMENTS

Demand is hereby made upon you, under the authority granted by Section 407.040, RSMo, to produce in person or via mail to Michelle Starke, P.O. Box 899, Jefferson City, Missouri 65102 by April 15, 2024, the following documentary material that may be in your possession, custody or control, and permit the inspection and copying thereof:

2. All promotional or marketing information provided by you from January 1, 2023 to March 25, 2024 to any individual or organization for the purpose of soliciting donations.

3. All documents or communications showing how solicited donations were used.

4. All communications or materials relating to any policy, strategy or operation related to generating stories or content intended to cancel, deplatform, demonetize, or otherwise interfere with businesses located in Missouri, or utilized by Missouri residents.

5. All communications, internal and external, regarding your strategy to pressure advertisers into pulling advertisements from the social media platform, X (formerly Twitter).

6. Documents sufficient to identify your employee organizational chart.

7. Documents sufficient to identify all your operational expenses in the state of Missouri.

8. All documents discussing Elon Musk's purchase of X (formerly Twitter).

9. All documents related to the article, or to the events described in the article, by Eric Hananoki entitled "As Musk endorses antisemitic conspiracy theory, X has been placing ads for Apple, Bravo, IBM,Oracle, and Xfinity next to pro-Nazi content."

AMERICAN OVERSIGHT

10. All documents sufficient to identify X accounts owned, controlled, or authorized by you used to obtain the images in the article referenced in paragraph 9.

11. All documents sufficient to identify all X accounts followed by the X accounts identified in response to paragraph 10.

12. All communications with Apple, International Business Machine Corporation, Bravo Television Network, NBCUniversal, Oracle Corporation, Comcast Corporation, Lions Gate Entertainment Corporation, Warner Bros Discovery Inc., Paramount Pictures Corporation, or Sony Group Corporation from November 1, 2023, to March 25, 2024.

NOTICE OF DEMAND FOR RETENTION OF RECORDS

You are hereby notified that all records, including communications, documents and things, relating to the above requests and the matters that are the subject of these requests for information are to be preserved during the pendency of this investigation. This includes, but is not limited to, all related customer records, including recordings made of customers, all related correspondence and other communications with third parties, all related documents and things received from third parties, and all internal documents and things.

COMPLIANCE

You may comply with this Investigative Demand by producing copies of the requested documents and information by regular mail or overnight delivery to Michelle Starke, P.O. Box 899, Jefferson City, Missouri 65102. The requested copies of documents and information should be received by the Office of the Attorney General by 10:00 a.m. (Central) on April 15, 2024 and be accompanied by the attached Business Records Affidavit and Certification of Compliance.

You are advised that the Attorney General will not grant an extension of time or modification of the terms of the Demand except for good cause pursuant to the terms of Section 407.070, RSMo. Your prompt response and provision of the requested information is requested.

AMERICAN OVERSIGHT

Your attention is respectfully called to the provisions of Section 407.080, RSMo, which makes certain acts done with the intent to avoid, evade or prevent compliance in whole or in part with any Investigative Demand served hereunder a Class A misdemeanor, which is punishable by a fine not to exceed $1,000.00 for individuals and $5,000.00 for corporations, or by imprisonment for a term of not more than one year, or both a fine and imprisonment.

Please direct all questions regarding this Investigative Demand to Jeremiah Morgan at 573-751-1800 or by e-mail to: Jeremiah.Morgan@ago.mo.gov.

Respectfully Submitted,

ANDREW BAILEY
Attorney General

/s/ Jeremiah J. Morgan
Jeremiah J. Morgan, #50387
Deputy Attorney General – Civil Litigation
Missouri Attorney General's Office
Post Office Box 899
Jefferson City, MO 65102
Tel: (573) 751-8870; Fax: (573) 751-0774
Jeremiah.Morgan@ago.mo.gov

AMERICAN OVERSIGHT

STATE OF _____)
) SS.
COUNTY OF _____)

BUSINESS RECORDS AFFIDAVIT AND CERTIFICATE OF COMPLIANCE

Before me, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

My name is _____, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the custodian of the records of _____. Attached hereto are _____ pages of records from _____. These _____ pages of records are kept by _____ in the regular course of business, and it was the regular course of business of_____ for an employee or representative of_____ with knowledge of the act, event, condition, opinion, or diagnosis recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time of the act, event, condition, opinion or diagnosis. The records attached hereto are the original or exact duplicate of the original.

I further certify that all documents and information required by Civil Investigative Demand No. 24-10 which is in the possession, custody, control, or knowledge of, _____ has been submitted to the Missouri Attorney General as directed herein.

_____
Affiant

Sworn to before me this ____ day of_____, 2024.

_____
Notary Public
Commission Expires:

AMERICAN OVERSIGHT

Exhibit 4

AMERICAN OVERSIGHT

USPS TRACKING #

9590 9402 6353 0296 0682 26

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States Postal Service

* Sender: Please print your name, address, and ZIP+4® in this box*

Allison Whitmer
Office of the Missouri Attorney General
815 Olive Street, Suite 200
St. Louis, MO 63101

CID 24-10 Media Matters for America

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Media Matters for America
P.O Box 44811
Washington, DC 20026

9590 9402 6353 0296 0682 26

2. Article Number *(Transfer from service label)*

7017 0660 0000 6553 8055

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL®

7017 0660 0000 6553 8055

7017 0660 0000 6553 8055

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee
$

Extra Services & Fees *(check box, add fee as appropriate)*
- ☐ Return Receipt (hardcopy) $
- ☐ Return Receipt (electronic) $
- ☐ Certified Mail Restricted Delivery $
- ☐ Adult Signature Required $
- ☐ Adult Signature Restricted Delivery $

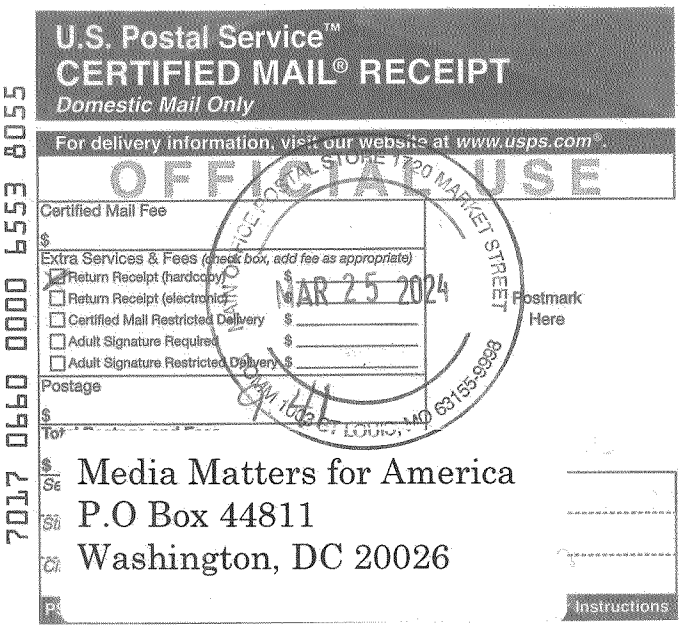
Postage
$

Postmark Here

Media Matters for America
P.O Box 44811
Washington, DC 20026

Instructions

AMERICAN OVERSIGHT



U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee
$

Extra Services & Fees (check box, add fee as appropriate)
☑ Return Receipt (hardcopy) $
☐ Return Receipt (electronic) $
☐ Certified Mail Restricted Delivery $
☐ Adult Signature Required $
☐ Adult Signature Restricted Delivery $

Postage
$

Tot

$
Se

Sti

Ci

Pl

Media Matters for America
P.O Box 44811
Washington, DC 20026

Instructions

7017 0660 0000 6553 8055

POSTAL STORE 1720 MARKET STREET
MAR 25 2024
ST LOUIS, MO 63155-9998

Postmark Here

AMERICAN OVERSIGHT

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

MEDIA MATTERS FOR AMERICA, ERIC HANANOKI,

Plaintiffs,

v.

WARREN KENNETH PAXTON JR., in his official capacity as Attorney General of the State of Texas,

ANDREW BAILEY, in his official capacity as Attorney General of the State of Missouri

Defendants.

No. 24-cv-147
Oral Hearing Requested

MISSOURI ATTORNEY GENERAL ANDREW BAILEY'S MOTION TO DISMISS

Defendant Andrew Bailey, in his official capacity as Attorney General of the State of Missouri, respectfully moves under Fed. R. Civ. P. 12(b) to dismiss Plaintiffs' Supplemental Complaint (ECF 46). Specifically, the Supplemental Complaint against Attorney General Bailey should be dismissed for the reasons set forth in his Opposition to Temporary Restraining Order and Preliminary Injunction filed simultaneously herewith and incorporated herein, including *Younger* abstention, the lack of subject-matter jurisdiction, and the lack of personal jurisdiction. *See* ECF 56.

AMERICAN OVERSIGHT

Date: May 8, 2024

Respectfully submitted,

ANDREW BAILEY
Attorney General of Missouri

/s/ *Joshua M. Divine*
JOSHUA M. DIVINE, #69875MO
Solicitor General

JEREMIAH J. MORGAN, #50387MO
Deputy Attorney General – Civil

OFFICE OF THE ATTORNEY GENERAL
Supreme Court Building
207 West High Street
P.O. Box 899
Jefferson City, Missouri 65102
Tel. (573) 751-1800
Fax (573) 751-0774
josh.divine@ago.mo.gov
jeremiah.morgan@ago.mo.gov

Counsel for Defendant Missouri Attorney General

CERTIFICATE OF COMPLIANCE

I certify that the foregoing document contains one page, exclusive of matters designated for omission, and satisfies the typesetting requirements.

/s/ *Joshua M. Divine*
Counsel for Missouri Attorney General

CERTIFICATE OF SERVICE

I certify that on May 8, 2024, a true and accurate copy of the foregoing document was electronically filed through the Court's CM/ECF System and that a copy of the foregoing will be sent via email to all parties by operation of the Court's electronic filing system, all consistent with Federal Rule of Civil Procedure 5(b).

/s/ *Joshua M. Divine*
Counsel for Missouri Attorney General

AMERICAN OVERSIGHT

To: Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: Divine, Josh[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9D8C0996EBF3480DB5B4F2237D9F8DBD-DIVINE, JOSHUA]
Sent: Wed 5/8/2024 2:13:57 PM (UTC-05:00)
Subject: On file for Media Matters
56 - Bailey memorandum in opposition to TRO, PI.pdf
56-1 - Steven Reed affidavit.pdf
57 - Bailey MTD.pdf

Just filed our opposition to the TRO/PI and filed a motion to dismiss.

Josh Divine | Solicitor General
Missouri Attorney General's Office
207 West High St.
Jefferson City, MO 65101
(573) 751-8870
Josh.Divine@ago.mo.gov

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Goodwin, Gregory[Gregory.Goodwin@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; Hammond, Wyatt[Wyatt.Hammond@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Lewis, Jason[Jason.Lewis@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Woodard, Winderlyn[winderlyn.woodard@ago.mo.gov]
From: Rathert, Branden[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6862523A4FCB4692B7523E7B2723AB70-RATHERT, BRANDEN]
Sent: Fri 5/24/2024 8:59:25 AM (UTC-05:00)
Subject: Daily News/Media Roundup -Friday May 24, 2024

Good morning all,

Below is the relevant news relating to the AGO, Missouri, and Nation for today:

AGO News:

Media Matters Lays Off A Dozen Staffers Following Federal Probe, Lawsuit By Elon Musk
Daily Caller | Nicole Silverio
https://dailycaller.com/2024/05/23/media-matters-layoffs-federal-probe-elon-musk-lawsuit/

- Media Matters followed suit with several liberal outlets by laying off at least a dozen staffers following a federal probe and lawsuit by "X" chief executive officer Elon Musk. Staffers, some of whom have been with Media Matters for years, took to social media announcing their sudden departure from the outlet. The layoffs followed federal probes filed by Republican Attorneys General Ken Paxton of Texas and Andrew Bailey of Missouri into the outlet for possible fraudulent activity by allegedly manipulating data on "X," formerly known as Twitter.

REPOSTL NY Post, The Daily Beast, Outkick, Times Now, Newsmax, American Greatness

Media Matters Staffers Announce Sweeping Lay Offs: 'There's a Reason Far-Right Billionaires Attack'
Mediaite | Alex Griffing
https://www.mediaite.com/news/media-matters-staffers-announce-sweeping-lay-offs-theres-a-reason-far-right-billionaires-attack/

- Media Matters for America laid off many of its staffers on Thursday as former employees took to X, formerly Twitter, to announce they were out of a job. Katherine Abughazaleh, also known as Kat Abu, posted, "Bad News: I've been laid off from @mmfa, along with a dozen colleagues. There's a reason far-right billionaires attack Media Matters with armies of lawyers: They know how effective our work is, and it terrifies them (him)." Abughazaleh appeared to be referring to Elon Musk who filed a defamation suit against the liberal media watchdog last November over a report claiming that major corporate ads on X were being shown alongside white nationalist content…. The hard-right website the Daily Caller also noted, "The layoffs followed federal probes filed by Republican Attorneys General Ken Paxton of Texas and Andrew Bailey of Missouri into the outlet for possible fraudulent activity by allegedly manipulating data on 'X,' formerly known as Twitter." Media Matters did not immediately reply to a request for comment regarding the various staffers announcing they were laid off….

Soros-Backed Media Matters Lays Off a Dozen Employees as Staffers Blame 'Far-Right Billionaires'
Gateway Pundit | Ben Kew
https://www.thegatewaypundit.com/2024/05/soros-backed-media-matters-lays-dozen-employees-as/

- The far-left media watchdog Media Matters for America (MMFA) is laying off around a dozen staff as the organization faces a series of federal probes and defamation lawsuits….Last November, Musk filed a defamation lawsuit against MMFA in federal court in November, accusing them of manipulating images to show advertisements from major corporations alongside posts from white supremacists and neo-Nazis. Meanwhile, the Missouri Attorney General filed a separate lawsuit last December for engaging in fraudulent business practices and refusing to cooperate with an ongoing investigation.

AMERICAN OVERSIGHT

City of Kansas City staffer fired over social media post that disowned Harrison Butker
NY Post | Christian Arnold

https://nypost.com/2024/05/23/sports/city-of-kansas-city-staffer-fired-over-harrison-butker-post/

- While the city may be done with the employee, it might not be the only repercussion that the ex-staffer faces. Missouri Attorney General Andrew Bailey has made it clear he is "demanding accountability after [Kansas City] doxxed [Butker last night for daring to express his religious beliefs." "I will enforce the Missouri Human Rights Act to ensure Missourians are not targeted for their free exercise of religion. Stay tuned." Bailey's office also requested Lucas to turn over documents following the since-deleted X post, KMBC reported.

REPOST : Kansas City Channel, KSHB, The Post Millennial, KAKE, KEYT, ABC17, Eerie News Now, KIFI, KTRH, 94.9 The Bull, WHO, KPRC, FOX Bangor, WTAM, WOR, KFYI, KFAN, Real 92.3, WIBA, WBZ, KGB, WLW, WLAP, KUBE, WOAI, 1059 The Rock, WDVE, KOA, WXTK

Bailey's office also requested Lucas to turn over documents following the since-deleted X post, KMBC reported.

FOX l Ryan Morik

https://www.foxnews.com/sports/city-kansas-city-separated-employee-doxed-harrison-butker-following-speech-mayor-says

- Mayor Quinton Lucas revealed on Thursday that Kansas City has "separated" from the social media employee who shared where Harrison Butker lives after his commencement speech at Benedictine College last week….Missouri Attorney General Andrew Bailey vowed to pursue action against the city following the post, saying in an interview with Outkick's Charly Arnolt he had "demanded certain records from the city related to their management of that social media account that doxxed Harrison Butker in retaliation for his free expression of religious beliefs."…

REPOST: Breitbart

Missouri and 18 states file Supreme Court suit over energy policies

KTTN l Staff

https://www.kttn.com/missouri-and-18-states-file-supreme-court-suit-over-energy-policies/

- Today Missouri Attorney General Andrew Bailey filed suit with 18 other states against California, Connecticut, Minnesota, New Jersey and Rhode Island at the United States Supreme Court in order to halt the blue states' burdensome policies that threaten Missouri energy. In the suit, General Bailey asserts the defendants have brought unprecedented pressure against the nation's most vital energy companies for an alleged "climate crisis," demanding billions of dollars in damages. California and the other states threaten to impose ruinous penalties and coercive remedies that would affect energy and fuel consumption and production across the country. The States raise the grave constitutional problems with California's extraordinary tactics and ask the Supreme Court to take up the multi-state lawsuit. "I will always fight to put Missouri consumers first, which includes protecting Missouri energy when it comes under attack by other states," said Attorney General Bailey. "California and its radical counterparts are working to upend our economy with their unconstitutional climate agenda. My office will not allow a state with zero respect for the rule of law to dictate how Missourians live their lives." The Supreme Court will decide whether to hear the 19-state lawsuit against California and the other four proposed defendants. General Bailey and the coalition argue that traditional energy sources like oil, natural gas, and coal are essential for American prosperity, but are being targeted by the five radical states. General Bailey also asserts that the matter is of utmost importance because federalism gives each state no more power than any other state. "Defendant States want a global carbon tax on the traditional energy industry. Citing fears of a climate catastrophe, they seek massive penalties, disgorgement, and injunctive relief against energy producers based on out-of-state conduct with out-of-state effects. On their view, a small gas station in rural Alabama could owe damages to the people of Minnesota simply for selling a gallon of gas. If Defendant States are right about the substance and reach of state law, their actions imperil access to affordable energy everywhere and inculpate every State and indeed every person on the planet. Consequently, Defendant States threaten not only our system of federalism and equal sovereignty among States, but our basic way of life," the attorneys general noted.

Therapists, social workers face scrutiny in Missouri AG investigation of transgender care

Missouri Independent l Annelise Hanshaw

https://missouriindependent.com/2024/05/24/therapists-social-workers-face-scrutiny-in-missouri-ag-investigation-of-transgender-care/

- A state investigation of the Washington University Transgender Center in St. Louis expanded to include therapists and social workers across the state who work with minors seeking gender-affirming care. Documents made public as part of various lawsuits show that Attorney General Andrew Bailey has obtained a collection of unredacted and loosely redacted records of transgender children, including a list of patients that received care at the Washington University Transgender Center at St. Louis Children's Hospital. He also seeking untethered access to the university's digital medical records system. The attorney general's use of private medical records, and the targeting of therapists and counselors, has interrupted the health care of LGBTQ Missourians and has families worrying about their children's privacy…..

AMERICAN OVERSIGHT

Missouri News:

MO State Rep Ben Baker's daughter and son-in-law killed in Haiti
KOAM | Shannon Becker
https://www.koamnewsnow.com/news/joplin-news-first/mo-state-rep-ben-baker-s-daughter-and-son-in-law-killed-in-haiti/article_fd104a2a-19af-11ef-90bc-435bf7926ce2.html

City fires employee who made social media post about Harrison Butker
KCTV | Greg Dailey
https://www.kctv5.com/2024/05/23/mayor-lucas-city-employee-who-made-social-media-post-about-harrison-butker-has-been-fired/

Democrat files lawsuit to keep GOP candidate off Missouri Senate ballot
Missouri Independent | Ezra Bitterman
https://missouriindependent.com/briefs/democrat-files-lawsuit-to-keep-gop-candidate-off-missouri-senate-ballot/

Man killed by St. Louis police in Jefferson County shootout identified, no officers injured
KSDK | Sam Clancy, Diamond Palmer, Holden Kurwicki
https://www.ksdk.com/article/news/crime/st-louis-police-involved-shooting-imperial-missouri-crash/63-03da1eef-f5ee-43bf-aa3b-a9a3e06878b9

Kansas City council members debate if they should vote on resolutions concerning Gaza
Yahoo via KC Star | Ilana Arougheti
https://www.yahoo.com/news/kansas-city-council-members-debate-050000497.html#:~:text=Some%20Kansas%20City%20council%20members,on%20events%20in%20Gaza%20again.

Missouri state auditor initiates review of Independence School District
KMBC | Martin Augustine
https://www.kmbc.com/article/missouri-auditors-office-independence-school-district/60884170#:~:text=The%20Missouri%20Auditor's%20Office%20now,to%20its%20students.The%20audit

Search underway after alligator goes missing from Kansas City school's petting zoo exhibit
KMBC | Nick Sloan
https://www.kmbc.com/article/search-for-missing-alligator-in-kansas-city/60888433

Family of man killed by Niangua police officer seeks millions in wrongful death lawsuit
Springfield News-Leader | Ryan Collingwood
https://www.news-leader.com/story/news/crime/2024/05/23/family-of-man-killed-by-niangua-police-officer-files-wrongful-death-lawsuit/73787314007/

Family of child killed in Nixa high-speed chase sues Christian County Sheriff's Office
Springfield News-Leader | Ryan Collingwood
https://www.news-leader.com/story/news/crime/2024/05/23/family-of-child-killed-in-nixa-high-speed-chase-sues-sheriffs-office/73822646007/

GOP candidates will remain on Vernon County ballot pending review by Missouri appeals court
Missouri Indpendent | Rudi Keller
https://missouriindependent.com/2024/05/23/gop-candidates-will-remain-on-vernon-county-ballot-pending-review-by-missouri-appeals-court/

22 dogs, some newborn puppies, rescued from Gasconade County unlicensed breeder
KSDK | Hunter Bassler
https://www.ksdk.com/article/life/pets/gasconade-county-dogs-rescued-humane-society/63-747deda5-f3b8-43b7-91db-9864a99430da

AMERICAN OVERSIGHT

St. Louis Public Radio makes unprecedented sovereign immunity claim in defamation case
Missouri Independent | William H. Freivogel

https://missouriindependent.com/2024/05/24/st-louis-public-radio-makes-unprecedented-sovereign-immunity-claim-in-defamation-case/

Residents gear up for 'Cicada-Apocalypse' in Missouri and Illinois
FOX 2 STL | Haley Fitzpatrick
https://fox2now.com/news/missouri/residents-gear-up-for-cicada-apocalypse-in-missouri-and-illinois/

Oil, natural gas, coal essential to U.S., state economies
The Center Square | Bethany Blankley
https://www.thecentersquare.com/national/article_1db085c4-1965-11ef-89b9-23d034838f57.html

White House visit announced for back-to-back Super Bowl champion Kansas City Chiefs
KMBC | Nick Sloan
https://www.kmbc.com/article/kansas-city-chiefs-white-house-visit-super-bowl-president-biden/60887832

Traveling for Memorial Day weekend? Here's what to expect at the gas pumps
Springfield News-Leader | Greta Cross
https://www.news-leader.com/story/news/local/2024/05/23/gas-prices-missouri-memorial-day-weekend/73785072007/

National News:

Trump vows to 'save' deep-blue New York City in massive, historic Bronx rally
FOX | Brandon Gillespie, Paul Steinhauser, Michael Ruiz
https://www.foxnews.com/politics/trump-vows-save-deep-blue-new-york-city-masive-historic-bronx-rally

'No open debate': Blue state judge removes controversial ballot initiative after backlash over parents' rights
FOX | Matthew Richert
https://www.foxnews.com/politics/blue-state-judge-removes-controversial-ballot-initiative-backlash-parents-rights

Supreme Court upholds GOP-drawn voting map in South Carolina gerrymandering case
FOX | Brianna Herlihy , Bill Mears , Shannon Bream
https://www.foxnews.com/politics/supreme-court-upholds-gop-drawn-voting-map-south-carolina

Man indicted after creating thousands of AI-generated child sex abuse images, prosecutors say
USA Today | Jonathan Limehouse
https://www.usatoday.com/story/news/nation/2024/05/22/steven-anderegg-arrest/73801269007/?tbref=hp

No jail time for former Dem Baltimore prosecutor convicted of perjury, mortgage fraud
Post Millennial | Jarryd Jaeger
https://thepostmillennial.com/no-jail-time-for-former-dem-baltimore-prosecutor-convicted-of-perjury-mortgage-fraud

Congress investigates Jordanians caught trying to sneak on Marine base
Washington Times | Stephen Dinan
https://www.washingtontimes.com/news/2024/may/23/congress-investigates-jordanians-caught-trying-to-/

New election laws set to shape how millions vote in November
Washington Examiner | Hailey Bullis and Mabinty Quarshie
https://www.washingtonexaminer.com/news/campaigns/3013233/new-election-laws-shape-millions-vote-november/

The most anticipated Supreme Court decisions remaining in 2024
Washington Examiner | Kaelan Deese
https://www.washingtonexaminer.com/news/3014209/most-anticipated-supreme-court-decisions-remaining-2024/

$310M East Palestine train derailment settlement reached
The Center Square | Christen Smith
https://www.thecentersquare.com/ohio/article_fe9d6a3e-1924-11ef-a9c4-8f226a547603.html

AMERICAN OVERSIGHT

American Airlines retreats after blaming a 9-year-old for not seeing a hidden camera in a lavatory
AP | Staff
https://apnews.com/article/american-airlines-blames-girl-hidden-camera-4b474bf3d8c8803872dbb7e12032d13e

Live Nation, Ticketmaster's parent company, sued in groundbreaking monopoly lawsuit
CNN | Brian Fung and Hanna Rabinowitz
https://www.kmbc.com/article/ticketmaster-live-nation-monopoly-lawsuit/60883530

Memorial Day travel set to break 20-year record as AAA predicts jams, delays
FOX | Anders Hagstrom
https://www.foxnews.com/us/memorial-day-travel-set-break-20-year-record-aaa-predicts-jams-delays

Thanks for reading and have a great day!

Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355

AMERICAN OVERSIGHT

To: Rathert, Branden[Branden.Rathert@ago.mo.gov]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Fri 5/24/2024 9:09:40 AM (UTC-05:00)
Subject: Fwd: Your Daily Cision Alert | Daily Missouri Attorney General Office Alert

Looks like a few in here missed in roundup if you have time to update.

Sent from my iPhone

Begin forwarded message:

From: Cision <alerts@cision.com>
Date: May 24, 2024 at 8:07:31 AM CDT
To: "Sieren, Madeline" <Madeline.Sieren@ago.mo.gov>
Subject: Your Daily Cision Alert | Daily Missouri Attorney General Office Alert

IN THIS EMAIL

May 24, 2024

Top Articles for AGAB Search ALL 100

Top Articles for AGAB Search ALL

Fate of Missouri man imprisoned for more than 30 years is now in the hands of a judge

Daily Mail Online

ST.

Published23, 2024Associated Press

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

City of Kansas City staffer fired over social media post that disowned Harrison Butker

New York Post

Missouri Attorney General Andrew Bailey has made it clear he is “demanding accountability after [Kansas

Published24, 2024Christian Arnold

View full article analysis

Share:Facebook Twitter

City of Kansas City has 'separated' from employee who doxed Harrison Butker following speech, mayor says

Fox News

Attorney General Andrew Bailey vowed to pursue action against the city following the post, saying in...Images) ROGER GOODELL PRAISES 'DIVERSITY OF OPINIONS' IN NFL, USA FOLLOWING H...

Published23, 2024Ryan Morik

View full article analysis

Share:Facebook Twitter

Media Matters Announces Mass Layoffs Amid Elon Musk Legal Battle

Times Now News

Another lawsuit on March 30, 2024, when the Missouri Attorney General sued Media Matters.

Published23, 2024Shamik Banerjee

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

American city accused of violating NFL player's privacy - but claim doesn't hold up

The Mirror

Missouri Attorney General Andrew Bailey has confirmed his intention to take legal action against the

Published24, 2024Matthew Neschis

View full article analysis

Share:Facebook Twitter

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

Yahoo

Prosecutors from the Missouri Attorney General's office maintained that Dunn was guilty, arguing that

Published23, 2024

View full article analysis

Share:Facebook Twitter

Fate of Missouri Man Imprisoned for More Than 30 Years Is Now in the Hands of a Judge

MSN

The Missouri Attorney General's Office opposed the effort to vacate Dunn's conviction.

Published23, 2024

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

On Your Side Investigation Update: Springfield roofer behind bars

MSN

disposal within the law to track down him or any other wrongdoing and hold them accountable," said Missouri...Before he was booked last fall, One Your Side talked with the Missouri...

Published23, 2024

View full article analysis

Share:Facebook Twitter

AG Bailey got his way and KC social media employee is out. What about real victims? | Opinion

Yahoo

From Toriano Porter: Missouri Attorney General Andrew Bailey wanted blood and got it....Instead of meeting with about 20 survivors of abuse - ...

Published23, 2024

View full article analysis

Share:Facebook Twitter

Surprising Twist In Case of Black Teen Recorded Severely Beating Kaylee Gain

Yahoo

General to call on the courts to prosecute Declue on assault charges as an adult....The incident sparked outrage across social media, leading politicians including the Missouri

Published23, 2024

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

After Doxxing Harrison Butker's Address, Kansas City Staffer Gets Fired

PINKVILLA

However, the involvement of the Missouri Attorney General suggests there may be further legal and political... M...

Published24, 2024

View full article analysis

Share:Facebook Twitter

Teen recorded beating Kaylee Gain into coma won't be tried as adult

New York Daily News

Still, several politicians and officials, including Missouri Attorney General Andrew Bailey, demanded

Published23, 2024Jessica Schladebeck

View full article analysis

Share:Facebook Twitter

Missouri AG Investigates Kansas City X Account for Doxing Harrison Butker

Breitbart

Kansas City X Account for Doxing Harrison Butker Ezra Shaw/Getty ImagesWarner Todd Huston23 May 2024 Missouri... Missouri Attorney

Published23, 2024

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

Fate of Missouri man imprisoned for more than 30 years is now in the hands of a judge

Star Tribune

The Missouri Attorney General's Office opposed the effort to vacate Dunn's conviction.

Published23, 2024

View full article analysis

Share:Facebook Twitter

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

Yahoo News UK

Prosecutors from the Missouri Attorney General's office maintained that Dunn was guilty, arguing that

Published21, 2024TESFAYE NEGUSSIE and DHANIKA PINEDA

View full article analysis

Share:Facebook Twitter

City of Kansas City Worker Fired over Social Media Post Doxing Harrison Butker

Breitbart

Missouri Attorney General Andrew Bailey has threatened additional action against the employee via the

Published24, 2024

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

American city accused of violating NFL player's privacy with public information

Irish Mirror

Missouri Attorney General Andrew Bailey is looking to take legal action against the city of Kansas City's official Twitter account after they 'doxed' Chiefs kicker Harrison Butker for his religious beliefs Missouri Attorney General Andrew Bailey has...

Published24, 2024Matthew Neschis

View full article analysis

Share:Facebook Twitter

Fate of man who claims innocence in St. Louis murder now in hands of judge

St. Louis Post-Dispatch

Attorney General's Office, retired St.... Attorney General's

Published23, 2024Katie Kull

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KOMO News

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Trump hangs over the GOP race for Missouri attorney general. Will he endorse his lawyer?

St. Louis Post-Dispatch

The Missouri attorney general is often called the state's chief law enforcement officer....Will Scharf, a Republican candidate for

Published24, 2024Jonathan Shorman, Kacen Bayless | The Kansas City Star (TNS)

View full article analysis

Share:Facebook Twitter

Missouri Judge Rules Black Teen Involved In Viral Fight Will Not Be Tried As An Adult, Going Against Wishes of Kaylee Gain's Family: 'Went Way Overboard'

Atlanta Black Star

In addition to Gain's family, Missouri Attorney General Andrew Bailey had previously called for Maurnice

Published24, 2024Nyamekye Daniel

View full article analysis

Share:Facebook Twitter

Soros-Backed Media Matters Lays Off a Dozen Employees as Staffers Blame 'Far-Right Billionaires'

The Gateway Pundit

Meanwhile, the Missouri Attorney General filed a separate lawsuit last December for engaging in fraudulent

Published24, 2024Ben Kew

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

Letter: Wash U's Prison Education Project is an inspiring program

St. Louis Post-Dispatch

General Andrew Bailey seeking restitution from incarcerated inmates for serving prison sentences through...Coincidentally this story appeared the same day columnist Tony Messenger wrote about

Published24, 2024

View full article analysis

Share:Facebook Twitter

Surprising Twist In Case of Black Teen Recorded Severely Beating Kaylee Gain

The Root

General to call on the courts to prosecute Declue on assault charges as an adult....The incident sparked outrage across social media, leading politicians including the Missouri

Published23, 2024Kalyn Womack

View full article analysis

Share:Facebook Twitter

Employee behind alleged 'doxxing' of Harrison Butker has been 'separated' from city workforce, mayor's office says

Kansas City Channel

Office has been fired after sending a questionable post about Kansas City Chiefs Kicker Harrison Butker... Missouri Attorney

Published23, 2024JoBeth Davis

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WJLA

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KATU

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KUTV

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

15 News

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

First Alert 4 at 4pm

nation says ticket master is not a monopoly saying it's faced underred competition and they asked the missouri... attorney general why his offi...

Published23, 2024KMOV

View full article analysis

Kansas City 'separates' with employee who posted since-deleted post on Harrison Butker

KSHB-TV

released a letter detailing the harassment to city employees and also released a letter directed toward Missouri... Attorney General Andrew Bai...

Published23, 2024

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WSET

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KTUL

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

NEW: Far-left activist group Media Matters lays off at least a dozen staff

thepostmillennial.com

Attorney General asked a state court to issue an order preventing this Court from hearing this case....motion to stop the move from Media Matters, the AG wrote in the motion. "How ...

Published23, 2024Thomas Stevenson

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

News 4 San Antonio

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KATV

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

FOX Baltimore

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still

AMERICAN OVERSIGHT

has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

KC employee who wrote social media post about Harrison Butker fired

KAKE

Attorney General's Office has been fired after sending a questionable post about Kansas City Chiefs...CITY, Missouri (KMBC) -- The Kansas City...

Published23, 2024

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

10 WJAR

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

ABC6 On Your Side

AMERICAN OVERSIGHT

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be

charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WPMI

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KSNV News 3 Las Vegas

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

Person who sent post about Chiefs Kicker Harrison Butker from Kansas City social account 'separated' from city workforce, mayor's office says

AMERICAN OVERSIGHT

KEYT-TV

Missouri Attorney General Andrew Bailey’s office then requested Lucas turn over documents regarding that

Published24, 2024CNN Newsource

View full article analysis

Share:Facebook Twitter

Person who sent post about Chiefs Kicker Harrison Butker from Kansas City social account 'separated' from city workforce, mayor's office says

ABC 17 News

Missouri Attorney General Andrew Bailey’s office then requested Lucas turn over documents regarding that

Published24, 2024CNN Newsource

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KFOX14

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WRGB

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

ABC 33/40

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

FOX 17

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

Fox26 News

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

Judge to decide whether man imprisoned for 33 years was wrongfully convicted

Irish Star

Attorney General's Office, however, opposed the move to overturn Dunn's conviction....life after prison attack Man, 73, accused of strangling...

Published23, 2024Laura Colgan

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KRNV

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WSBT

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

BakersfieldNow

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WJAC 6

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WHP CBS21

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

Person who sent post about Chiefs Kicker Harrison Butker from Kansas City social account 'separated' from city workforce, mayor's office says

Erie News Now

Attorney General's Office has been fired after sending a questionable post about Kansas City Chiefs...CITY, Missouri (KMBC) -- The Kansas City...

Published23, 2024

View full article analysis

Share:Facebook Twitter

kansascity.com: «Trump hangs over the GOP race for Missouri attorney general. Will he endorse his lawyer?»

Newstral

Former President Donald Trump features heavily in the Republican race for Missouri attorney general.

Published24, 2024Newstral.com

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

WBAL NewsRadio 1090

Prosecutors from the Missouri Attorney General's office maintained that Dunn was guilty, arguing that

Published23, 2024

View full article analysis

Share:Facebook Twitter

Person who sent post about Chiefs Kicker Harrison Butker from Kansas City social account 'separated' from city workforce, mayor's office says

KIFI Local News 8

Missouri Attorney General Andrew Bailey’s office then requested Lucas turn over documents regarding that

Published24, 2024CNN Newsource

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

Newschannel 12

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

Newschannel 20

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

IdahoNews.com

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

WATCH: 'Furious' Andy Reid lashes out at reporter after being quizzed about Harrison Butker's controversial speech

FirstSportz

Previously, Chiefs heiress Gracie Hunt, teammate Chris Jones, Missouri Attorney General, Whoopi Goldberg

AMERICAN OVERSIGHT

Published23, 2024Ishan Misra

View full article analysis

Share:Facebook Twitter

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

95.5 WSB

Prosecutors from the Missouri Attorney General's office maintained that Dunn was guilty, arguing that

Published23, 2024Tesfaye Negussie and Dhanika Pineda, ABC News

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WYCB NEWS 5

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KABB

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still

AMERICAN OVERSIGHT

has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

KMA Land 99.1

Prosecutors from the Missouri Attorney General's office maintained that Dunn was guilty, arguing that

Published23, 2024

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

NewsRadio 740 KTRH

The former employee's status confirmation comes after Missouri Attorney General Andrew Bailey said he

Published23, 2024Jason Hall

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KRCG

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still

AMERICAN OVERSIGHT

has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

94.9 The Bull

The former employee's status confirmation comes after Missouri Attorney General Andrew Bailey said he

Published23, 2024Jason Hall

View full article analysis

Share:Facebook Twitter

American city accused of violating NFL player's privacy with public information

Head Topics

Ireland Latest News, Ireland Headlines Missouri Attorney General Andrew Bailey has confirmed his intention

Published24, 2024

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

NEWSRADIO 1040 WHO

AMERICAN OVERSIGHT

The former employee's status confirmation comes after Missouri Attorney General Andrew Bailey said he

Published24, 2024Jason Hall

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

KPRC AM 950

The former employee's status confirmation comes after Missouri Attorney General Andrew Bailey said he

Published23, 2024Jason Hall

View full article analysis

Share:Facebook Twitter

Fox News Sports Huddle Newsletter: Scottie Scheffler's shocking arrest, Harrison Butker's faith-based speech | National

FoxBangor.com

Continue reading…PUSHING BACK – Missouri Attorney General Andrew Bailey intends to pursue action against

Published22, 2024

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

Newsradio WTAM 1100

The former employee's status confirmation comes after Missouri Attorney General Andrew Bailey said he

AMERICAN OVERSIGHT

Published23, 2024Jason Hall

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

710wor.iheart.com

The former employee's status confirmation comes after Missouri Attorney General Andrew Bailey said he

Published23, 2024Jason Hall

View full article analysis

Share:Facebook Twitter

Missouri attorney general requests records from Kansas City related to Harrison Butker doxing post

FoxBangor.com

Missouri Attorney General Andrew Bailey is following through on his vow to pursue action against the

Published22, 2024

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

News Talk 550 KFYI

The former employee's status confirmation comes after Missouri Attorney General Andrew Bailey said he

Published23, 2024Jason Hall

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

KFAN FM 100.3

The former employee's status confirmation comes after Missouri Attorney General Andrew Bailey said he

Published23, 2024Jason Hall

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

REAL 92.3

The former employee's status confirmation comes after Missouri Attorney General Andrew Bailey said he

Published23, 2024Jason Hall

View full article analysis

Share:Facebook Twitter

Fate of man who claims innocence in St. Louis murder now in hands of judge | State and National News

Maryville Daily Forum

Attorney General's Office, retired St.... Attorney General's

Published23, 2024

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

Willmar Radio Home

Prosecutors from the Missouri Attorney General's office maintained that Dunn was guilty, arguing that

Published23, 2024Tesfaye Negussie and Dhanika Pineda, ABC News

View full article analysis

Share:Facebook Twitter

Radio clip from KMBZ-FM - May 23, 2024

media, Sheriff Scott Childers is running for another term in office while facing a trial in September, Missouri... Attorney General Andrew Bail...

Published23, 2024KMBZ

View full article analysis

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

1310 WIBA

The former employee's status confirmation comes after Missouri Attorney General Andrew Bailey said he

Published23, 2024Jason Hall

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

NTV News

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WGXA News

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

Fate of man who claims innocence in St. Louis murder now in hands of judge

The Griffon News

Attorney General's Office, retired St.... Attorney General's

Published23, 2024Katie Kull St. Louis Post-Dispatch

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

Elvis Duran and the Morning Show

The former employee's status confirmation comes after Missouri Attorney General Andrew Bailey said he

Published23, 2024Jason Hall

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

Wach Fox 57

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

WBZ NewsRadio 1030

The former employee's status confirmation comes after Missouri Attorney General Andrew Bailey said he

Published24, 2024Jason Hall

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

101.5 KGB

The former employee's status confirmation comes after Missouri Attorney General Andrew Bailey said he

Published23, 2024Jason Hall

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

700WLW

The former employee's status confirmation comes after Missouri Attorney General Andrew Bailey said he

Published23, 2024Jason Hall

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

kpic.com

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

NewsRadio 630 WLAP

The former employee's status confirmation comes after Missouri Attorney General Andrew Bailey said he

Published23, 2024Jason Hall

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

KUBE 93.3

The former employee's status confirmation comes after Missouri Attorney General Andrew Bailey said he

Published23, 2024Jason Hall

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

WOAI

The former employee's status confirmation comes after Missouri Attorney General Andrew Bailey said he

Published23, 2024Jason Hall

View full article analysis

AMERICA'S OVERSIGHT

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

ABC 7 News

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024JACKSON WALKER | The National Desk

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

1059 The Rock

The former employee's status confirmation comes after Missouri Attorney General Andrew Bailey said he

Published24, 2024Jason Hall

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

102.5 WDVE

The former employee's status confirmation comes after Missouri Attorney General Andrew Bailey said he

Published23, 2024Jason Hall

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

koacolorado.iheart.com

The former employee's status confirmation comes after Missouri Attorney General Andrew Bailey said he

Published23, 2024Jason Hall

View full article analysis

Share:Facebook Twitter

Click here to unsubscribe or check alert preferences.
Connect with us on Facebook and Twitter.

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]
Cc: King, Kelly[Kelly.King@ago.mo.gov]; Atkins, Jay[Jay.Atkins@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]
From: Lewis, Jason[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5C0354B7D8F4AE4B03D7DD0D4144031-LEWIS, JASON]
Sent: Fri 5/24/2024 9:33:19 AM (UTC-05:00)
Subject: RE: Daily News/Media Roundup -Friday May 24, 2024

I just want to thank Branden, Maddie, Grace, and the whole comms team for continuing to assemble these daily media reports, and for your excellent work all around. The podcast is exceptional and a great team effort by all of you.
Jason

From: Rathert, Branden <Branden.Rathert@ago.mo.gov>
Sent: Friday, May 24, 2024 8:59 AM
To: Atkins, Jay <Jay.Atkins@ago.mo.gov>; Beal, Bryce <Bryce.Beal@ago.mo.gov>; Bryson, Isabelle <Isabelle.Bryson@ago.mo.gov>; Childers, Cooper <Cooper.Childers@ago.mo.gov>; Clausner, Evan <Evan.Clausner@ago.mo.gov>; Davis, Clifton <Clifton.Davis@ago.mo.gov>; Divine, Josh <Josh.Divine@ago.mo.gov>; Donohue, Peter <Peter.Donohue@ago.mo.gov>; Dusheke, Sheala <Sheala.Dusheke@ago.mo.gov>; Freedlund, Samuel <Samuel.Freedlund@ago.mo.gov>; Goodwin, Gregory <Gregory.Goodwin@ago.mo.gov>; Haines, Diana <Diana.Haines@ago.mo.gov>; Hammond, Wyatt <Wyatt.Hammond@ago.mo.gov>; King, Kelly <Kelly.King@ago.mo.gov>; Lanahan, Maria <Maria.Lanahan@ago.mo.gov>; Lewis, Jason <Jason.Lewis@ago.mo.gov>; Mackelprang, Shaun <shaun.mackelprang@ago.mo.gov>; Meyer, Rhonda <rhonda.meyer@ago.mo.gov>; Monroe, Kathryn <Kathryn.Monroe@ago.mo.gov>; Morgan, Jeremiah <jeremiah.morgan@ago.mo.gov>; McCuien, Grace <Grace.McCuien@ago.mo.gov>; Rathert, Branden <Branden.Rathert@ago.mo.gov>; Rutledge, Caleb <Caleb.Rutledge@ago.mo.gov>; Scott, Todd <Todd.Scott@ago.mo.gov>; Sieren, Madeline <Madeline.Sieren@ago.mo.gov>; Woodard, Winderlyn <winderlyn.woodard@ago.mo.gov>
Subject: Daily News/Media Roundup -Friday May 24, 2024

Good morning all,
Below is the relevant news relating to the AGO, Missouri, and Nation for today:

AGO News:

Media Matters Lays Off A Dozen Staffers Following Federal Probe, Lawsuit By Elon Musk
Daily Caller l Nicole Silverio
https://dailycaller.com/2024/05/23/media-matters-layoffs-federal-probe-elon-musk-lawsuit/

-Media Matters followed suit with several liberal outlets by laying off at least a dozen staffers following a federal probe and lawsuit by "X" chief executive officer Elon Musk. Staffers, some of whom have been with Media Matters for years, took to social media announcing their sudden departure from the outlet. The layoffs followed federal probes filed by Republican Attorneys General Ken Paxton of Texas and Andrew Bailey of Missouri into the outlet for possible fraudulent activity by allegedly manipulating data on "X," formerly known as Twitter.

REPOSTL NY Post, The Daily Beast, Outkick, Times Now, Newsmax, American Greatness

Media Matters Staffers Announce Sweeping Lay Offs: 'There's a Reason Far-Right Billionaires Attack'
Mediaite l Alex Griffing
https://www.mediaite.com/news/media-matters-staffers-announce-sweeping-lay-offs-theres-a-reason-far-right-billionaires-attack/

-Media Matters for America laid off many of its staffers on Thursday as former employees took to X, formerly Twitter, to announce they were out of a job. Katherine Abughazaleh, also known as Kat Abu, posted, "Bad News: I've been laid off from @mmfa, along with a dozen colleagues. There's a reason far-right billionaires attack Media Matters with armies of lawyers: They know how effective our work is, and it terrifies them (him)." Abughazaleh appeared to be referring to Elon Musk who filed a defamation suit against the liberal media watchdog last November over a report claiming that major corporate ads on X were being shown alongside white nationalist content…. The hard-right website the Daily Caller also noted, "The layoffs followed federal probes filed by Republican Attorneys General Ken Paxton of Texas and Andrew Bailey of Missouri into the outlet for possible fraudulent activity by allegedly manipulating data on 'X,' formerly known as Twitter." Media Matters did not immediately reply to a request for comment regarding the various staffers announcing they were laid off….

Soros-Backed Media Matters Lays Off a Dozen Employees as Staffers Blame 'Far-Right Billionaires'
Gateway Pundit l Ben Kew
https://www.thegatewaypundit.com/2024/05/soros-backed-media-matters-lays-dozen-employees-as/

-The far-left media watchdog Media Matters for America (MMFA) is laying off around a dozen staff as the organization faces a series of federal probes and defamation lawsuits….Last November, Musk filed a defamation lawsuit against MMFA in federal court in November, accusing them of manipulating images to show advertisements from major corporations alongside posts from white supremacists and neo-Nazis. Meanwhile, the Missouri Attorney General filed a separate lawsuit last December for engaging in fraudulent business practices and refusing to cooperate with an ongoing investigation.

AMERICAN OVERSIGHT

City of Kansas City staffer fired over social media post that disowned Harrison Butker
NY Post | Christian Arnold
https://nypost.com/2024/05/23/sports/city-of-kansas-city-staffer-fired-over-harrison-butker-post/

-While the city may be done with the employee, it might not be the only repercussion that the ex-staffer faces. Missouri Attorney General Andrew Bailey has made it clear he is "demanding accountability after [Kansas City] doxxed [Butker last night for daring to express his religious beliefs." "I will enforce the Missouri Human Rights Act to ensure Missourians are not targeted for their free exercise of religion. Stay tuned." Bailey's office also requested Lucas to turn over documents following the since-deleted X post, KMBC reported.

REPOST : Kansas City Channel, KSHB, The Post Millennial, KAKE, KEYT, ABC17, Eerie News Now, KIFI, KTRH, 94.9 The Bull, WHO, KPRC, FOX Bangor, WTAM, WOR, KFYI, KFAN, Real 92.3, WIBA, WBZ, KGB, WLW, WLAP, KUBE, WOAI, 1059 The Rock, WDVE, KOA, WXTK

Bailey's office also requested Lucas to turn over documents following the since-deleted X post, KMBC reported.
FOX | Ryan Morik
https://www.foxnews.com/sports/city-kansas-city-separated-employee-doxed-harrison-butker-following-speech-mayor-says

-Mayor Quinton Lucas revealed on Thursday that Kansas City has "separated" from the social media employee who shared where Harrison Butker lives after his commencement speech at Benedictine College last week….Missouri Attorney General Andrew Bailey vowed to pursue action against the city following the post, saying in an interview with Outkick's Charly Arnolt he had "demanded certain records from the city related to their management of that social media account that doxxed Harrison Butker in retaliation for his free expression of religious beliefs."…

REPOST: Breitbart

Missouri and 18 states file Supreme Court suit over energy policies
KTTN | Staff
https://www.kttn.com/missouri-and-18-states-file-supreme-court-suit-over-energy-policies/

-Today Missouri Attorney General Andrew Bailey filed suit with 18 other states against California, Connecticut, Minnesota, New Jersey and Rhode Island at the United States Supreme Court in order to halt the blue states' burdensome policies that threaten Missouri energy. In the suit, General Bailey asserts the defendants have brought unprecedented pressure against the nation's most vital energy companies for an alleged "climate crisis," demanding billions of dollars in damages. California and the other states threaten to impose ruinous penalties and coercive remedies that would affect energy and fuel consumption and production across the country. The States raise the grave constitutional problems with California's extraordinary tactics and ask the Supreme Court to take up the multi-state lawsuit. "I will always fight to put Missouri consumers first, which includes protecting Missouri energy when it comes under attack by other states," said Attorney General Bailey. "California and its radical counterparts are working to upend our economy with their unconstitutional climate agenda. My office will not allow a state with zero respect for the rule of law to dictate how Missourians live their lives." The Supreme Court will decide whether to hear the 19-state lawsuit against California and the other four proposed defendants. General Bailey and the coalition argue that traditional energy sources like oil, natural gas, and coal are essential for American prosperity, but are being targeted by the five radical states. General Bailey also asserts that the matter is of utmost importance because federalism gives each state no more power than any other state. "Defendant States want a global carbon tax on the traditional energy industry. Citing fears of a climate catastrophe, they seek massive penalties, disgorgement, and injunctive relief against energy producers based on out-of-state conduct with out-of-state effects. On their view, a small gas station in rural Alabama could owe damages to the people of Minnesota simply for selling a gallon of gas. If Defendant States are right about the substance and reach of state law, their actions imperil access to affordable energy everywhere and inculpate every State and indeed every person on the planet. Consequently, Defendant States threaten not only our system of federalism and equal sovereignty among States, but our basic way of life," the attorneys general noted.

Therapists, social workers face scrutiny in Missouri AG investigation of transgender care
Missouri Independent | Annelise Hanshaw
https://missouriindependent.com/2024/05/24/therapists-social-workers-face-scrutiny-in-missouri-ag-investigation-of-transgender-care/

-A state investigation of the Washington University Transgender Center in St. Louis expanded to include therapists and social workers across the state who work with minors seeking gender-affirming care. Documents made public as part of various lawsuits show that Attorney General Andrew Bailey has obtained a collection of unredacted and loosely redacted records of transgender children, including a list of patients that received care at the Washington University Transgender Center at St. Louis Children's Hospital. He also seeking untethered access to the university's digital medical records system. The attorney general's use of private medical records, and the targeting of therapists and counselors, has interrupted the health care of LGBTQ Missourians and has families worrying about their children's privacy…..

Missouri News:

MO State Rep Ben Baker's daughter and son-in-law killed in Haiti
KOAM | Shannon Becker

AMERICAN OVERSIGHT

https://www.koamnewsnow.com/news/joplin-news-first/mo-state-rep-ben-baker-s-daughter-and-son-in-law-killed-in-haiti/article_fd104a2a-19af-11ef-90bc-435bf7926ce2.html

City fires employee who made social media post about Harrison Butker
KCTV l Greg Dailey
https://www.kctv5.com/2024/05/23/mayor-lucas-city-employee-who-made-social-media-post-about-harrison-butker-has-been-fired/

Democrat files lawsuit to keep GOP candidate off Missouri Senate ballot
Missouri Independent l Ezra Bitterman
https://missouriindependent.com/briefs/democrat-files-lawsuit-to-keep-gop-candidate-off-missouri-senate-ballot/

Man killed by St. Louis police in Jefferson County shootout identified, no officers injured
KSDK l Sam Clancy, Diamond Palmer, Holden Kurwicki
https://www.ksdk.com/article/news/crime/st-louis-police-involved-shooting-imperial-missouri-crash/63-03da1eef-f5ee-43bf-aa3b-a9a3e06878b9

Kansas City council members debate if they should vote on resolutions concerning Gaza
Yahoo via KC Star l Ilana Arougheti
https://www.yahoo.com/news/kansas-city-council-members-debate-050000497.html#:~:text=Some%20Kansas%20City%20council%20members,on%20events%20in%20Gaza%20again.

Missouri state auditor initiates review of Independence School District
KMBC l Martin Augustine
https://www.kmbc.com/article/missouri-auditors-office-independence-school-district/60884170#:~:text=The%20Missouri%20Auditor's%20Office%20now,to%20its%20students.The%20audit

Search underway after alligator goes missing from Kansas City school's petting zoo exhibit
KMBC l Nick Sloan
https://www.kmbc.com/article/search-for-missing-alligator-in-kansas-city/60888433

Family of man killed by Niangua police officer seeks millions in wrongful death lawsuit
Springfield News-Leader l Ryan Collingwood
https://www.news-leader.com/story/news/crime/2024/05/23/family-of-man-killed-by-niangua-police-officer-files-wrongful-death-lawsuit/73787314007/

Family of child killed in Nixa high-speed chase sues Christian County Sheriff's Office
Springfield News-Leader l Ryan Collingwood
https://www.news-leader.com/story/news/crime/2024/05/23/family-of-child-killed-in-nixa-high-speed-chase-sues-sheriffs-office/73822646007/

GOP candidates will remain on Vernon County ballot pending review by Missouri appeals court
Missouri Indpendent l Rudi Keller
https://missouriindependent.com/2024/05/23/gop-candidates-will-remain-on-vernon-county-ballot-pending-review-by-missouri-appeals-court/

22 dogs, some newborn puppies, rescued from Gasconade County unlicensed breeder
KSDK l Hunter Bassler
https://www.ksdk.com/article/life/pets/gasconade-county-dogs-rescued-humane-society/63-747deda5-f3b8-43b7-91db-9864a99430da

St. Louis Public Radio makes unprecedented sovereign immunity claim in defamation case
Missouri Independent l William H. Freivogel
https://missouriindependent.com/2024/05/24/st-louis-public-radio-makes-unprecedented-sovereign-immunity-claim-in-defamation-case/

Residents gear up for 'Cicada-Apocalypse' in Missouri and Illinois
FOX 2 STL l Haley Fitzpatrick
https://fox2now.com/news/missouri/residents-gear-up-for-cicada-apocalypse-in-missouri-and-illinois/

Oil, natural gas, coal essential to U.S., state economies
The Center Square l Bethany Blankley
https://www.thecentersquare.com/national/article_1db085c4-1965-11ef-89b9-23d034838f57.html

White House visit announced for back-to-back Super Bowl champion Kansas City Chiefs
KMBC l Nick Sloan
https://www.kmbc.com/article/kansas-city-chiefs-white-house-visit-super-bowl-president-biden/60887832

Traveling for Memorial Day weekend? Here's what to expect at the gas pumps
Springfield News-Leader l Greta Cross
https://www.news-leader.com/story/news/local/2024/05/23/gas-prices-missouri-memorial-day-weekend/73785072007/

National News:

Trump vows to 'save' deep-blue New York City in massive, historic Bronx rally

AMERICAN OVERSIGHT

FOX | Brandon Gillespie, Paul Steinhauser, Michael Ruiz
https://www.foxnews.com/politics/trump-vows-save-deep-blue-new-york-city-masive-historic-bronx-rally

'No open debate': Blue state judge removes controversial ballot initiative after backlash over parents' rights
FOX | Matthew Richert
https://www.foxnews.com/politics/blue-state-judge-removes-controversial-ballot-initiative-backlash-parents-rights

Supreme Court upholds GOP-drawn voting map in South Carolina gerrymandering case
FOX | Herlihy , Bill Mears , Shannon Bream
https://www.foxnews.com/politics/supreme-court-upholds-gop-drawn-voting-map-south-carolina

Man indicted after creating thousands of AI-generated child sex abuse images, prosecutors say
USA Today | Jonathan Limehouse
https://www.usatoday.com/story/news/nation/2024/05/22/steven-anderegg-arrest/73801269007/?tbref=hp

No jail time for former Dem Baltimore prosecutor convicted of perjury, mortgage fraud
Post Millennial | Jarryd Jaeger
https://thepostmillennial.com/no-jail-time-for-former-dem-baltimore-prosecutor-convicted-of-perjury-mortgage-fraud

Congress investigates Jordanians caught trying to sneak on Marine base
Washington Times | Stephen Dinan
https://www.washingtontimes.com/news/2024/may/23/congress-investigates-jordanians-caught-trying-to-/

New election laws set to shape how millions vote in November
Washington Examiner | Hailey Bullis and Mabinty Quarshie
https://www.washingtonexaminer.com/news/campaigns/3013233/new-election-laws-shape-millions-vote-november/

The most anticipated Supreme Court decisions remaining in 2024
Washington Examiner | Kaelan Deese
https://www.washingtonexaminer.com/news/3014209/most-anticipated-supreme-court-decisions-remaining-2024/

$310M East Palestine train derailment settlement reached
The Center Square | Christen Smith
https://www.thecentersquare.com/ohio/article_fe9d6a3e-1924-11ef-a9c4-8f226a547603.html

American Airlines retreats after blaming a 9-year-old for not seeing a hidden camera in a lavatory
AP | Staff
https://apnews.com/article/american-airlines-blames-girl-hidden-camera-4b474bf3d8c8803872dbb7e12032d13e

Live Nation, Ticketmaster's parent company, sued in groundbreaking monopoly lawsuit
CNN | Brian Fung and Hanna Rabinowitz
https://www.kmbc.com/article/ticketmaster-live-nation-monopoly-lawsuit/60883530

Memorial Day travel set to break 20-year record as AAA predicts jams, delays
FOX | Anders Hagstrom
https://www.foxnews.com/us/memorial-day-travel-set-break-20-year-record-aaa-predicts-jams-delays

Thanks for reading and have a great day!

Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: Rathert, Branden[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6862523A4FCB4692B7523E7B2723AB70-RATHERT, BRANDEN]
Sent: Fri 5/24/2024 9:11:22 AM (UTC-05:00)
Subject: RE: Your Daily Cision Alert | Daily Missouri Attorney General Office Alert

Ok...can you highlight which ones?The "Fate of Missouri man imprisoned for more than 30 years is now in the hands of a judge" was in yesterday's....are there some other ones?
Thanks!

Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355
Branden.Rathert@ago.mo.gov

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Friday, May 24, 2024 9:10 AM
To: Rathert, Branden <Branden.Rathert@ago.mo.gov>
Subject: Fwd: Your Daily Cision Alert | Daily Missouri Attorney General Office Alert

Looks like a few in here missed in roundup if you have time to update.

Sent from my iPhone
Begin forwarded message:

From: Cision <alerts@cision.com>
Date: May 24, 2024 at 8:07:31 AM CDT
To: "Sieren, Madeline" <Madeline.Sieren@ago.mo.gov>
Subject: Your Daily Cision Alert | Daily Missouri Attorney General Office Alert

IN THIS EMAIL

May 24, 2024

Top Articles for AGAB Search ALL 100

AMERICAN OVERSIGHT

Fate of Missouri man imprisoned for more than 30 years is now in the hands of a judge

Daily Mail Online

ST.

Published**23, 2024Associated Press**

City of Kansas City staffer fired over social media post that disowned Harrison Butker

New York Post

Missouri Attorney General Andrew Bailey has made it clear he is “demanding accountability after [Kansas

Published**24, 2024Christian Arnold**

AMERICAN OVERSIGHT

City of Kansas City has 'separated' from employee who doxed Harrison Butker following speech, mayor says

Fox News

Attorney General Andrew Bailey vowed to pursue action against the city following the post, saying in...Images) ROGER GOODELL PRAISES 'DIVERSITY OF OPINIONS' IN NFL, USA FOLLOWING H...

Published**23, 2024Ryan Morik**

Media Matters Announces Mass Layoffs Amid Elon Musk Legal Battle

Times Now News

Another lawsuit on March 30, 2024, when the **Missouri Attorney General** sued Media Matters.

Published**23, 2024Shamik Banerjee**

AMERICAN OVERSIGHT

American city accused of violating NFL player's privacy - but claim doesn't hold up

The Mirror

Missouri Attorney General Andrew Bailey has confirmed his intention to take legal action against the

Published**24, 2024Matthew Neschis**

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

Yahoo

Prosecutors from the **Missouri Attorney General's office** maintained that Dunn was guilty, arguing that

Published**23, 2024**

AMERICAN OVERSIGHT

Fate of Missouri Man Imprisoned for More Than 30 Years Is Now in the Hands of a Judge

MSN

The **Missouri Attorney General's Office** opposed the effort to vacate Dunn's conviction.

Published**23, 2024**

On Your Side Investigation Update: Springfield roofer behind bars

MSN

disposal within the law to track down him or any other wrongdoing and hold them accountable," said **Missouri**...Before he was booked last fall, One Your Side talked with the **Missouri**...

Published**23, 2024**

AMERICAN OVERSIGHT

AG Bailey got his way and KC social media employee is out. What about real victims? | Opinion

Yahoo

From Toriano Porter: **Missouri Attorney General** Andrew Bailey wanted blood and got it....Instead of meeting with about 20 survivors of abuse - ...

Published**23, 2024**

Surprising Twist In Case of Black Teen Recorded Severely Beating Kaylee Gain

Yahoo

General to call on the courts to prosecute Declue on assault charges as an adult....The incident sparked outrage across social media, leading politicians including the **Missouri**

Published**23, 2024**

AMERICAN OVERSIGHT

After Doxxing Harrison Butker's Address, Kansas City Staffer Gets Fired

PINKVILLA

However, the involvement of the **Missouri Attorney General** suggests there may be further legal and political... **M...**

Published**24, 2024**

Teen recorded beating Kaylee Gain into coma won't be tried as adult

New York Daily News

Still, several politicians and officials, including **Missouri Attorney General** Andrew Bailey, demanded

Published**23, 2024Jessica Schladebeck**

AMERICAN OVERSIGHT

Missouri AG Investigates Kansas City X Account for

Doxing Harrison Butker

Breitbart

Kansas City X Account for Doxing Harrison Butker Ezra Shaw/Getty ImagesWarner Todd Huston23 May 2024 **Missouri**... **Missouri Attorney**

Published**23, 2024**

Fate of Missouri man imprisoned for more than 30 years is now in the hands of a judge

Star Tribune

The **Missouri Attorney General's Office** opposed the effort to vacate Dunn's conviction.

Published**23, 2024**

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

Yahoo News UK

AMERICAN OVERSIGHT

Prosecutors from the **Missouri Attorney General's office** maintained that Dunn was guilty, arguing that

Published**21, 2024TESFAYE NEGUSSIE and DHANIKA PINEDA**

City of Kansas City Worker Fired over Social Media Post Doxing Harrison Butker

Breitbart

Missouri Attorney General Andrew Bailey has threatened additional action against the employee via the

Published**24, 2024**

American city accused of violating NFL player's privacy with public information

Irish Mirror

AMERICAN OVERSIGHT

Missouri Attorney General Andrew Bailey is looking to take legal action against

the city of Kansas City's official Twitter account after they 'doxed' Chiefs kicker Harrison Butker for his religious beliefs Missouri Attorney General Andrew Bailey has...

Published**24, 2024Matthew Neschis**

Fate of man who claims innocence in St. Louis murder now in hands of judge

St. Louis Post-Dispatch

Attorney General's Office, retired St.... **Attorney General's**

Published**23, 2024Katie Kull**

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KOMO News

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

AMERICAN OVERSIGHT

Published**23, 2024JACKSON WALKER | The National Desk**

Trump hangs over the GOP race for Missouri attorney general. Will he endorse his lawyer?

St. Louis Post-Dispatch

The **Missouri attorney general** is often called the state's chief law enforcement officer....Will Scharf, a Republican candidate for

Published**24, 2024Jonathan Shorman, Kacen Bayless | The Kansas City Star (TNS)**

Missouri Judge Rules Black Teen Involved In Viral Fight Will Not Be Tried As An Adult, Going Against Wishes of Kaylee Gain's Family: 'Went Way Overboard'

Atlanta Black Star

AMERICAN OVERSIGHT

In addition to Gain's family, **Missouri Attorney General** Andrew Bailey had

previously called for Maurnice

Published**24, 2024Nyamekye Daniel**

Soros-Backed Media Matters Lays Off a Dozen Employees as Staffers Blame ‘Far-Right Billionaires’

The Gateway Pundit

Meanwhile, the **Missouri Attorney General** filed a separate lawsuit last December for engaging in fraudulent

Published**24, 2024Ben Kew**

Letter: Wash U's Prison Education Project is an inspiring program

St. Louis Post-Dispatch

General Andrew Bailey seeking restitution from incarcerated inmates for serving prison sentences through...Coincidentally this story appeared the same day columnist Tony Messenger wrote about

AMERICAN OVERSIGHT

Published**24, 2024**

Surprising Twist In Case of Black Teen Recorded Severely Beating Kaylee Gain

The Root

General to call on the courts to prosecute Declue on assault charges as an adult....The incident sparked outrage across social media, leading politicians including the **Missouri**

Published**23, 2024Kalyn Womack**

Employee behind alleged 'doxxing' of Harrison Butker has been 'separated' from city workforce, mayor's office says

Kansas City Channel

Office has been fired after sending a questionable post about Kansas City Chiefs Kicker Harrison Butker... **Missouri Attorney**

AMERICAN OVERSIGHT

Published**23, 2024JoBeth Davis**

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WJLA

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KATU

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KUTV

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

15 News

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

First Alert 4 at 4pm

nation says ticket master is not a monopoly saying it's faced underred competition and they asked the **missouri**... **attorney general** why his offi...

Published**23, 2024KMOV**

Kansas City 'separates' with employee who posted since-deleted post on Harrison Butker

KSHB-TV

released a letter detailing the harassment to city employees and also released a letter directed toward **Missouri**... **Attorney General** Andrew Bai...

Published**23, 2024**

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WSET

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KTUL

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

NEW: Far-left activist group Media Matters lays off at least a dozen staff

thepostmillennial.com

Attorney General asked a state court to issue an order preventing this Court from hearing this case....motion to stop the move from Media Matters, the AG wrote in the motion, "How ...

Published**23, 2024Thomas Stevenson**

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

News 4 San Antonio

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KATV

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

FOX Baltimore

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

KC employee who wrote social media post about Harrison Butker fired

KAKE

Attorney General's Office has been fired after sending a questionable post about Kansas City Chiefs...CITY, Missouri (KMBC) -- The Kansas City...

Published**23, 2024**

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

10 WJAR

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

ABC6 On Your Side

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WPMI

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KSNV News 3 Las Vegas

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

Person who sent post about Chiefs Kicker Harrison Butker from Kansas City social account ‘separated’ from city workforce, mayor’s office says

KEYT-TV

Missouri Attorney General Andrew Bailey’s office then requested Lucas turn over documents regarding that

Published**24, 2024CNN Newsource**

AMERICAN OVERSIGHT

Person who sent post about Chiefs Kicker Harrison Butker from Kansas City social account 'separated' from city workforce, mayor's office says

ABC 17 News

Missouri Attorney General Andrew Bailey's office then requested Lucas turn over documents regarding that

Published**24, 2024CNN Newsource**

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KFOX14

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WRGB

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

ABC 33/40

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

FOX 17

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

Fox26 News

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

Judge to decide whether man imprisoned for 33 years was wrongfully convicted

Irish Star

Attorney General's Office, however, opposed the move to overturn Dunn's conviction....life after prison attack Man, 73, accused of strangling...

Published**23, 2024Laura Colgan**

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KRNV

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024**

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WSBT

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

BakersfieldNow

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WJAC 6

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WHP CBS21

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

Person who sent post about Chiefs Kicker Harrison Butker from Kansas City social account 'separated' from city workforce, mayor's office says

Erie News Now

Attorney General's Office has been fired after sending a questionable post about Kansas City Chiefs...CITY, Missouri (KMBC) -- The Kansas City...

Published**23, 2024**

kansascity.com: «Trump hangs over the GOP race for Missouri attorney general. Will he endorse his lawyer?»

Newstral

Former President Donald Trump features heavily in the Republican race for **Missouri attorney general**.

Published**24, 2024Newstral.com**

AMERICAN OVERSIGHT

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

WBAL NewsRadio 1090

Prosecutors from the **Missouri Attorney General's office** maintained that Dunn was guilty, arguing that

Published**23, 2024**

Person who sent post about Chiefs Kicker Harrison Butker from Kansas City social account 'separated' from city workforce, mayor's office says

KIFI Local News 8

Missouri Attorney General Andrew Bailey's office then requested Lucas turn over documents regarding that

Published**24, 2024CNN Newsource**

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

Newschannel 12

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

Newschannel 20

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

IdahoNews.com

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

WATCH: 'Furious' Andy Reid lashes out at reporter after being quizzed about Harrison Butker's controversial speech

FirstSportz

Previously, Chiefs heiress Gracie Hunt, teammate Chris Jones, **Missouri Attorney General**, Whoopi Goldberg

Published**23, 2024Ishan Misra**

AMERICAN OVERSIGHT

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

95.5 WSB

Prosecutors from the **Missouri Attorney General's office** maintained that Dunn was guilty, arguing that

Published**23, 2024Tesfaye Negussie and Dhanika Pineda, ABC News**

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WYCB NEWS 5

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KABB

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

KMA Land 99.1

Prosecutors from the **Missouri Attorney General's office** maintained that Dunn was guilty, arguing that

Published**23, 2024**

AMERICAN OVERSIGHT

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

NewsRadio 740 KTRH

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KRCG

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

94.9 The Bull

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

American city accused of violating NFL player's privacy with public information

Head Topics

Ireland Latest News, Ireland Headlines **Missouri Attorney General** Andrew Bailey has confirmed his intention

Published**24, 2024**

AMERICAN OVERSIGHT

Status Of Employee Accused Of Doxxing Harrison

Butker Revealed

NEWSRADIO 1040 WHO

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**24, 2024Jason Hall**

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

KPRC AM 950

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

Fox News Sports Huddle Newsletter: Scottie Scheffler's shocking arrest, Harrison Butker's faith-based speech | National

AMERICAN OVERSIGHT

FoxBangor.com

Continue reading…PUSHING BACK – **Missouri Attorney General** Andrew Bailey intends to pursue action against

Published**22, 2024**

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

Newsradio WTAM 1100

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

710wor.iheart.com

AMERICAN OVERSIGHT

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

Missouri attorney general requests records from Kansas City related to Harrison Butker doxing post

FoxBangor.com

Missouri Attorney General Andrew Bailey is following through on his vow to pursue action against the

Published**22, 2024**

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

News Talk 550 KFYI

AMERICAN OVERSIGHT

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

KFAN FM 100.3

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

REAL 92.3

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

AMERICAN OVERSIGHT

Fate of man who claims innocence in St. Louis murder now in hands of judge | State and National News

Maryville Daily Forum

Attorney General's Office, retired St.... **Attorney General's**

Published**23, 2024**

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

Willmar Radio Home

Prosecutors from the **Missouri Attorney General's office** maintained that Dunn was guilty, arguing that

Published**23, 2024Tesfaye Negussie and Dhanika Pineda, ABC News**

AMERICAN OVERSIGHT

Radio clip from KMBZ-FM - May 23, 2024

media, Sheriff Scott Childers is running for another term in office while facing a trial in September, **Missouri**... **Attorney General** Andrew Bail...

Published**23, 2024KMBZ**

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

1310 WIBA

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

NTV News

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WGXA News

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

Fate of man who claims innocence in St. Louis murder now in hands of judge

The Griffon News

Attorney General's Office, retired St.... **Attorney General's**

Published**23, 2024Katie Kull St. Louis Post-Dispatch**

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

Elvis Duran and the Morning Show

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

Wach Fox 57

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

WBZ NewsRadio 1030

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**24, 2024Jason Hall**

AMERICAN OVERSIGHT

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

101.5 KGB

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

700WLW

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't

be tried as adult, report says

kpic.com

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

NewsRadio 630 WLAP

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

AMERICAN OVERSIGHT

KUBE 93.3

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

WOAI

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

ABC 7 News

AMERICAN OVERSIGHT

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

1059 The Rock

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**24, 2024Jason Hall**

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

102.5 WDVE

The former employee's status confirmation comes after **Missouri Attorney**

AMERICAN OVERSIGHT

General Andrew Bailey said he

Published**23, 2024Jason Hall**

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

koacolorado.iheart.com

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

Click here to unsubscribe or check alert preferences.
Connect with us on Facebook and Twitter.

AMERICAN OVERSIGHT

To: Lewis, Jason[Jason.Lewis@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]
Cc: King, Kelly[Kelly.King@ago.mo.gov]; Atkins, Jay[Jay.Atkins@ago.mo.gov]
From: Scott, Todd[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1DAF1E35615D4B2E8DBB3F318306291A-SCOTT, TODD]
Sent: Fri 5/24/2024 1:18:45 PM (UTC-05:00)
Subject: RE: Daily News/Media Roundup -Friday May 24, 2024

I agree.These news headlines are consistently valuable to me.
Thanks!
Todd Scott | Senior Counsel
Missouri Attorney General's Office
(573) 751-8366
Todd.Scott@ago.mo.gov

From: Lewis, Jason <Jason.Lewis@ago.mo.gov>
Sent: Friday, May 24, 2024 9:33 AM
To: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>; Rathert, Branden <Branden.Rathert@ago.mo.gov>; McCuien, Grace <Grace.McCuien@ago.mo.gov>
Cc: King, Kelly <Kelly.King@ago.mo.gov>; Atkins, Jay <Jay.Atkins@ago.mo.gov>; Scott, Todd <Todd.Scott@ago.mo.gov>
Subject: RE: Daily News/Media Roundup -Friday May 24, 2024

I just want to thank Branden, Maddie, Grace, and the whole comms team for continuing to assemble these daily media reports, and for your excellent work all around. The podcast is exceptional and a great team effort by all of you.
Jason

From: Rathert, Branden <Branden.Rathert@ago.mo.gov>
Sent: Friday, May 24, 2024 8:59 AM
To: Atkins, Jay <Jay.Atkins@ago.mo.gov>; Beal, Bryce <Bryce.Beal@ago.mo.gov>; Bryson, Isabelle <Isabelle.Bryson@ago.mo.gov>; Childers, Cooper <Cooper.Childers@ago.mo.gov>; Clausner, Evan <Evan.Clausner@ago.mo.gov>; Davis, Clifton <Clifton.Davis@ago.mo.gov>; Divine, Josh <Josh.Divine@ago.mo.gov>; Donohue, Peter <Peter.Donohue@ago.mo.gov>; Dusheke, Sheala <Sheala.Dusheke@ago.mo.gov>; Freedlund, Samuel <Samuel.Freedlund@ago.mo.gov>; Goodwin, Gregory <Gregory.Goodwin@ago.mo.gov>; Haines, Diana <Diana.Haines@ago.mo.gov>; Hammond, Wyatt <Wyatt.Hammond@ago.mo.gov>; King, Kelly <Kelly.King@ago.mo.gov>; Lanahan, Maria <Maria.Lanahan@ago.mo.gov>; Lewis, Jason <Jason.Lewis@ago.mo.gov>; Mackelprang, Shaun <shaun.mackelprang@ago.mo.gov>; Meyer, Rhonda <rhonda.meyer@ago.mo.gov>; Monroe, Kathryn <Kathryn.Monroe@ago.mo.gov>; Morgan, Jeremiah <jeremiah.morgan@ago.mo.gov>; McCuien, Grace <Grace.McCuien@ago.mo.gov>; Rathert, Branden <Branden.Rathert@ago.mo.gov>; Rutledge, Caleb <Caleb.Rutledge@ago.mo.gov>; Scott, Todd <Todd.Scott@ago.mo.gov>; Sieren, Madeline <Madeline.Sieren@ago.mo.gov>; Woodard, Winderlyn <winderlyn.woodard@ago.mo.gov>
Subject: Daily News/Media Roundup -Friday May 24, 2024

Good morning all,
Below is the relevant news relating to the AGO, Missouri, and Nation for today:

AGO News:

Media Matters Lays Off A Dozen Staffers Following Federal Probe, Lawsuit By Elon Musk
Daily Caller l Nicole Silverio
https://dailycaller.com/2024/05/23/media-matters-layoffs-federal-probe-elon-musk-lawsuit/

-Media Matters followed suit with several liberal outlets by laying off at least a dozen staffers following a federal probe and lawsuit by "X" chief executive officer Elon Musk. Staffers, some of whom have been with Media Matters for years, took to social media announcing their sudden departure from the outlet. The layoffs followed federal probes filed by Republican Attorneys General Ken Paxton of Texas and Andrew Bailey of Missouri into the outlet for possible fraudulent activity by allegedly manipulating data on "X," formerly known as Twitter.

REPOSTL NY Post, The Daily Beast, Outkick, Times Now, Newsmax, American Greatness

Media Matters Staffers Announce Sweeping Lay Offs: 'There's a Reason Far-Right Billionaires Attack'
Mediaite l Alex Griffing
https://www.mediaite.com/news/media-matters-staffers-announce-sweeping-lay-offs-theres-a-reason-far-right-billionaires-attack/

-Media Matters for America laid off many of its staffers on Thursday as former employees took to X, formerly Twitter, to announce they were out of a job. Katherine Abughazaleh, also known as Kat Abu, posted, "Bad News: I've been laid off from @mmfa, along with a dozen colleagues. There's a reason far-right billionaires attack Media Matters with armies of lawyers: They know how effective our work is, and it terrifies them (him)." Abughazaleh appeared to be referring to Elon Musk who filed a defamation suit against the liberal media watchdog last November over a report claiming that major

AMERICAN OVERSIGHT

corporate ads on X were being shown alongside white nationalist content…. The hard-right website the Daily Caller also noted, "The layoffs followed federal probes filed by Republican Attorneys General Ken Paxton of Texas and Andrew Bailey of Missouri into the outlet for possible fraudulent activity by allegedly manipulating data on 'X,' formerly known as Twitter." Media Matters did not immediately reply to a request for comment regarding the various staffers announcing they were laid off….

Soros-Backed Media Matters Lays Off a Dozen Employees as Staffers Blame 'Far-Right Billionaires'

Gateway Pundit l Ben Kew

https://www.thegatewaypundit.com/2024/05/soros-backed-media-matters-lays-dozen-employees-as/

-The far-left media watchdog Media Matters for America (MMFA) is laying off around a dozen staff as the organization faces a series of federal probes and defamation lawsuits….Last November, Musk filed a defamation lawsuit against MMFA in federal court in November, accusing them of manipulating images to show advertisements from major corporations alongside posts from white supremacists and neo-Nazis. Meanwhile, the Missouri Attorney General filed a separate lawsuit last December for engaging in fraudulent business practices and refusing to cooperate with an ongoing investigation.

City of Kansas City staffer fired over social media post that disowned Harrison Butker

NY Post l Christian Arnold

https://nypost.com/2024/05/23/sports/city-of-kansas-city-staffer-fired-over-harrison-butker-post/

-While the city may be done with the employee, it might not be the only repercussion that the ex-staffer faces. Missouri Attorney General Andrew Bailey has made it clear he is "demanding accountability after [Kansas City] doxxed [Butker last night for daring to express his religious beliefs." "I will enforce the Missouri Human Rights Act to ensure Missourians are not targeted for their free exercise of religion. Stay tuned." Bailey's office also requested Lucas to turn over documents following the since-deleted X post, KMBC reported.

REPOST : Kansas City Channel, KSHB, The Post Millennial, KAKE, KEYT, ABC17, Eerie News Now, KIFI, KTRH, 94.9 The Bull, WHO, KPRC, FOX Bangor, WTAM, WOR, KFYI, KFAN, Real 92.3, WIBA, WBZ, KGB, WLW, WLAP, KUBE, WOAI, 1059 The Rock, WDVE, KOA, WXTK

Bailey's office also requested Lucas to turn over documents following the since-deleted X post, KMBC reported.

FOX l Ryan Morik

https://www.foxnews.com/sports/city-kansas-city-separated-employee-doxed-harrison-butker-following-speech-mayor-says

-Mayor Quinton Lucas revealed on Thursday that Kansas City has "separated" from the social media employee who shared where Harrison Butker lives after his commencement speech at Benedictine College last week….Missouri Attorney General Andrew Bailey vowed to pursue action against the city following the post, saying in an interview with Outkick's Charly Arnolt he had "demanded certain records from the city related to their management of that social media account that doxxed Harrison Butker in retaliation for his free expression of religious beliefs."…

REPOST: Breitbart

Missouri and 18 states file Supreme Court suit over energy policies

KTTN l Staff

https://www.kttn.com/missouri-and-18-states-file-supreme-court-suit-over-energy-policies/

-Today Missouri Attorney General Andrew Bailey filed suit with 18 other states against California, Connecticut, Minnesota, New Jersey and Rhode Island at the United States Supreme Court in order to halt the blue states' burdensome policies that threaten Missouri energy. In the suit, General Bailey asserts the defendants have brought unprecedented pressure against the nation's most vital energy companies for an alleged "climate crisis," demanding billions of dollars in damages. California and the other states threaten to impose ruinous penalties and coercive remedies that would affect energy and fuel consumption and production across the country. The States raise the grave constitutional problems with California's extraordinary tactics and ask the Supreme Court to take up the multi-state lawsuit. "I will always fight to put Missouri consumers first, which includes protecting Missouri energy when it comes under attack by other states," said Attorney General Bailey. "California and its radical counterparts are working to upend our economy with their unconstitutional climate agenda. My office will not allow a state with zero respect for the rule of law to dictate how Missourians live their lives." The Supreme Court will decide whether to hear the 19-state lawsuit against California and the other four proposed defendants. General Bailey and the coalition argue that traditional energy sources like oil, natural gas, and coal are essential for American prosperity, but are being targeted by the five radical states. General Bailey also asserts that the matter is of utmost importance because federalism gives each state no more power than any other state. "Defendant States want a global carbon tax on the traditional energy industry. Citing fears of a climate catastrophe, they seek massive penalties, disgorgement, and injunctive relief against energy producers based on out-of-state conduct with out-of-state effects. On their view, a small gas station in rural Alabama could owe damages to the people of Minnesota simply for selling a gallon of gas. If Defendant States are right about the substance and reach of state law, their actions imperil access to affordable energy everywhere and inculpate every State and indeed every person on the planet. Consequently, Defendant States threaten not only our system of federalism and equal sovereignty among States, but our basic way of life," the attorneys general noted.

Therapists, social workers face scrutiny in Missouri AG investigation of transgender care

AMERICAN OVERSIGHT

Missouri Independent l Annelise Hanshaw
https://missouriindependent.com/2024/05/24/therapists-social-workers-face-scrutiny-in-missouri-ag-investigation-of-transgender-care/

-A state investigation of the Washington University Transgender Center in St. Louis expanded to include therapists and social workers across the state who work with minors seeking gender-affirming care. Documents made public as part of various lawsuits show that Attorney General Andrew Bailey has obtained a collection of unredacted and loosely redacted records of transgender children, including a list of patients that received care at the Washington University Transgender Center at St. Louis Children's Hospital. He also seeking untethered access to the university's digital medical records system. The attorney general's use of private medical records, and the targeting of therapists and counselors, has interrupted the health care of LGBTQ Missourians and has families worrying about their children's privacy…..

Missouri News:

MO State Rep Ben Baker's daughter and son-in-law killed in Haiti
KOAM l Shannon Becker
https://www.koamnewsnow.com/news/joplin-news-first/mo-state-rep-ben-baker-s-daughter-and-son-in-law-killed-in-haiti/article_fd104a2a-19af-11ef-90bc-435bf7926ce2.html

City fires employee who made social media post about Harrison Butker
KCTV l Greg Dailey
https://www.kctv5.com/2024/05/23/mayor-lucas-city-employee-who-made-social-media-post-about-harrison-butker-has-been-fired/

Democrat files lawsuit to keep GOP candidate off Missouri Senate ballot
Missouri Independent l Ezra Bitterman
https://missouriindependent.com/briefs/democrat-files-lawsuit-to-keep-gop-candidate-off-missouri-senate-ballot/

Man killed by St. Louis police in Jefferson County shootout identified, no officers injured
KSDK l Sam Clancy, Diamond Palmer, Holden Kurwicki
https://www.ksdk.com/article/news/crime/st-louis-police-involved-shooting-imperial-missouri-crash/63-03da1eef-f5ee-43bf-aa3b-a9a3e06878b9

Kansas City council members debate if they should vote on resolutions concerning Gaza
Yahoo via KC Star l Ilana Arougheti
https://www.yahoo.com/news/kansas-city-council-members-debate-050000497.html#:~:text=Some%20Kansas%20City%20council%20members,on%20events%20in%20Gaza%20again.

Missouri state auditor initiates review of Independence School District
KMBC l Martin Augustine
https://www.kmbc.com/article/missouri-auditors-office-independence-school-district/60884170#:~:text=The%20Missouri%20Auditor's%20Office%20now,to%20its%20students.The%20audit

Search underway after alligator goes missing from Kansas City school's petting zoo exhibit
KMBC l Nick Sloan
https://www.kmbc.com/article/search-for-missing-alligator-in-kansas-city/60888433

Family of man killed by Niangua police officer seeks millions in wrongful death lawsuit
Springfield News-Leader l Ryan Collingwood
https://www.news-leader.com/story/news/crime/2024/05/23/family-of-man-killed-by-niangua-police-officer-files-wrongful-death-lawsuit/73787314007/

Family of child killed in Nixa high-speed chase sues Christian County Sheriff's Office
Springfield News-Leader l Ryan Collingwood
https://www.news-leader.com/story/news/crime/2024/05/23/family-of-child-killed-in-nixa-high-speed-chase-sues-sheriffs-office/73822646007/

GOP candidates will remain on Vernon County ballot pending review by Missouri appeals court
Missouri Indpendent l Rudi Keller
https://missouriindependent.com/2024/05/23/gop-candidates-will-remain-on-vernon-county-ballot-pending-review-by-missouri-appeals-court/

22 dogs, some newborn puppies, rescued from Gasconade County unlicensed breeder
KSDK l Hunter Bassler
https://www.ksdk.com/article/life/pets/gasconade-county-dogs-rescued-humane-society/63-747deda5-f3b8-43b7-91db-9864a99430da

St. Louis Public Radio makes unprecedented sovereign immunity claim in defamation case
Missouri Independent l William H. Freivogel
https://missouriindependent.com/2024/05/24/st-louis-public-radio-makes-unprecedented-sovereign-immunity-claim-in-defamation-case/

Residents gear up for 'Cicada-Apocalypse' in Missouri and Illinois

AMERICAN OVERSIGHT

FOX 2 STL | Haley Fitzpatrick
https://fox2now.com/news/missouri/residents-gear-up-for-cicada-apocalypse-in-missouri-and-illinois/
Oil, natural gas, coal essential to U.S., state economies
The Center Square | Bethany Blankley
https://www.thecentersquare.com/national/article_1db085c4-1965-11ef-89b9-23d034838f57.html
White House visit announced for back-to-back Super Bowl champion Kansas City Chiefs
KMBC | Nick Sloan
https://www.kmbc.com/article/kansas-city-chiefs-white-house-visit-super-bowl-president-biden/60887832
Traveling for Memorial Day weekend? Here's what to expect at the gas pumps
Springfield News-Leader | Greta Cross
https://www.news-leader.com/story/news/local/2024/05/23/gas-prices-missouri-memorial-day-weekend/73785072007/

National News:

Trump vows to 'save' deep-blue New York City in massive, historic Bronx rally
FOX | Brandon Gillespie, Paul Steinhauser, Michael Ruiz
https://www.foxnews.com/politics/trump-vows-save-deep-blue-new-york-city-masive-historic-bronx-rally
'No open debate': Blue state judge removes controversial ballot initiative after backlash over parents' rights
FOX | Matthew Richert
https://www.foxnews.com/politics/blue-state-judge-removes-controversial-ballot-initiative-backlash-parents-rights
Supreme Court upholds GOP-drawn voting map in South Carolina gerrymandering case
FOX | Herlihy , Bill Mears , Shannon Bream
https://www.foxnews.com/politics/supreme-court-upholds-gop-drawn-voting-map-south-carolina
Man indicted after creating thousands of AI-generated child sex abuse images, prosecutors say
USA Today | Jonathan Limehouse
https://www.usatoday.com/story/news/nation/2024/05/22/steven-anderegg-arrest/73801269007/?tbref=hp
No jail time for former Dem Baltimore prosecutor convicted of perjury, mortgage fraud
Post Millennial | Jarryd Jaeger
https://thepostmillennial.com/no-jail-time-for-former-dem-baltimore-prosecutor-convicted-of-perjury-mortgage-fraud
Congress investigates Jordanians caught trying to sneak on Marine base
Washington Times | Stephen Dinan
https://www.washingtontimes.com/news/2024/may/23/congress-investigates-jordanians-caught-trying-to-/
New election laws set to shape how millions vote in November
Washington Examiner | Hailey Bullis and Mabinty Quarshie
https://www.washingtonexaminer.com/news/campaigns/3013233/new-election-laws-shape-millions-vote-november/
The most anticipated Supreme Court decisions remaining in 2024
Washington Examiner | Kaelan Deese
https://www.washingtonexaminer.com/news/3014209/most-anticipated-supreme-court-decisions-remaining-2024/
$310M East Palestine train derailment settlement reached
The Center Square | Christen Smith
https://www.thecentersquare.com/ohio/article_fe9d6a3e-1924-11ef-a9c4-8f226a547603.html
American Airlines retreats after blaming a 9-year-old for not seeing a hidden camera in a lavatory
AP | Staff
https://apnews.com/article/american-airlines-blames-girl-hidden-camera-4b474bf3d8c8803872dbb7e12032d13e
Live Nation, Ticketmaster's parent company, sued in groundbreaking monopoly lawsuit
CNN | Brian Fung and Hanna Rabinowitz
https://www.kmbc.com/article/ticketmaster-live-nation-monopoly-lawsuit/60883530
Memorial Day travel set to break 20-year record as AAA predicts jams, delays
FOX | Anders Hagstrom
https://www.foxnews.com/us/memorial-day-travel-set-break-20-year-record-aaa-predicts-jams-delays
Thanks for reading and have a great day!
Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: Rathert, Branden[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6862523A4FCB4692B7523E7B2723AB70-RATHERT, BRANDEN]
Sent: Fri 5/24/2024 10:55:33 AM (UTC-05:00)
Subject: RE: Your Daily Cision Alert | Daily Missouri Attorney General Office Alert

Doh!Sorry about that…I looked over the rundown and realized on this particular FOX story I put the 'wrong' headline with the 'correct' story.

Bailey's office also requested Lucas to turn over documents following the since-deleted X post, KMBC reported.
FOX | Ryan Morik
https://www.foxnews.com/sports/city-kansas-city-separated-employee-doxed-harrison-butker-following-speech-mayor-says

-Mayor Quinton Lucas revealed on Thursday that Kansas City has "separated" from the social media employee who shared where Harrison Butker lives after his commencement speech at Benedictine College last week….Missouri Attorney General Andrew Bailey vowed to pursue action against the city following the post, saying in an interview with Outkick's Charly Arnolt he had "demanded certain records from the city related to their management of that social media account that doxxed Harrison Butker in retaliation for his free expression of religious beliefs."…

REPOST: Breitbart

Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355
Branden.Rathert@ago.mo.gov

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Friday, May 24, 2024 10:26 AM
To: Rathert, Branden <Branden.Rathert@ago.mo.gov>
Subject: Re: Your Daily Cision Alert | Daily Missouri Attorney General Office Alert

Fox story about separating from employee for example.

Sent from my iPhone

On May 24, 2024, at 9:11 AM, Rathert, Branden <Branden.Rathert@ago.mo.gov> wrote:

Ok…can you highlight which ones?The "Fate of Missouri man imprisoned for more than 30 years is now in the hands of a judge" was in yesterday's….are there some other ones?
Thanks!

Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355
Branden.Rathert@ago.mo.gov

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Friday, May 24, 2024 9:10 AM
To: Rathert, Branden <Branden.Rathert@ago.mo.gov>
Subject: Fwd: Your Daily Cision Alert | Daily Missouri Attorney General Office Alert

Looks like a few in here missed in roundup if you have time to update.

Sent from my iPhone
Begin forwarded message:

From: Cision <alerts@cision.com>
Date: May 24, 2024 at 8:07:31 AM CDT
To: "Sieren, Madeline" <Madeline.Sieren@ago.mo.gov>
Subject: Your Daily Cision Alert | Daily Missouri Attorney General Office Alert

AMERICAN OVERSIGHT

IN THIS EMAIL

May 24, 2024

Top Articles for AGAB Search ALL 100

Top Articles for AGAB Search ALL

Fate of Missouri man imprisoned for more than 30 years is now in the hands of a judge

Daily Mail Online

ST.

Published**23, 2024Associated Press**

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

City of Kansas City staffer fired over social media post that disowned Harrison Butker

New York Post

Missouri Attorney General Andrew Bailey has made it clear he is “demanding accountability after [Kansas

Published**24, 2024Christian Arnold**

View full article analysis

Share:Facebook Twitter

City of Kansas City has 'separated' from employee who doxed Harrison Butker following speech, mayor says

Fox News

Attorney General Andrew Bailey vowed to pursue action against the city following the post, saying in...Images) ROGER GOODELL PRAISES 'DIVERSITY OF OPINIONS' IN NFL, USA FOLLOWING H...

Published**23, 2024Ryan Morik**

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Media Matters Announces Mass Layoffs Amid Elon Musk Legal Battle

Times Now News

Another lawsuit on March 30, 2024, when the **Missouri Attorney General** sued Media Matters.

Published**23, 2024Shamik Banerjee**

View full article analysis

Share:Facebook Twitter

American city accused of violating NFL player's privacy - but claim doesn't hold up

The Mirror

AMERICAN OVERSIGHT

Missouri Attorney General Andrew Bailey has confirmed his intention to take

legal action against the

Published**24, 2024Matthew Neschis**

View full article analysis

Share:Facebook Twitter

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

Yahoo

Prosecutors from the **Missouri Attorney General's office** maintained that Dunn was guilty, arguing that

Published**23, 2024**

View full article analysis

Share:Facebook Twitter

Fate of Missouri Man Imprisoned for More Than 30 Years Is Now in the Hands of a Judge

AMERICAN OVERSIGHT

MSN

The **Missouri Attorney General's Office** opposed the effort to vacate Dunn's conviction.

Published**23, 2024**

View full article analysis

Share:Facebook Twitter

On Your Side Investigation Update: Springfield roofer behind bars

MSN

disposal within the law to track down him or any other wrongdoing and hold them accountable," said **Missouri**...Before he was booked last fall, One Your Side talked with the **Missouri**...

Published**23, 2024**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

AG Bailey got his way and KC social media employee is out. What about real victims? | Opinion

Yahoo

From Toriano Porter: **Missouri Attorney General** Andrew Bailey wanted blood and got it....Instead of meeting with about 20 survivors of abuse - ...

Published**23, 2024**

View full article analysis

Share:Facebook Twitter

Surprising Twist In Case of Black Teen Recorded Severely Beating Kaylee Gain

Yahoo

General to call on the courts to prosecute Declue on assault charges as an adult....The incident sparked outrage across social media, leading politicians including the **Missouri**

Published**23, 2024**

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

After Doxxing Harrison Butker's Address, Kansas City Staffer Gets Fired

PINKVILLA

However, the involvement of the **Missouri Attorney General** suggests there may be further legal and political... **M...**

Published**24, 2024**

View full article analysis

Share:Facebook Twitter

Teen recorded beating Kaylee Gain into coma won't be tried as adult

New York Daily News

Still, several politicians and officials, including **Missouri Attorney General** Andrew Bailey, demanded

Published**23, 2024Jessica Schladebeck**

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

Missouri AG Investigates Kansas City X Account for Doxing Harrison Butker

Breitbart

Kansas City X Account for Doxing Harrison Butker Ezra Shaw/Getty ImagesWarner Todd Huston23 May 2024 **Missouri**... **Missouri Attorney**

Published**23, 2024**

View full article analysis

Share:Facebook Twitter

Fate of Missouri man imprisoned for more than 30 years is now in the hands of a judge

Star Tribune

The **Missouri Attorney General's Office** opposed the effort to vacate Dunn's conviction.

Published**23, 2024**

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

Yahoo News UK

Prosecutors from the **Missouri Attorney General's office** maintained that Dunn was guilty, arguing that

Published**21, 2024TESFAYE NEGUSSIE and DHANIKA PINEDA**

View full article analysis

Share:Facebook Twitter

City of Kansas City Worker Fired over Social Media Post Doxing Harrison Butker

Breitbart

AMERICAN OVERSIGHT

Missouri Attorney General Andrew Bailey has threatened additional action against the employee via the

Published**24, 2024**

View full article analysis

Share:Facebook Twitter

American city accused of violating NFL player's privacy with public information

Irish Mirror

Missouri Attorney General Andrew Bailey is looking to take legal action against the city of Kansas City's official Twitter account after they 'doxed' Chiefs kicker Harrison Butker for his religious beliefs Missouri Attorney General Andrew Bailey has...

Published**24, 2024Matthew Neschis**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

Fate of man who claims innocence in St. Louis murder now in hands of judge

St. Louis Post-Dispatch

Attorney General's Office, retired St.... **Attorney General's**

Published**23, 2024Katie Kull**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KOMO News

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

Trump hangs over the GOP race for Missouri attorney general. Will he endorse his lawyer?

St. Louis Post-Dispatch

The **Missouri attorney general** is often called the state's chief law enforcement officer....Will Scharf, a Republican candidate for

Published**24, 2024Jonathan Shorman, Kacen Bayless | The Kansas City Star (TNS)**

View full article analysis

Share:Facebook Twitter

Missouri Judge Rules Black Teen Involved In Viral Fight Will Not Be Tried As An Adult, Going Against Wishes of Kaylee Gain's Family: 'Went Way Overboard'

Atlanta Black Star

In addition to Gain's family, **Missouri Attorney General** Andrew Bailey had previously called for Maurnice

Published**24, 2024Nyamekye Daniel**

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

Soros-Backed Media Matters Lays Off a Dozen Employees as Staffers Blame ‘Far-Right Billionaires’

The Gateway Pundit

Meanwhile, the **Missouri Attorney General** filed a separate lawsuit last December for engaging in fraudulent

Published**24, 2024Ben Kew**

View full article analysis

Share:Facebook Twitter

Letter: Wash U's Prison Education Project is an inspiring program

St. Louis Post-Dispatch

General Andrew Bailey seeking restitution from incarcerated inmates for serving prison sentences through...Coincidentally this story appeared the same day columnist Tony Messenger wrote about

Published**24, 2024**

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Surprising Twist In Case of Black Teen Recorded Severely Beating Kaylee Gain

The Root

General to call on the courts to prosecute Declue on assault charges as an adult....The incident sparked outrage across social media, leading politicians including the **Missouri**

Published**23, 2024Kalyn Womack**

View full article analysis

Share:Facebook Twitter

Employee behind alleged 'doxxing' of Harrison Butker has been 'separated' from city workforce, mayor's office says

AMERICAN OVERSIGHT

Kansas City Channel

Office has been fired after sending a questionable post about Kansas City Chiefs Kicker Harrison Butker... **Missouri Attorney**

Published**23, 2024JoBeth Davis**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WJLA

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KATU

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KUTV

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

15 News

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

First Alert 4 at 4pm

nation says ticket master is not a monopoly saying it's faced underred competition and they asked the **missouri**... **attorney general** why his offi...

Published**23, 2024KMOV**

View full article analysis

AMERICAN OVERSIGHT

Kansas City 'separates' with employee who posted since-deleted post on Harrison Butker

KSHB-TV

released a letter detailing the harassment to city employees and also released a letter directed toward **Missouri**... **Attorney General** Andrew Bai...

Published**23, 2024**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WSET

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KTUL

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

NEW: Far-left activist group Media Matters lays off at least a dozen staff

thepostmillennial.com

Attorney General asked a state court to issue an order preventing this Court from hearing this case....motion to stop the move from Media Matters, the AG wrote in the motion, "How ...

AMERICAN OVERSIGHT

Published**23, 2024Thomas Stevenson**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

News 4 San Antonio

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KATV

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

FOX Baltimore

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

KC employee who wrote social media post about Harrison Butker fired

KAKE

Attorney General's Office has been fired after sending a questionable post about Kansas City Chiefs...CITY, Missouri (KMBC) -- The Kansas City...

Published**23, 2024**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

10 WJAR

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

ABC6 On Your Side

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WPMI

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KSNV News 3 Las Vegas

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

Person who sent post about Chiefs Kicker Harrison Butker from Kansas City social account ‘separated’ from city workforce, mayor’s office says

KEYT-TV

Missouri Attorney General Andrew Bailey’s office then requested Lucas turn over documents regarding that

AMERICAN OVERSIGHT

Published**24, 2024CNN Newsource**

View full article analysis

Share:Facebook Twitter

Person who sent post about Chiefs Kicker Harrison Butker from Kansas City social account 'separated' from city workforce, mayor's office says

ABC 17 News

Missouri Attorney General Andrew Bailey's office then requested Lucas turn over documents regarding that

Published**24, 2024CNN Newsource**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

AMERICAN OVERSIGHT

KFOX14

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WRGB

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

ABC 33/40

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

FOX 17

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

Fox26 News

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

Judge to decide whether man imprisoned for 33 years was wrongfully convicted

Irish Star

Attorney General's Office, however, opposed the move to overturn Dunn's conviction....life after prison attack Man, 73, accused of strangling...

Published**23, 2024Laura Colgan**

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KRNV

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WSBT

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved

AMERICAN OVERSIGHT

considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

BakersfieldNow

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't

be tried as adult, report says

WJAC 6

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WHP CBS21

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

Person who sent post about Chiefs Kicker Harrison Butker from Kansas City social account 'separated' from city workforce, mayor's office says

Erie News Now

Attorney General's Office has been fired after sending a questionable post about Kansas City Chiefs...CITY, Missouri (KMBC) -- The Kansas City...

Published**23, 2024**

View full article analysis

Share:Facebook Twitter

kansascity.com: «Trump hangs over the GOP race for Missouri attorney general. Will he endorse his lawyer?»

Newstral

Former President Donald Trump features heavily in the Republican race for **Missouri attorney general**.

Published**24, 2024Newstral.com**

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

WBAL NewsRadio 1090

Prosecutors from the **Missouri Attorney General's office** maintained that Dunn was guilty, arguing that

Published**23, 2024**

View full article analysis

Share:Facebook Twitter

Person who sent post about Chiefs Kicker Harrison Butker from Kansas City social account 'separated' from city workforce, mayor's office says

KIFI Local News 8

Missouri Attorney General Andrew Bailey's office then requested Lucas turn over documents regarding that

Published**24, 2024CNN Newsource**

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

Newschannel 12

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

Newschannel 20

AMERICAN OVERSIGHT

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

IdahoNews.com

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

WATCH: 'Furious' Andy Reid lashes out at reporter after being quizzed about Harrison Butker's controversial speech

FirstSportz

Previously, Chiefs heiress Gracie Hunt, teammate Chris Jones, **Missouri Attorney General**, Whoopi Goldberg

Published**23, 2024Ishan Misra**

View full article analysis

Share:Facebook Twitter

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

95.5 WSB

Prosecutors from the **Missouri Attorney General's office** maintained that Dunn was guilty, arguing that

Published**23, 2024Tesfaye Negussie and Dhanika Pineda, ABC News**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WYCB NEWS 5

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KABB

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

KMA Land 99.1

Prosecutors from the **Missouri Attorney General's office** maintained that Dunn was guilty, arguing that

Published**23, 2024**

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

NewsRadio 740 KTRH

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KRCG

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

94.9 The Bull

AMERICAN OVERSIGHT

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

View full article analysis

Share:Facebook Twitter

American city accused of violating NFL player's privacy with public information

Head Topics

Ireland Latest News, Ireland Headlines **Missouri Attorney General** Andrew Bailey has confirmed his intention

Published**24, 2024**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

NEWSRADIO 1040 WHO

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**24, 2024Jason Hall**

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

KPRC AM 950

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

Fox News Sports Huddle Newsletter: Scottie Scheffler's shocking arrest, Harrison Butker's faith-based speech | National

FoxBangor.com

Continue reading…PUSHING BACK – **Missouri Attorney General** Andrew Bailey intends to pursue action against

Published**22, 2024**

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

Newsradio WTAM 1100

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

710wor.iheart.com

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

View full article analysis

Share:Facebook Twitter

Missouri attorney general requests records from Kansas City related to Harrison Butker doxing post

FoxBangor.com

Missouri Attorney General Andrew Bailey is following through on his vow to pursue action against the

Published**22, 2024**

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

News Talk 550 KFYI

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

KFAN FM 100.3

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

AMERICAN OVERSIGHT

Published**23, 2024Jason Hall**

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

REAL 92.3

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

View full article analysis

Share:Facebook Twitter

Fate of man who claims innocence in St. Louis murder now in hands of judge | State and National News

AMERICAN OVERSIGHT

Maryville Daily Forum

Attorney General's Office, retired St.... **Attorney General's**

Published**23, 2024**

View full article analysis

Share:Facebook Twitter

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

Willmar Radio Home

Prosecutors from the **Missouri Attorney General's office** maintained that Dunn was guilty, arguing that

Published**23, 2024Tesfaye Negussie and Dhanika Pineda, ABC News**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

Radio clip from KMBZ-FM - May 23, 2024

media, Sheriff Scott Childers is running for another term in office while facing a trial in September, **Missouri**... **Attorney General** Andrew Bail...

Published**23, 2024KMBZ**

View full article analysis

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

1310 WIBA

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't

be tried as adult, report says

NTV News

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WGXA News

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

Fate of man who claims innocence in St. Louis murder now in hands of judge

The Griffon News

Attorney General's Office, retired St.... **Attorney General's**

Published**23, 2024Katie Kull St. Louis Post-Dispatch**

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

Elvis Duran and the Morning Show

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

Wach Fox 57

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

WBZ NewsRadio 1030

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**24, 2024Jason Hall**

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

101.5 KGB

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

700WLW

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

kpic.com

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

NewsRadio 630 WLAP

AMERICAN OVERSIGHT

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

KUBE 93.3

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

WOAI

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

ABC 7 News

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published**23, 2024JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

1059 The Rock

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**24, 2024Jason Hall**

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

102.5 WDVE

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

koacolorado.iheart.com

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published**23, 2024Jason Hall**

View full article analysis

Share:Facebook Twitter

Click here to unsubscribe or check alert preferences.
Connect with us on Facebook and Twitter.

AMERICAN OVERSIGHT

To: Rathert, Branden[Branden.Rathert@ago.mo.gov]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Fri 5/24/2024 10:25:46 AM (UTC-05:00)
Subject: Re: Your Daily Cision Alert | Daily Missouri Attorney General Office Alert

Fox story about separating from employee for example.

Sent from my iPhone

On May 24, 2024, at 9:11 AM, Rathert, Branden <Branden.Rathert@ago.mo.gov> wrote:

Ok…can you highlight which ones?The "Fate of Missouri man imprisoned for more than 30 years is now in the hands of a judge" was in yesterday's….are there some other ones?
Thanks!
Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355
Branden.Rathert@ago.mo.gov

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Friday, May 24, 2024 9:10 AM
To: Rathert, Branden <Branden.Rathert@ago.mo.gov>
Subject: Fwd: Your Daily Cision Alert | Daily Missouri Attorney General Office Alert
Looks like a few in here missed in roundup if you have time to update.

Sent from my iPhone
Begin forwarded message:

From: Cision <alerts@cision.com>
Date: May 24, 2024 at 8:07:31 AM CDT
To: "Sieren, Madeline" <Madeline.Sieren@ago.mo.gov>
Subject: Your Daily Cision Alert | Daily Missouri Attorney General Office Alert

IN THIS EMAIL **May 24, 2024**

AMERICAN OVERSIGHT

Top Articles for AGAB Search ALL

Fate of Missouri man imprisoned for more than 30 years is now in the hands of a judge

Daily Mail Online

ST.

Published23, 2024**Associated Press**

View full article analysis

Share:Facebook Twitter

City of Kansas City staffer fired over social media post that disowned Harrison Butker

New York Post

Missouri Attorney General Andrew Bailey has made it clear he is "demanding accountability after [Kansas

Published24, 2024**Christian Arnold**

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

City of Kansas City has 'separated' from employee who doxed Harrison Butker following speech, mayor says

Fox News

Attorney General Andrew Bailey vowed to pursue action against the city following the post, saying in...Images) ROGER GOODELL PRAISES 'DIVERSITY OF OPINIONS' IN NFL, USA FOLLOWING H...

Published23, 2024**Ryan Morik**

View full article analysis

Share:Facebook Twitter

Media Matters Announces Mass Layoffs Amid Elon Musk Legal Battle

Times Now News

AMERICAN OVERSIGHT

Another lawsuit on March 30, 2024, when the **Missouri Attorney General** sued Media Matters.

Published23, 2024**Shamik Banerjee**

View full article analysis

Share:Facebook Twitter

American city accused of violating NFL player's privacy - but claim doesn't hold up

The Mirror

Missouri Attorney General Andrew Bailey has confirmed his intention to take legal action against the

Published24, 2024**Matthew Neschis**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

Yahoo

Prosecutors from the **Missouri Attorney General's office** maintained that Dunn was guilty, arguing that

Published23, 2024

View full article analysis

Share:Facebook Twitter

Fate of Missouri Man Imprisoned for More Than 30 Years Is Now in the Hands of a Judge

MSN

The **Missouri Attorney General's Office** opposed the effort to vacate Dunn's conviction.

Published23, 2024

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

On Your Side Investigation Update: Springfield roofer behind bars

MSN

disposal within the law to track down him or any other wrongdoing and hold them accountable," said **Missouri**...Before he was booked last fall, One Your Side talked with the **Missouri**...

Published23, 2024

View full article analysis

Share:Facebook Twitter

AG Bailey got his way and KC social media employee is out. What about real victims? | Opinion

Yahoo

From Toriano Porter: **Missouri Attorney General** Andrew Bailey wanted blood and got it....Instead of meeting with about 20 survivors of abuse - ...

Published23, 2024

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

Surprising Twist In Case of Black Teen Recorded Severely Beating Kaylee Gain

Yahoo

General to call on the courts to prosecute Declue on assault charges as an adult....The incident sparked outrage across social media, leading politicians including the **Missouri**

Published23, 2024

View full article analysis

Share:Facebook Twitter

After Doxxing Harrison Butker's Address, Kansas City Staffer Gets Fired

PINKVILLA

However, the involvement of the **Missouri Attorney General** suggests there may be further legal and political... **M...**

Published24, 2024

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Teen recorded beating Kaylee Gain into coma won't be tried as adult

New York Daily News

Still, several politicians and officials, including **Missouri Attorney General** Andrew Bailey, demanded

Published23, 2024**Jessica Schladebeck**

View full article analysis

Share:Facebook Twitter

Missouri AG Investigates Kansas City X Account for Doxing Harrison Butker

Breitbart

Kansas City X Account for Doxing Harrison Butker Ezra Shaw/Getty ImagesWarner Todd Huston23 May 2024 **Missouri**... **Missouri Attorney**

Published23, 2024

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Fate of Missouri man imprisoned for more than 30 years is now in the hands of a judge

Star Tribune

The **Missouri Attorney General's Office** opposed the effort to vacate Dunn's conviction.

Published23, 2024

View full article analysis

Share:Facebook Twitter

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

Yahoo News UK

Prosecutors from the **Missouri Attorney General's office** maintained that Dunn was

AMERICAN OVERSIGHT

guilty, arguing that

Published21, 2024**TESFAYE NEGUSSIE and DHANIKA PINEDA**

View full article analysis

Share:Facebook Twitter

City of Kansas City Worker Fired over Social Media Post Doxing Harrison Butker

Breitbart

Missouri Attorney General Andrew Bailey has threatened additional action against the employee via the

Published24, 2024

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

American city accused of violating NFL player's privacy with public information

Irish Mirror

Missouri Attorney General Andrew Bailey is looking to take legal action against the city of Kansas City's official Twitter account after they 'doxed' Chiefs kicker Harrison Butker for his religious beliefs Missouri Attorney General Andrew Bailey has...

Published**24, 2024** **Matthew Neschis**

View full article analysis

Share:Facebook Twitter

Fate of man who claims innocence in St. Louis murder now in hands of judge

St. Louis Post-Dispatch

Attorney General's Office, retired St.... **Attorney General's**

Published**23, 2024** **Katie Kull**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KOMO News

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

Trump hangs over the GOP race for Missouri attorney general. Will he endorse his lawyer?

St. Louis Post-Dispatch

The **Missouri attorney general** is often called the state's chief law enforcement officer....Will Scharf, a Republican candidate for

Published24, 2024**Jonathan Shorman, Kacen Bayless | The Kansas City Star (TNS)**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

Missouri Judge Rules Black Teen Involved In Viral Fight Will Not Be Tried As An Adult, Going Against Wishes of Kaylee Gain's Family: 'Went Way Overboard'

Atlanta Black Star

In addition to Gain's family, **Missouri Attorney General** Andrew Bailey had previously called for Maurnice

Published24, 2024**Nyamekye Daniel**

View full article analysis

Share:Facebook Twitter

Soros-Backed Media Matters Lays Off a Dozen Employees as Staffers Blame 'Far-Right Billionaires'

The Gateway Pundit

Meanwhile, the **Missouri Attorney General** filed a separate lawsuit last December for engaging in fraudulent

Published24, 2024**Ben Kew**

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

Letter: Wash U's Prison Education Project is an inspiring program

St. Louis Post-Dispatch

General Andrew Bailey seeking restitution from incarcerated inmates for serving prison sentences through...Coincidentally this story appeared the same day columnist Tony Messenger wrote about

Published**24, 2024**

View full article analysis

Share:Facebook Twitter

Surprising Twist In Case of Black Teen Recorded Severely Beating Kaylee Gain

The Root

General to call on the courts to prosecute Declue on assault charges as an adult....The incident sparked outrage across social media, leading politicians including the **Missouri**

Published**23, 2024Kalyn Womack**

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Employee behind alleged 'doxxing' of Harrison Butker has been 'separated' from city workforce, mayor's office says

Kansas City Channel

Office has been fired after sending a questionable post about Kansas City Chiefs Kicker Harrison Butker... **Missouri Attorney**

Published23, 2024**JoBeth Davis**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WJLA

AMERICAN OVERSIGHT

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KATU

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KUTV

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

15 News

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

First Alert 4 at 4pm

nation says ticket master is not a monopoly saying it's faced underred competition and they asked the **missouri**... **attorney general** why his offi...

Published23, 2024**KMOV**

View full article analysis

Kansas City 'separates' with employee who posted since-deleted post on Harrison Butker

KSHB-TV

released a letter detailing the harassment to city employees and also released a letter directed toward **Missouri**... **Attorney General** Andrew Bai...

Published23, 2024

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WSET

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KTUL

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

NEW: Far-left activist group Media Matters lays off at least a dozen staff

thepostmillennial.com

Attorney General asked a state court to issue an order preventing this Court from hearing this case....motion to stop the move from Media Matters, the AG wrote in the motion, "How ...

Published23, 2024**Thomas Stevenson**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

News 4 San Antonio

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KATV

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

FOX Baltimore

AMERICAN OVERSIGHT

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

KC employee who wrote social media post about Harrison Butker fired

KAKE

Attorney General's Office has been fired after sending a questionable post about Kansas City Chiefs...CITY, Missouri (KMBC) -- The Kansas City...

Published23, 2024

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

10 WJAR

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

ABC6 On Your Side

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WPMI

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KSNV News 3 Las Vegas

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Person who sent post about Chiefs Kicker Harrison Butker from Kansas City social account ‘separated’ from city workforce, mayor’s office says

KEYT-TV

Missouri Attorney General Andrew Bailey’s office then requested Lucas turn over documents regarding that

Published24, 2024**CNN Newsource**

View full article analysis

Share:Facebook Twitter

Person who sent post about Chiefs Kicker Harrison Butker from Kansas City social account 'separated' from city workforce, mayor's office says

ABC 17 News

Missouri Attorney General Andrew Bailey’s office then requested Lucas turn over documents regarding that

AMERICAN OVERSIGHT

Published24, 2024**CNN Newsource**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KFOX14

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WRGB

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

ABC 33/40

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

FOX 17

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

Fox26 News

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

Judge to decide whether man imprisoned for 33 years was wrongfully convicted

Irish Star

Attorney General's Office, however, opposed the move to overturn Dunn's conviction....life after prison attack Man, 73, accused of strangling...

Published23, 2024**Laura Colgan**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KRNV

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WSBT

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

BakersfieldNow

AMERICAN OVERSIGHT

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has

'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WJAC 6

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be

tried as adult, report says

WHP CBS21

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

Person who sent post about Chiefs Kicker Harrison Butker from Kansas City social account 'separated' from city workforce, mayor's office says

Erie News Now

Attorney General's Office has been fired after sending a questionable post about Kansas City Chiefs...CITY, Missouri (KMBC) -- The Kansas City...

Published23, 2024

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

kansascity.com: «Trump hangs over the GOP race for Missouri attorney general. Will he endorse his lawyer?»

Newstral

Former President Donald Trump features heavily in the Republican race for **Missouri attorney general**.

Published24, 2024**Newstral.com**

View full article analysis

Share:Facebook Twitter

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

WBAL NewsRadio 1090

Prosecutors from the **Missouri Attorney General's office** maintained that Dunn was guilty, arguing that

Published23, 2024

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

Person who sent post about Chiefs Kicker Harrison Butker from Kansas City social account 'separated' from city workforce, mayor's office says

KIFI Local News 8

Missouri Attorney General Andrew Bailey's office then requested Lucas turn over documents regarding that

Published24, 2024**CNN Newsource**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

Newschannel 12

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

Newschannel 20

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

IdahoNews.com

AMERICAN OVERSIGHT

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

WATCH: 'Furious' Andy Reid lashes out at reporter after being quizzed about Harrison Butker's controversial speech

FirstSportz

Previously, Chiefs heiress Gracie Hunt, teammate Chris Jones, **Missouri Attorney General**, Whoopi Goldberg

Published23, 2024**Ishan Misra**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

95.5 WSB

Prosecutors from the **Missouri Attorney General's office** maintained that Dunn was guilty, arguing that

Published23, 2024**Tesfaye Negussie and Dhanika Pineda, ABC News**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

WYCB NEWS 5

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KABB

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

KMA Land 99.1

Prosecutors from the **Missouri Attorney General's office** maintained that Dunn was guilty, arguing that

Published23, 2024

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

NewsRadio 740 KTRH

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published23, 2024**Jason Hall**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

KRCG

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

94.9 The Bull

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published23, 2024**Jason Hall**

View full article analysis

Share:Facebook Twitter

American city accused of violating NFL player's privacy with public information

Head Topics

AMERICAN OVERSIGHT

Ireland Latest News, Ireland Headlines **Missouri Attorney General** Andrew Bailey has confirmed his intention

Published24, 2024

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

NEWSRADIO 1040 WHO

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published24, 2024**Jason Hall**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

KPRC AM 950

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published23, 2024**Jason Hall**

View full article analysis

Share:Facebook Twitter

Fox News Sports Huddle Newsletter: Scottie Scheffler's shocking arrest, Harrison Butker's faith-based speech | National

FoxBangor.com

Continue reading…PUSHING BACK – **Missouri Attorney General** Andrew Bailey intends to pursue action against

Published22, 2024

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

Newsradio WTAM 1100

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published23, 2024**Jason Hall**

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

710wor.iheart.com

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published23, 2024**Jason Hall**

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

Missouri attorney general requests records from Kansas City related to Harrison Butker doxing post

FoxBangor.com

Missouri Attorney General Andrew Bailey is following through on his vow to pursue action against the

Published22, 2024

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

News Talk 550 KFYI

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published23, 2024**Jason Hall**

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

KFAN FM 100.3

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published23, 2024**Jason Hall**

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

REAL 92.3

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

AMERICAN OVERSIGHT

Published23, 2024**Jason Hall**

View full article analysis

Share:Facebook Twitter

Fate of man who claims innocence in St. Louis murder now in hands of judge | State and National News

Maryville Daily Forum

Attorney General's Office, retired St.... **Attorney General's**

Published23, 2024

View full article analysis

Share:Facebook Twitter

Wife of Missouri man who says he was falsely imprisoned for 33 years speaks out

Willmar Radio Home

AMERICAN OVERSIGHT

Prosecutors from the **Missouri Attorney General's office** maintained that Dunn was guilty, arguing that

Published23, 2024**Tesfaye Negussie and Dhanika Pineda, ABC News**

View full article analysis

Share:Facebook Twitter

Radio clip from KMBZ-FM - May 23, 2024

media, Sheriff Scott Childers is running for another term in office while facing a trial in September, **Missouri**... **Attorney General** Andrew Bail...

Published23, 2024**KMBZ**

View full article analysis

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

1310 WIBA

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

AMERICAN OVERSIGHT

Published23, 2024**Jason Hall**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

NTV News

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

AMERICAN OVERSIGHT

WGXA News

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

Fate of man who claims innocence in St. Louis murder now in hands of judge

The Griffon News

Attorney General's Office, retired St.... **Attorney General's**

Published23, 2024**Katie Kull St. Louis Post-Dispatch**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

Elvis Duran and the Morning Show

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published23, 2024**Jason Hall**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

Wach Fox 57

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

WBZ NewsRadio 1030

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published24, 2024**Jason Hall**

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

101.5 KGB

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published23, 2024**Jason Hall**

View full article analysis

AMERICAN OVERSIGHT

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

700WLW

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published23, 2024**Jason Hall**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

kpic.com

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

AMERICAN OVERSIGHT

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

NewsRadio 630 WLAP

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published23, 2024**Jason Hall**

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

KUBE 93.3

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

AMERICAN OVERSIGHT

Published23, 2024**Jason Hall**

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

WOAI

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published23, 2024**Jason Hall**

View full article analysis

Share:Facebook Twitter

15-year-old accused of attacking Kaylee Gain won't be tried as adult, report says

ABC 7 News

AMERICAN OVERSIGHT

Attorney General Andrew Bailey in March said Gain's alleged attacker "should be charged and tried as...READ MORE | Kaylee Gain has 'improved considerably,' still has 'long road' to...

Published23, 2024**JACKSON WALKER | The National Desk**

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

1059 The Rock

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published24, 2024**Jason Hall**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

102.5 WDVE

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published23, 2024**Jason Hall**

View full article analysis

Share:Facebook Twitter

Status Of Employee Accused Of Doxxing Harrison Butker Revealed

koacolorado.iheart.com

The former employee's status confirmation comes after **Missouri Attorney General** Andrew Bailey said he

Published23, 2024**Jason Hall**

View full article analysis

Share:Facebook Twitter

AMERICAN OVERSIGHT

Click here to unsubscribe or check alert preferences.
Connect with us on Facebook and Twitter.

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Goodwin, Gregory[Gregory.Goodwin@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; Hammond, Wyatt[Wyatt.Hammond@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Lewis, Jason[Jason.Lewis@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Woodard, Winderlyn[winderlyn.woodard@ago.mo.gov]
From: Rathert, Branden[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6862523A4FCB4692B7523E7B2723AB70-RATHERT, BRANDEN]
Sent: Thur 5/30/2024 8:59:25 AM (UTC-05:00)
Subject: Daily News/Media Roundup -Thursday May 30, 2024

Good morning all,

Below is the relevant news relating to the AGO, Missouri, and Nation for today:

AGO News:

"This Is Insanity": Judge In Trump Case Issues Unbelievable Jury Instructions
Zero Hedge l Tyler Durden
https://www.zerohedge.com/political/jury-begins-deliberations-trump-hush-money-trial

- Legal minds are beside themselves at how the judge in the Trump 'hush money' case has instructed jurors to rule - first in what constitutional law professor Jonathan Turley called "the coup de grace instruction," Judge Juan Merchan said that there is no need to agree on what occurred - and can disagree on what the crime was among the charges…."This is absolute insanity," posted Missouri Attorney General Andrew Bailey, in response to another Turley observation - namely that the jury will not be given copies of their instructions, but can ask for them to be read again. This is insanity. I've tried many jury trials in my day. You give jurors paper instructions every time. How are 12 jurors supposed to remember the elements necessary for each of the 34 felony counts? This is an illicit, witch-hunt prosecution."….

REPOST: Nieuwskoerier

HUSH MONEY TRIAL: Legal experts, Republicans, Trump, others weigh in on bias of judge
True News l Staff
https://true.news/hush-money-trial-legal-experts-republicans-trump-others-weigh-in-on-bias-of-judge/

- While a jury in New York City is currently deliberating the "hush money" case against former President Donald Trump Wednesday afternoon, legal experts, Republican lawmakers and many others are voicing their concerns and outrage over the clear bias against Trump by Democrat judge Juan Merchan.
  "Mother Theresa could not beat these charges. These charges are rigged, the whole thing is rigged. The Judge is so conflicted he can't breathe," Trump said…Missouri Attorney General Andrew Bailey wrote, "This is insanity. I've tried many jury trials in my day. You give jurors paper instructions every time. How are 12 jurors supposed to remember the elements necessary for each of the 34 felony counts? This is an illicit, witch-hunt prosecution."….

May Consumer Protection News
National Association of Attorneys General l Kate Donoven
https://www.naag.org/attorney-general-journal/may-consumer-protection-news/

- Missouri Attorney General Andrew Bailey launched consumer protection investigation to combat dangerous illicit Delta-8 products. The investigation stems from adverse health incidents occurring both in Missouri and around the nation, specifically incidents harming children. Delta-8 is already illegal or severely restricted in at least 24 states because of the serious health risks it poses to consumers. In March of 2024, six elementary-age children in St. Louis County became so sick that their parents had to pick them up from school after reportedly ingesting Delta-8 products that were packaged as "Nerds Rope Bites and Mad Monkey Sour Strawberry Premium Gummies." One of the affected children had trouble walking and believed she was being kidnapped when her mother came to pick her up.

AMERICAN OVERSIGHT

Governors Move to Stop Coerced Abortion, Trafficking of Teens for Abortions
PJ Media l Catherine Salgado

https://pjmedia.com/catherinesalgado/2024/05/29/governors-move-to-stop-trafficking-of-teens-for-abortions-in-leftist-states-n4929424

- After the overturn of anti-constitutional Roe v. Wade, a number of Republican states moved to protect innocent babies from abortion by restricting or banning it. Unfortunately, pro-death leftists have reportedly been caught trafficking teens across state lines to obtain abortions without parental consent or coercing women to take abortion pills. Two Republican governors just signed legislation addressing this outrageous behavior….The governors of Tennessee and Louisiana just signed legislation either to make non-parental trafficking of underaged mothers across state lines for abortions criminal offenses or to criminalize coerced abortions. The attorney general of Missouri, Andrew Bailey, previously sued abortion giant Planned Parenthood over just such reported trafficking of minors to obtain abortions….

Kansas City voters weigh in on KCPD budget re-vote

KCTV l Samantha Boring

https://www.kctv5.com/2024/05/29/kansas-city-voters-weigh-kcpd-budget-re-vote/

- In August, Missouri voters will re-vote on whether to increase the funding for the Kansas City, Mo. Police Department provided by the City of Kansas City. Back in 2022, voters approved to increase how much Kansas City gives to the department. After that, the City of Kansas City filed a lawsuit against the state, the Missouri Attorney General, and the Kansas City Board of Police Commissioners calling the amendment unconstitutional and misleading. The Missouri Supreme Court ruled and agreed with the City that the fiscal note showing the ballot measures estimated costs or savings was not accurate and misled voters….

REPOST: Opera News

Ken Paxton Has Used Consumer Protection Law to Target These Organizations

Propublica l Vianna Davila

https://www.propublica.org/article/texas-ken-paxton-consumer-protection-law-investigations

- Texas Attorney General Ken Paxton has repeatedly used the state's powerful consumer protection laws to investigate organizations whose work conflicts in some way with his political views or the views of his conservative base, an analysis by ProPublica and The Texas Tribune found. Paxton has been particularly aggressive among an increasing number of attorneys general who are using consumer protection statutes to investigate not only predatory lenders or unscrupulous car dealers but also political targets, experts say. ProPublica and the Tribune identified more than a dozen instances in the past two years in which Paxton has used the state's consumer protection office to demand records from organizations with which he disagrees politically…. Media Matters for America, a progressive media watchdog nonprofit whose mission includes "correcting conservative misinformation," published a report in November that found ads for major brands like Apple and IBM on the social media platform X were appearing alongside posts promoting antisemitic and white supremacist views. On Nov. 20, X owner Elon Musk filed a lawsuit in federal court in Texas against the nonprofit, arguing its report had disparaged the company. The lawsuit accused Media Matters of using filters on X to produce ad and content combinations it wanted to see. Paxton launched an investigation into Media Matters the same day, saying in a press release that his office was troubled by allegations that the nonprofit had "fraudulently manipulated data." Within days of announcing his investigation, Paxton appeared on a conservative podcast and encouraged other attorneys general to pursue similar inquiries against the nonprofit. On Dec. 11, Missouri Attorney General Andrew Bailey, a Republican, opened a consumer protection investigation into the organization. He did not mention Paxton in a letter informing the nonprofit of the inquiry. On Dec. 12, Media Matters filed a lawsuit against Paxton in federal court, arguing the attorney general's investigation violated the nonprofit's First, Fourth and 14th amendment rights.

REPOST: Gilmer Mirror

Illegal immigrant charged in high-speed crash killing motorcyclist in South Carolina

The Lion l Faith Perkins

https://readlion.com/illegal-immigrant-charged-in-high-speed-crash-killing-motorcyclist-in-south-carolina/

- An illegal immigrant is now in police custody following a high-speed crash involving a motorcycle, school bus and work van that resulted in a fatality. The collision occurred last week at the 100 block of Industrial Drive in Lexington, South Carolina. Local police identified the driver who struck the motorcycle and school bus as 20-year-old Giovanni Mendoza-Jimenez, a Mexican citizen unlawfully in the United States. He was arrested and charged with driving without a license, driving too fast for conditions and failure to stop for a school bus…Travis Wolfe, a 12-year-old in vehicle, succumbed to his injuries in March, while his parents suffered broken bones, among other injuries. "The tragic loss of 12-year-old Travis Wolfe is yet another painful reminder of the devastating consequences of lax border enforcement," Missouri Attorney General Andrew Bailey wrote following the incident. "It's heartbreaking to see innocent lives lost because of the failure of our government to secure our borders effectively."….

AMERICAN OVERSIGHT

Missouri high school faces scrutiny over gender ideology survey

The Lion | Elizabeth Troutman
https://readlion.com/missouri-high-school-faces-scrutiny-over-gender-ideology-survey/

- A Missouri high school instructed students in a health class to complete a survey asking if they understood "the difference between sex assigned at birth and gender." Webster Groves High School hosted a workshop in late April called "Understanding Gender and Relationships" presented by a speaker with a program run by the St. Louis-based domestic abuse treatment center Safe Connections…The high school gave the survey to students after Missouri Attorney General Andrew Bailey, a Republican, ordered the Webster Groves School District to "cease and desist" teaching students about human sexuality, including gender ideology, without parental consent ahead of time, The Daily Signal reported in February….

Missouri News:

U.S. House speaker reverses on radiation compensation bill that excluded Missouri
Missouri Independent | Allison Kite
https://missouriindependent.com/2024/05/29/house-speaker-johnson-opposes-radiation-compensation-for-missouri-new-mexico/

'We're rebuilding the office'; Circuit Attorney Gore says office is making serious strides as one family still awaits justice
KMOV | Jon Kipper
https://www.firstalert4.com/2024/05/30/were-rebuilding-office-circuit-attorney-gore-says-office-is-making-serious-strides-one-family-still-awaits-justice/

Missouri lawmakers passed 48 bills this year. Here's a list of potential new Missouri laws
The Beacon | Meg Cunningham
https://thebeaconnews.org/stories/2024/05/29/missouri-laws-bills-passed-2024/

The St. Louis Reparations Commission is working on a draft of the final harm report
STL NPR | Andrea Y. Henderson
https://www.stlpr.org/race-identity-and-faith/2024-05-29/st-louis-reparations-commission-draft-final-harm-report

Boilermakers' ousted president stole millions from KC-based union, court filing alleges
Yahoo via KC Star | Judy L. Thomas
https://www.yahoo.com/news/boilermakers-ousted-president-stole-millions-100000289.html

Officer-involved shooting near Metro station, suspect injured
FOX 2 St. Louis | Megan Mueller
https://fox2now.com/news/missouri/officer-involved-shooting-near-metro-station-suspect-injured/

Fourth lawsuit filed against Hereford House, couple alleges they suffered food poisoning
KMBC | Nick Sloan
https://www.kmbc.com/article/fourth-lawsuit-filed-against-hereford-house-leawood-kansas/60943295

KCPD warns of computer pop-up scam after Kansas City resident loses more than $1 million
KMBC | Connor Hills
https://www.kmbc.com/article/kcpd-warns-computer-scam-kansas-city-1-million/60925471

Missouri's food stamps program was unlawfully inaccessible, federal court rules
KMOV | Joe McLean
https://www.firstalert4.com/2024/05/28/missouris-food-stamps-program-was-unlawfully-inaccessible-federal-court-rules/?tbref=hp

Summer curfew hours begin for teens in Kansas City, Mo.
KCTV | Betsy Webster
https://www.kctv5.com/2024/05/25/summer-curfew-hours-begin-teens-kansas-city-mo/

These are the 15 fastest-growing small towns and cities in Missouri
FOX 2 St. Louis | Ashleigh Jackson

AMERICAN OVERSIGHT

https://fox2now.com/news/missouri/these-are-the-15-fastest-growing-small-towns-and-cities-in-missouri/

A fifth grader's fundraiser cleared his school of meal debt. It named an award for him
AP | Jim Salter
https://apnews.com/article/student-fundraiser-lunch-debt-c6d8f4c82ef5a7651953c880c8513974

National News:

Judge in Trump Trial Tells Jurors They Don't Need to Agree on Elements of Underlying Crime to Convict
Epoch Times | Tom Ozimek
https://www.theepochtimes.com/us/judge-in-trump-trial-tells-jurors-they-dont-need-to-agree-on-crimes-to-convict-5658931

Rep. Stefanik slaps Judge Juan Merchan with misconduct complaint over 'random' assignment to Trump 'hush money' trial
New York Post | Victor Nava
https://nypost.com/2024/05/28/us-news/elise-stefanik-files-misconduct-complaint-against-judge-juan-merchan-over-random-assignment-to-trumps-trial/

Frail Harvey Weinstein wheeled into same courthouse as Donald Trump
Daily Express | Kyle O' Sullivan
https://www.the-express.com/news/us-news/138890/Harvey-Weinstein-courthouse-Donald-Trump

'Right side of history': Iran Supreme Leader thanks campus protesters, calls them 'The 'Resistance'
USA Today | Savannah Kuchar
https://www.usatoday.com/story/news/world/2024/05/30/iran-supreme-leader-sayyed-ali-khamenei-letter-college-protests/73904227007/?tbref=hp

What NIH email scandal means for COVID-19 origins inquiry and Fauci
Washington Examiner | Gabrielle M. Etzel
https://www.washingtonexaminer.com/policy/healthcare/3021456/nih-email-scandal-covid-19-origins-inquiry-fauci/

Alito says he won't recuse himself over wife's flag flap
The Center Square | Brett Rowland
https://www.thecentersquare.com/national/article_67155d50-1def-11ef-ad21-b33e1c23b86e.html

Biden tells Black voters he will put progressives on Supreme Court in second term
FOX | Chris Pandolfo
https://www.foxnews.com/politics/biden-tells-black-voters-put-progressives-supreme-court-second-term

Son of a Gun: Hunter Biden to fight felony firearm charges in Delaware trial
Washington Examiner | Ashley Oliver
https://www.washingtonexaminer.com/news/3021588/son-of-a-gun-hunter-biden-firearm-charges/

Arkansas Teacher, Parents, and Students Sue to Restore Critical Race Theory
Epoch Times | Aaron Gifford
https://www.theepochtimes.com/us/arkansas-teacher-parents-and-students-sue-to-restore-critical-race-theory-5659033

Federal Judge Strikes Down School Ban on CRT, 'Divisive Concepts'
Epoch Times | Alice Giordano
https://www.theepochtimes.com/us/federal-judge-strikes-down-school-ban-on-crt-divisive-concepts-5658939

Bush appointee hit and killed in car accident outside Nevada federal courthouse: police
FOX | Sarah Rumpf-Whitten
https://www.foxnews.com/us/bush-appointee-hit-killed-car-accident-outside-nevada-federal-courthouse-police

Alabama inmate Jamie Ray Mills to be 2nd inmate executed by the state in 2024. What to know
USA Today | Amaris Encinas

AMERICAN OVERSIGHT

https://www.usatoday.com/story/news/nation/2024/05/30/jamie-mills-execution-what-to-know/73806153007/?tbref=hp

Higher interest rates could cost US companies $380B in 'slowly unfolding crisis'
FOX | Megan Henney
https://www.foxbusiness.com/economy/higher-interest-rates-could-cost-us-companies-380b-slowly-unfolding-crisis

Michigan judge astonished at how man shows up to virtual hearing for driving with suspended license charge
FOX | Louis Casiano
https://www.foxnews.com/us/michigan-judge-astonished-how-man-shows-up-virtual-hearing-driving-suspended-license-charge

California's $20 Fast Food Minimum Wage Law Is Already Having Disastrous Unintended Consequences
Reason | John Stossel
https://reason.com/2024/05/29/californias-20-fast-food-minimum-wage-law-is-already-having-disastrous-unintended-consequences/#:~:text=But%20the%20unseen%20effect%20is,employees'%20hours%20by%2010%20percent.

California Senate passes bill to add 'speed governors' to all new cars
SF Gate | Katie Dowd
https://www.sfgate.com/bayarea/article/california-speed-governors-new-cars-19479169.php

UCLA medical school paid first-year students to write left-wing course requirements
Washington Examiner | Breccan T. Thies
https://www.washingtonexaminer.com/news/3020882/ucla-medical-school-left-wing-course-requirements/

Is China Stockpiling Resources to Prepare for War?
Newsweek | Micah McCartney
https://www.newsweek.com/china-stockpiling-resources-preparation-war-taiwan-economy-gold-oil-ukraine-russia-1905113

Thanks for reading and have a great day!

Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Goodwin, Gregory[Gregory.Goodwin@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; Hammond, Wyatt[Wyatt.Hammond@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Lewis, Jason[Jason.Lewis@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Woodard, Winderlyn[winderlyn.woodard@ago.mo.gov]
From: Rathert, Branden[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6862523A4FCB4692B7523E7B2723AB70-RATHERT, BRANDEN]
Sent: Fri 5/31/2024 9:11:54 AM (UTC-05:00)
Subject: Daily News/Media Roundup -Friday May 31, 2024

Good morning all,

Below is the relevant news relating to the AGO, Missouri, and Nation for today:

AGO News:

Reactions to Trump conviction fall along party lines in Missouri
Missouri Independent l Rudi Keller
https://missouriindependent.com/2024/05/30/reactions-to-trump-conviction-fall-along-party-lines-in-missouri/

- Reactions by Missouri politicians to the felony conviction Thursday of former President Donald Trump fell predictably along partisan lines, with Republicans condemning the verdict and Democrats expressing satisfaction or trolling their partisan foes. Secretary of State Jay Ashcroft, a candidate for the GOP nomination for governor, blamed President Joe Biden for the state of New York's prosecution of Trump for hush money payments to a porn star to keep the story of their sexual liaison private. "Joe Biden has weaponized the justice system to go after one of the greatest Presidents in our history," Ashcroft wrote on X, formerly known as Twitter. "The democrats are trying to steal another election."… Attorney General Andrew Bailey called the outcome an "illegal conviction" and predicted "Americans will overwhelmingly reelect President Trump in November.

Local elected officials react to Trump's guilty verdict
KMOV l Staff
https://www.firstalert4.com/2024/05/30/local-elected-officials-react-trumps-guilty-verdict/

- Local elected officials are reacting after former President Donald Trump was convicted of felony crimes by a New York jury. "New York's six-week sham trial against President Trump has eroded the public's trust in our legal system in a way that will take years to overcome," said U.S. Representative Mike Bost (IL-12). "The trial, along with all the character attacks, campaign interference and Hollywood cameos that surrounded it, had one purpose: to weaken President Trump before the 2024 election. It won't work. Even after today's verdict, he is strengthened with an American public that is fed up with liberals weaponizing the legal system for their partisan political gain." Missouri Attorney General Andrew Bailey posted on social media: "I am outraged by the sham verdict finding President @realDonaldTrump guilty on all counts. This is the result of a rigged system, where the judge manipulated the process to turn jurors against President Trump. Donald Trump is an America First patriot who has tirelessly worked for the good of the American public. I refuse to stand idly by while this gross injustice unfolds. This politically motivated attack is an outrage. The Democrats have left a permanent scar on this country with their blatant witch hunt. I will continue to do everything in my power to ensure President Trump's good name is cleared in this outrageous weaponization of our justice system. Enough is enough."…

Missouri Republican politicians speak out in support of former President Trump
KJLU l Leslie Taylor
https://www.kjluradio.com/newsroom/missouri-republican-politicians-speak-out-in-support-of-former-president-trump/article_0e643e20-1ee8-11ef-9969-9fec37381267.html

- Missouri Republicans take to social media touting their support for Donald Trump following Thursday's guilty verdict in New York….Missouri Attorney General Andrew Bailey called it a "blatant act of election interference", calling it "pathetic that the Democrats have resorted to weaponizing our justice system to target President Trump and his loyal supporters"…

AMERICAN OVERSIGHT

Missouri, Arkansas politicians react to Trump verdict
KOLR l Tony Nguyen
https://www.ozarksfirst.com/news/missouri-arkansas-politicians-react-to-trump-verdict/

- The jury in Donald Trump's criminal hush money trial has found the former president guilty of all 34 felony counts against him…"What happened in New York is a travesty for the rule of law and our Constitution. Democrats have opened Pandora's Box and have fully weaponized the judicial process against President Trump – this was a Soviet-style show trial of Joe Biden's chief political adversary that has irreparably cheapened the American judicial system. President Trump will be vindicated on appeal and the American people will reject this unprecedented lawfare in November."-Missouri Attorney General Andrew Bailey

Guilty X 34: Trump becomes first former U.S. president convicted of felony crimes
Wisconsin Law Journal via AP l Staff
https://wislawjournal.com/2024/05/30/guilty-x-34-trump-becomes-first-former-u-s-president-convicted-of-felony-crimes/

- Donald Trump became the first former president to be convicted of felony crimes Thursday as a New York jury found him guilty on 34 felony counts of falsifying business records in a scheme to illegally influence the 2016 election through hush money payments to a porn actor who said the two had sex…Missouri Attorney General Andrew Bailey posted to X, "An illicit, which-hunt prosecution against President Trump has resulted in an illegal conviction."..

Trump and allies step up suggestions of rigged trial — with bad evidence
Washington Post l Aaron Blake
https://www.washingtonpost.com/politics/2024/05/30/trump-allies-step-up-suggestions-rigged-trial-with-bad-evidence/

- The jury in former president Donald Trump's Manhattan criminal trial continued to deliberate Thursday, with a verdict possible at any moment. And as we await that crucial decision, efforts to pre-spin the verdict by Trump and his allies have kicked into high gear. "I've tried many jury trials in my day. You give jurors paper instructions every time. … This is an illicit, witch-hunt prosecution." — Missouri Attorney General Andrew Bailey (R) on Wednesday

Former President Donald Trump found guilty on all counts, angering KS, MO Republicans
Yahoo via KC Star l Daniel Desrochers, Kacen Bayless, Jonathan Shorman, Jenna Barackman
https://www.yahoo.com/news/former-president-donald-trump-found-212115417.html

- Kansas and Missouri Republicans embraced former President Donald Trump on Thursday as a New York jury found the presumptive GOP nominee for president guilty on 34 counts of falsifying business records to cover up a hush money payment to a porn star just before the 2016 election. Trump's grip on statewide politics is perhaps most visible in the Republican contest for Missouri attorney general. Incumbent Andrew Bailey has cast himself as a staunch defender of the former president while Scharf, his opponent, serves on Trump's legal team. Bailey on Thursday said he was "outraged by the sham verdict." "This is the result of a rigged system, where the judge manipulated the process to turn jurors against President Trump," Bailey alleged on social media.

REPOST: Wichitia Eagle

Missouri, Illinois politicians react to Trump verdict
Yahoo VIA FOX 2 STL l Joey Schneider
https://www.yahoo.com/news/missouri-illinois-politicians-react-trump-215107177.html

- The jury in Donald Trump's criminal hush money trial has found the former president guilty of all 34 felony counts against him. Missouri Attorney General Andrew Bailey: "I am outraged by the sham verdict finding President [Donald Trump] guilty on all counts. This is the result of a rigged system, where the judge manipulated the process to turn jurors against President Trump. Donald Trump is an America First patriot who has tirelessly worked for the good of the American public. I refuse to stand idly by while this gross injustice unfolds. This politically motivated attack is an outrage. The Democrats have left a permanent scar on this country with their blatant witch hunt. I will continue to do everything in my power to ensure President Trump's good name is cleared in this outrageous weaponization of our justice system." Enough is enough."…

REPOST: Web Times

Constitutionality of surcharge collections before Missouri Supreme Court
Missouri Lawyers Media l Correy E. Stephenson
https://molawyersmedia.com/2024/05/30/constitutionality-of-surcharge-collections-before-missouri-supreme-court/

- The Missouri Supreme Court heard oral argument on May 14 on the constitutionality of the collection of surcharges for certain state funds as court costs in criminal cases. Various statutes require circuit court clerks to collect a surcharge for certain state funds as court costs in criminal cases. The circuit clerks disburse the money to the state's director of revenue, who then deposits the money into the state's general revenue account and notifies the state treasurer of the amount paid to each fund…. For the state, Reed Dempsey of the Office of the Attorney General emphasized that sovereign immunity prevented the suit. In Metropolitan St. Louis Sewer District v. City of Bellefontaine Neighbors, the Missouri Supreme Court

AMERICAN OVERSIGHT

was clear that in the absence of an express statutory exception or recognized common law exception, sovereign immunity is the rule, and it applies to all public entities, he told the court, eliminating the possibility of implied consent….

'People have to be on guard': Ex-scammer shares common fraud tactics, how you can protect yourself
KSDK l Paula Vasan
https://www.ksdk.com/article/news/investigations/ex-scammer-exposes-fraud-network-impersonation-scams-tips-to-prevent/63-0090a611-4df3-4187-978e-584f49f4e223

- Chris Maxwell is a voice you don't hear from every day. Once a scammer, he's now exposing the dark secrets of a global fraud network. "I just wanted to make money. I just wanted to make a lot of money," he said. "I made over $70,000 in total." A reformed scammer from Nigeria, he said he conned women into wiring him money, pretending to be in love with them. But he did this only over the phone. He never showed his face….The Missouri Department of Health & Senior Services recommends that if you think you're being scammed or receiving a call of this nature, you should contact the threatened family member directly. Additionally, you should report the call to police and also file a claim with the Missouri Attorney General's Office.

Trump and allies step up suggestions of rigged trial — with bad evidence
Washington Post l Aaron Blake
https://www.washingtonpost.com/politics/2024/05/30/trump-allies-step-up-suggestions-rigged-trial-with-bad-evidence/

- The jury in former president Donald Trump's Manhattan criminal trial continued to deliberate Thursday, with a verdict possible at any moment. And as we await that crucial decision, efforts to pre-spin the verdict by Trump and his allies have kicked into high gear… "I've tried many jury trials in my day. You give jurors paper instructions every time. … This is an illicit, witch-hunt prosecution." — Missouri Attorney General Andrew Bailey (R) on Wednesday. This objection seeped in late Wednesday, after the jury asked in a note to the judge that jury instructions be read to them again. How could Merchan not give them a copy of the extensive and complicated instructions?

Attorney General Labrador Joins 19-State Lawsuit Against California & Others Threatening Energy System
Idaho Dispatch l Staff
https://idahodispatch.com/press-release-attorney-general-labrador-joins-19-state-lawsuit-against-california-others-threatening-energy-system/#google_vignette

- Idaho Attorney General Raúl Labrador joined a 19-state coalition asking the Supreme Court to declare unconstitutional the efforts of California, Connecticut, Minnesota, New Jersey, and Rhode Island to dictate the future of American energy policy. Those five states have brought unprecedented litigation against the nation's most vital energy companies for an alleged "climate crisis," and are demanding billions of dollars in damages. As litigation proceeds in their individual state courts, California and the others threaten to impose ruinous penalties and coercive remedies that would affect energy and fuel consumption and production across the country…. The Alabama-led motion was also joined by attorneys general from Alaska, Florida, Georgia, Iowa, Kansas, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Carolina, South Dakota, Utah, West Virginia, and Wyoming.

Republican AGs Seek Intervention of U.S. Supreme Court to Block Climate Change Lawsuits filed by Blue States Against Fossil Fuel Industry
JD Supra l Staff
https://www.jdsupra.com/legalnews/republican-ags-seek-intervention-of-u-s-3852366/

- A coalition of Republican state attorneys-general representing nineteen states (Alabama, Alaska, Florida, Georgia, Idaho, Iowa, Kansas, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Carolina, South Dakota, Utah, West Virginia, and Wyoming) has petitioned the U.S. Supreme Court under a theory of original jurisdiction (i.e., disputes between states) to block the lawsuits filed by five liberal states (California, Connecticut, Minnesota, New Jersey, and Rhode Island) against fossil fuel companies. The premise of the lawsuit, as stated in the petition, is that the defendant states are "dictat[ing] the future of the American energy industry . . . by imposing ruinous liability and coercive remedies on energy companies through state tort actions governed by state law in state court."…..

Here are the organizations that Ken Paxton targeted using consumer protection laws
Texas Tribune l Vianna Davila
https://www.texastribune.org/2024/05/30/texas-ken-paxton-consumer-protection-law-investigations/

- Texas Attorney General Ken Paxton has repeatedly used the state's powerful consumer protection laws to investigate organizations whose work conflicts in some way with his political views or the views of his conservative base, an analysis by ProPublica and The Texas Tribune found… Media Matters for America, a progressive media watchdog nonprofit whose mission includes "correcting conservative misinformation," published a report in November that found ads for major brands like Apple and IBM on the social media platform X were appearing alongside posts promoting antisemitic and white

AMERICAN OVERSIGHT

supremacist views. On Nov. 20, X owner Elon Musk filed a lawsuit in federal court in Texas against the nonprofit, arguing its report had disparaged the company. The lawsuit accused Media Matters of using filters on X to produce ad and content combinations it wanted to see. Paxton launched an investigation into Media Matters the same day, saying in a press release that his office was troubled by allegations that the nonprofit had "fraudulently manipulated data." Within days of announcing his investigation, Paxton appeared on a conservative podcast and encouraged other attorneys general to pursue similar inquiries against the nonprofit. On Dec. 11, Missouri Attorney General Andrew Bailey, a Republican, opened a consumer protection investigation into the organization. He did not mention Paxton in a letter informing the nonprofit of the inquiry. On Dec. 12, Media Matters filed a lawsuit against Paxton in federal court, arguing the attorney general's investigation violated the nonprofit's First, Fourth and 14th amendment rights.

REPOST: El Paso Matters, News Explorer

Federal rule on Title IX is a ruse to require trans sports participation, GOP states say

Yahoo via AP l Andrew DeMillo

https://au.news.yahoo.com/news/federal-rule-title-ix-ruse-042216975.html

- The Biden administration has put on hold a plan to prohibit across-the-board bans on transgender athletes on school teams during an election year in which Republicans are rallying around restrictions on trans youths. But GOP state leaders are making sure voters know the issue is still on the table. At least two dozen Republican-controlled states have sued over a different federal regulation being implemented to protect the rights of transgender students that they argue would require governments to allow transgender girls to play on girls teams….Republicans now are trying to keep the focus on sports, appealing to parents' and athletes' sensitivities over fairness in competition. They have student athletes signing on as plaintiffs and appearing alongside attorneys general at news conferences announcing the lawsuits… "I don't want any girl to lose her right to a fair playing field or her right to use a safe place to change," said Amelia Ford, a high school basketball player from Brookland, Arkansas, who is a plaintiff in a lawsuit filed in federal court in Missouri challenging the enacted rule…

REPOST: FOX 2 STL, KRON, ABC27, My FOX 8, WFMZ, ABC 4, Newsday, Winnipeg Free Press, WCIA, KNWA, FOX 24, WLNS, WSPA, FOX 16, Head Topics, WFXR, Bozeman Daily Chornicle, Messenger-Inquirer, Utica News, WNTZ

How Trump's Jury Was Transformed Into a DANGEROUS Commission (listen)

Glenn Beck

https://www.glennbeck.com/radio/trumps-jury-transformed-dangerous-commission

- The jury in former president Donald Trump's New York hush money trial is deliberating on whether to convict him. But there are some major issues: For one, the judge didn't give the jury a printed copy of the jury instructions — something Missouri Attorney General Andrew Bailey says he has "never" seen before. Plus, the jury doesn't even have to agree on WHAT crime Trump committed. Attorney General Bailey joins Glenn to explain why this is dangerous: This isn't the American justice system. The judge has created a "roving commission" more akin to the system the British used to jail dissenters in the colonial era…

REPOST: KPRC, WTAM, KSTE, KFAB, USSA News, WJBO, Powertalk 96.7, WFLA, WTAG, WKMQ,

Andy, Andrew Bailey & DJ CTI: Jury Resumes Deliberations In NY v. Trump Trial, Biden Tells Black Voters Trump Wanted To Tear Gas Them & Blinken Hints U.S. May Accept Ukrainian Strikes In Russia (listen)

Real AG with Andy Frisella

https://player.fm/series/real-af-with-andy-frisella-80165/ep-718-andy-andrew-bailey-dj-cti-jury-resumes-deliberations-in-ny-v-trump-trial-biden-tells-black-voters-trump-wanted-to-tear-gas-them-blinken-hints-us-may-accept-ukrainian-strikes-in-russia

- In today's episode, Andy & DJ are joined in the studio by Missouri Attorney General Andrew Bailey. They discuss the Jury resuming deliberations in the NY vs. Trump trial, Biden telling black voters Trump wanted to tear gas them during a "peaceful" George Floyd protest, and Blinken hinting that the U.S. may accept Ukrainian strikes in Russia with American arms.

If Biden Wrecks Trump's Presidential Immunity…

The Liberty Beacon via Zero Hedge l Michael G. Zey

https://www.thelibertybeacon.com/if-biden-wrecks-trumps-presidential-immunity/

- Democrats and their friends on the left are hoping against hope that the Supreme Court rules that Donald J. Trump possesses only limited immunity for his presidential actions and is thus subject to prosecution by the Biden administration as well as local and state prosecutors… Now Missouri attorney general Andrew Bailey announced that he plans to use the Freedom of Information Act to pry loose from the DOJ any information related to "activity and/or communications between Manhattan District Attorney Alvin Bragg, New York Attorney General Letitia James, Special Prosecutor Jack Smith or Fulton County District Attorney Fani Willis related to the investigation or prosecution" of former president Trump. "The investigations and subsequent prosecutions of former President Donald J. Trump appear to have been conducted in

AMERICAN OVERSIGHT

coordination with the United States Department of Justice," Bailey states. Bailey's Exhibit A is the role former third-highest-ranking DOJ official Matthew Colangelo is now playing in Manhattan D.A. Bragg's criminal case, N.Y. v. Trump…..

Missouri News:

Missouri and Illinois lawmakers react to Trump guilty verdict in New York hush money case
STL NPR l Jason Rosenbaum
https://www.stlpr.org/government-politics-issues/2024-05-30/missouri-illinois-lawmakers-react-trump-guilty-verdict-ashcroft-pritzker-kehoe

Inside the US effort to bring home two young American missionaries killed in Haiti
CNN l Caitlin Stephen Hu and David Culver
https://www.cnn.com/2024/05/30/americas/haiti-david-natalie-lloyd-bodies-returned-intl/index.html

2nd Missouri judge rules counties can stack taxes at marijuana dispensaries
Missouri Independent l Rudi Keller
https://missouriindependent.com/2024/05/30/2nd-missouri-judge-rules-counties-can-stack-taxes-at-marijuana-dispensaries/

Man charged for sex trafficking 15-year-old girl
FOX 2 STL l Kamy Smelser
https://fox2now.com/news/man-charged-for-sex-trafficking-15-year-old-girl/

Drought almost completely gone from Missouri
Missourinet l Marshall Griffin
https://www.missourinet.com/2024/05/30/drought-almost-completely-gone-from-missouri/

Lawmakers clarify some confusion to let more counties freeze property taxes for seniors
The Beacon l Meg Cunningham
https://thebeaconnews.org/stories/2024/05/31/senior-property-tax-freeze-clarified-2024-missouri-counties/

Kids abused at MO boarding school have long sought justice. He's determined to bring it
Yahoo Via KC Star l Laura Bauer and Judy L. Thomas
https://www.yahoo.com/news/kids-abused-mo-boarding-school-110000446.html

Iowa fertilizer spill impacting Missouri's water, kills thousands of fish
KSDK l Laura Bowen
https://www.ksdk.com/article/tech/science/environment/nishnabotna-river-fertilizer-spill-iowa-missouri-impacts-attorney-general-environmental-protection-commission/524-89aa0c8d-ca53-4e6c-99d8-b9b16d51245b

Suspects arrested after KCPD K-9 sniffs out alleged armed bank robbers
KCTV l Sarah Motter
https://www.kctv5.com/2024/05/29/suspects-arrested-after-kcpd-k-9-sniffs-out-alleged-armed-bank-robbers/?tbref=hp

Independence's four-day school week draws Missouri auditor probe
Missouri Independent via KC Beacon l Maria Benevento
https://missouriindependent.com/2024/05/30/independences-four-day-school-week-draws-missouri-auditor-probe/

Missouri Ag director says avian influenza is not a consumer Concern
Missourinet l Anthony Morabith
https://www.missourinet.com/2024/05/30/missouri-ag-director-says-avian-influenza-is-not-a-consumer-concern/

'America at her best': Negro Leagues museum head says stat recognition is bigger than baseball
Missouri Independent l Cuyler Dunn
https://missouriindependent.com/2024/05/29/america-at-her-best-negro-leagues-museum-president-says-stat-recognition-is-bigger-than-baseball/

AMERICAN OVERSIGHT

National News:

Trump to Hold Press Conference After Guilty Verdict in New York Trial
Epoch Times | Catherine Yang and Michael Washburn
https://www.theepochtimes.com/us/trump-to-hold-press-conference-after-guilty-verdict-in-new-york-trial-5660024

Here's what you should know about Donald Trump's conviction in his hush money trial
AP | Staff
https://apnews.com/article/trump-conviction-what-to-know-a70941a7cd367f7b2aa3218ea91ad922

Yes, Donald Trump can still be president as a convicted felon
Politico | Ben Feuerherd
https://www.politico.com/news/2024/05/30/can-trump-still-be-president-00160433

Bragg Won't Reveal Whether Prosecutors Will Seek Trump Prison Sentence
Epoch Times | Catherine Yang
https://www.theepochtimes.com/us/bragg-wont-reveal-whether-prosecutors-will-seek-trump-prison-sentence-5659989

'Kangaroo court': Trump conviction brings strong reactions from GOP, Democrats
The Center Square | Elyse Apel
https://www.thecentersquare.com/national/article_2aeac192-1ed2-11ef-83f1-bb0828e7d555.html

Supreme Court Unanimously Rules for NRA in Free Speech Case
Epoch Times | Sam Dorman
https://www.theepochtimes.com/us/supreme-court-unanimously-rules-for-nra-in-first-amendment-lawsuit-with-ny-5641423?ea_src=frontpage&ea_med=lead-special-courts-medium-0

Minneapolis neighborhood shooting leaves at least 3 people dead, including officer, authorities say
FOX | Sarah Rumpf-Whitten
https://www.foxnews.com/us/minneapolis-neighborhood-shooting-2-civilians-dead-2-police-officers-injured-authorities

Arkansas Supreme Court tosses ballot review case
The Center Square | Kim Jarrett
https://www.thecentersquare.com/arkansas/article_014e600c-1ecb-11ef-91e1-7b12fc44b4be.html

Supreme Court Rules 6-3 That Death Row Inmate Was Not Denied Effective Legal Representation
Epoch Times | Matthew Vadum
https://www.theepochtimes.com/us/supreme-court-rules-6-3-that-death-row-inmate-was-not-denied-effective-legal-representation-5659562

Chief Justice John Roberts Rebukes Senate Dems Over Request for Meeting on Alito Flags
Mediaite | Isaac Schorr
https://www.mediaite.com/news/just-in-chief-justice-john-roberts-rebukes-senate-dems-over-request-for-meeting-on-alito-flags/

Supreme Court Votes 9-0 to Reexamine Law Requiring Banks to Pay Interest on Mortgage Escrow Accounts
Epoch Times | Matthew Vadum
https://www.theepochtimes.com/us/supreme-court-votes-9-0-to-uphold-new-york-law-requiring-banks-to-pay-interest-on-mortgage-escrow-accounts-5659532

Las Vegas aliens 'try to stave off pesky humans,' expert says: 'What are they doing here?'
FOX | Chris Eberhart
https://www.foxnews.com/us/las-vegas-aliens-try-stave-off-pesky-humans-expert-says-speculates-what-doing-here

How a Chinese attack on Taiwan could lead to a direct war between the US and Beijing
FOX | Elizabeth Elkind
https://www.foxnews.com/politics/how-chinese-attack-taiwan-could-lead-direct-war-us-beijing

AMERICAN OVERSIGHT

Thanks for reading and have a great day!

Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355

AMERICAN OVERSIGHT

To: Prestage, Holly[Holly.Prestage@ago.mo.gov]; Engle, Evelyn[Evelyn.Engle@ago.mo.gov]; Kessler, Lauren[Lauren.Kessler@ago.mo.gov]; Finn, Ethan[Ethan.Finn@ago.mo.gov]; George, Charlotte[Charlotte.George@ago.mo.gov]; Brewer, Zachary[Zachary.Brewer@ago.mo.gov]
Cc: Scott, Todd[Todd.Scott@ago.mo.gov]
From: Monroe, Kathryn[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=064360B52A0A4BCEBBB731D6FB722A65-MONROE, KATHRYN]
Sent: Wed 6/5/2024 9:47:54 AM (UTC-05:00)
Subject: FW: Daily News/Media Roundup -Wednesday June 5, 2024

In case you are interested, below are snippets of articles and other media related to the work of the office.
Best,
Kathryn Monroe | Assistant Attorney General
Missouri Attorney General's Office
221 West High Street
Jefferson City, MO 65101
(573) 751-9199
Kathryn.Monroe@ago.mo.gov

From: Rathert, Branden <Branden.Rathert@ago.mo.gov>
Sent: Wednesday, June 5, 2024 8:59 AM
To: Atkins, Jay <Jay.Atkins@ago.mo.gov>; Beal, Bryce <Bryce.Beal@ago.mo.gov>; Bryson, Isabelle <Isabelle.Bryson@ago.mo.gov>; Childers, Cooper <Cooper.Childers@ago.mo.gov>; Clausner, Evan <Evan.Clausner@ago.mo.gov>; Davis, Clifton <Clifton.Davis@ago.mo.gov>; Divine, Josh <Josh.Divine@ago.mo.gov>; Donohue, Peter <Peter.Donohue@ago.mo.gov>; Dusheke, Sheala <Sheala.Dusheke@ago.mo.gov>; Freedlund, Samuel <Samuel.Freedlund@ago.mo.gov>; Goodwin, Gregory <Gregory.Goodwin@ago.mo.gov>; Haines, Diana <Diana.Haines@ago.mo.gov>; Hammond, Wyatt <Wyatt.Hammond@ago.mo.gov>; King, Kelly <Kelly.King@ago.mo.gov>; Lanahan, Maria <Maria.Lanahan@ago.mo.gov>; Lewis, Jason <Jason.Lewis@ago.mo.gov>; Mackelprang, Shaun <shaun.mackelprang@ago.mo.gov>; Meyer, Rhonda <rhonda.meyer@ago.mo.gov>; Monroe, Kathryn <Kathryn.Monroe@ago.mo.gov>; Morgan, Jeremiah <jeremiah.morgan@ago.mo.gov>; McCuien, Grace <Grace.McCuien@ago.mo.gov>; Rathert, Branden <Branden.Rathert@ago.mo.gov>; Rutledge, Caleb <Caleb.Rutledge@ago.mo.gov>; Scott, Todd <Todd.Scott@ago.mo.gov>; Sieren, Madeline <Madeline.Sieren@ago.mo.gov>; Woodard, Winderlyn <winderlyn.woodard@ago.mo.gov>
Subject: Daily News/Media Roundup -Wednesday June 5, 2024
Good morning all,
Below is the relevant news relating to the AGO, Missouri, and Nation for today:

AGO News:

AG's lawsuit against Wentzville schools postponed again. Trial date still unset.
St. Louis Post-Dispatch | Monica Obradovic
https://archive.is/LKCmS#selection-3487.0-3487.80

-A hearing for the Missouri attorney general's lawsuit against the Wentzville Board of Education has been postponed again, this time until September. Charles County judge on Monday granted a third delay for a hearing in the suit, which accuses Wentzville schools of breaking the state's open records law by discussing bathroom policies for transgender students behind closed doors. Attorney General Andrew Bailey sued the district in September 2023, but a status hearing has now been delayed until Sept. 23 of this year. It was initially scheduled for this past February. Both parties anticipate setting a trial date at the Sept. 23 hearing…..

REPOST: News-Press Now, Gladstone Dispatch, My Courier Tribune

Trial for Jackson County property tax lawsuit delayed
KCTV | Cyndi Fahrlander
https://www.kctv5.com/2024/06/04/trial-jackson-county-propert-tax-lawsuit-delayed/

-A Jackson County judge has delayed the trial in the lawsuit filed over the latest Jackson County tax assessment. The lawsuit, filed by the Missouri Attorney General and the state Tax Commission was set to be heard on Thursday, but late Tuesday, a Jackson County judge continued the case until June 27. In arguing for the delay, the Jackson County attorney claimed the Attorney Generals office refused to name an expert witness and an auditor in time for the county to depose them. The Attorney Generals office argued that the county had been uncooperative throughout the discovery process and was trying to get the trial delayed. The lawsuit claims laws were broken in the 2023 assessment and wants the judge to void the increases in property taxes that owners paid last year. County executive Frank White claims the lawsuit was politically motivated, and could be devastating for school funding.

Judge agrees to delay start of Jackson County property assessment trial
KSHB | Sam Hartle
https://www.kshb.com/news/local-news/property-tax/judge-agrees-to-delay-start-of-jackson-county-property-assessment-trial

AMERICAN OVERSIGHT

-A Missouri judge set a new trial date Tuesday in a lawsuit filed by Missouri Attorney General Andrew Bailey and the State Tax Commission over Jackson County's 2023 tax assessment process. The trial was to begin Thursday, June 6, and continue on Friday, June 7. Clay County Judge Karen Krauser ruled the trial will now start on June 27 and continue June 28 and July 8. Jackson County's attorneys said in the Tuesday hearing they had problems obtaining information from the AG's office, including a violation of the judge's discovery order…..

A Supreme Court weighs abortion pill case, three states wait in the wings (article locked)

Washington Post l Staff

https://www.washingtonpost.com/politics/2024/06/04/abortion-pill-states-challenge-supreme-court/

-When the Supreme Court debated this spring whether to limit access to a widely used abortion medication, a majority of justices seemed inclined to rule against the lawsuit by finding that the antiabortion doctors behind it had no legal basis to bring the...

University of Missouri files petition to remove racial criteria from scholarship donations

Columbia Missourian l Katelyn McIlwain and Finnegan Belleau

https://www.columbiamissourian.com/news/higher_education/university-of-missouri-files-petition-to-remove-racial-criteria-from-scholarship-donations/article_f824fffc-220a-11ef-83e8-2bff654efa5f.html#tncms-source=Top%20Story

-The University of Missouri Curators filed a petition last week to change the use of donations from their original purpose of providing financial opportunities to students from specific racial and ethnic backgrounds. According to the filing, the change would impact a minimum of 53 funds across UM's four campuses by removing any "racial criteria" and leaving all other wording intact. A review of some of the funds shows they can range from several thousand dollars to more than $100,000 each. "The courts have authority to modify these gift instruments that private people and corporations have created to set up trusts, gifts, etc. with nonprofit institutions," said Steven Hoffmann, a licensed attorney in St. Louis…. SCOTUS decided in the case that race cannot be used as a factor in the admissions process of universities receiving federal assistance. On the day of the ruling, Missouri Attorney General Andrew Bailey warned in a letter that the decision further applies to other aspects of education, like scholarships….

REPOST: KOMU, KBIA, KCUR, Higher Ed Dive, Maryville Daily Forum

Be like Trump, says adviser to embattled Missouri House speaker (article locked)

St. Louis Post-Dispatch l Kurt Erickson

https://www.stltoday.com/news/local/government-politics/be-like-trump-says-adviser-to-embattled-missouri-house-speaker/article_65863620-2296-11ef-86b2-77ce128c1ae9.html#tracking-source=home-top-story

-A top adviser to Missouri's politically hobbled House speaker said the Des Peres Republican should take a page out of convicted felon Donald Trump's playbook. In a podcast interview Tuesday, political consultant Jonathan Ratliff said House Speaker Dean Plocher could bolster his bid to become Missouri's next secretary of state by playing up a whistleblower lawsuit filed against him and his chief of staff Friday. Rather than addressing allegations of retaliation, mismanagement and fear-mongering made by the top administrator in the House, Plocher should mimic Trump and say he's being attacked by insiders, Ratliff said during an episode of "This Week in Missouri Politics." "We have a story just like President Trump. We have fought the swamp in Jefferson City. We took on the bureaucracy. We beat them. Now they are using lawfare to come after us, just like President Trump," Ratliff said. The lawsuit filed by House Chief Clerk Dana Rademan Miller came after Plocher pushed back against a seven-month investigation by the House Ethics Committee in response to his attempt to steer an $800,000 software contract for the House around the standard bidding process, possibly in pursuit of a campaign donation. He also repaid a series of travel bills that he had charged to taxpayers, fired two long-time House aides and hired former House Speaker Rod Jetton to help him right the ship. The ethics case was eventually dismissed by the panel, but Plocher was accused of obstructing the investigation with Jetton's assistance. In her lawsuit, Miller said she privately counseled Plocher about complaints she had received about his treatment of female Republican lawmakers, including former Rep. Sara Walsh of Ashland, whom he called "stupid." "Plocher's reaction to plaintiff's sharing of those concerns was to be dismissive. He replied, 'They are like an invasive species.' "When Miller expressed her confusion over that statement, Plocher clarified, 'Stupid Republican women … they are an invasive species.'" The lawsuit also says Jetton allegedly told another employee that "that they needed to 'choke'" Miller's authority and "made a physical choking gesture with both hands." Jetton, who served as speaker from 2005 to 2009, was charged with felony assault from a 2009 sexual encounter where he choked a woman to the point of unconsciousness. He pleaded guilty to a reduced charge of misdemeanor assault. Plocher, in a separate interview Tuesday on KSSZ-FM in Columbia, signaled he is taking Ratliff's advice, calling the pushback he received from House employees an attempted "coup." "This has been a coup for a long time now," he said. "The bureaucrats in the House are trying to take us down. We are not going to let the bureaucrats run the place just because they are whining." Ratliff said the timing of the lawsuit and Trump's conviction on 34 counts in a New York City courtroom last week were a gift to Plocher's campaign to be the state's top election official. "From a stagecraft perspective we couldn't honestly have coordinated it any better," Ratliff said. Ratliff, who is the former political director for the Missouri House Republican Campaign Committee, is a partner with Palm Strategic Group, which has received $37,000 from Plocher's political action committee this year. He downplayed the controversy swirling around his client. "Don't believe anything you read in the funny papers," he said. "He's a generally good guy." Plocher, meantime, has

AMERICAN OVERSIGHT

not said whether he will ask Attorney General Andrew Bailey's office to represent him in the whistleblower case. If that occurs, any damages Miller may be awarded would come from taxpayer funds, not out of Plocher's pocket. A similar scenario facing three state senators accused of defamation spurred Gov. Mike Parson to say the state won't pay their legal bills, but Bailey has nonetheless moved forward with those cases. Plocher, a former municipal judge, is leading the fundraising race to replace Secretary of State Jay Ashcroft, who is running for governor. In April, Plocher reported more than $1.3 million between his campaign account and an allied political action committee. His closest competitor in the campaign finance arena was Sen. Denny Hoskins, R-Warrensburg, who had nearly $255,000 on hand. Other Republicans running include state Rep. Adam Schwadron, state Sen. Mary Elizabeth Coleman, Valentina Gomez, Greene County Clerk Shane Schoeller, Jamie Corley and Mike Carter.

Execution date set for Missouri inmate, even as he awaits hearing on claim of actual innocence

AP l Jim Salter

https://apnews.com/article/missouri-death-row-inquiry-board-state-supreme-court-0103d6047d1caa04eefbb6ef262063fb

-The Missouri Supreme Court on Tuesday set a Sept. 24 execution date for Marcellus Williams, even as the inmate awaits a court hearing on his claim that he was not involved in the murder that landed him on death row. The state Supreme Court set the date hours after it ruled that Republican Gov. Mike Parson was within his rights last year when he dissolved a board of inquiry convened six years earlier by Parson's predecessor to investigate Williams' innocence claim….The day after Parson dissolved the board, Missouri Attorney General Andrew Bailey asked the state Supreme Court to set an execution date….

REPOST: The Independent, ABC, Yahoo, MSN, Newsbreak, Yahoo UK, WTOP, NW Arkansas Democrat, Niagara Falls Review, KOMU, WAND, WACO Trib, My Mother Lode, Bowling Green Daily News, Joplin Globe, SC Now, SM News, Imperial Valley Press, KZRG, Canadian Press, KBSI, Okaloosa Herald, Bharat Express News, Richmond Sentinel

Missouri takes Biden Administration to court over student loan plan

KZRG l Steve Scott

https://newstalkkzrg.com/2024/06/04/missouri-takes-biden-administration-to-court-over-student-loan-plan/

-Missouri takes its case to court against the Biden Administration's student loan plan. A federal judge in St. Louis is considering arguments in Missouri versus Biden – whether President Joe Biden's administration went too far in canceling student loan debt without the approval of Congress. Missouri Attorney General Andrew Bailey is suing the Biden Administration because he argues Biden is sidestepping the Constitution by "saddling working Missourians with a half trillion dollars in college debt." Bailey cites a 2023 U.S. Supreme Court ruling striking down a Biden administration attempt to forgive student loan debt.

Missouri Attorney General argues to block Biden administration's second student loan relief plan

KCUR via Missouri Independent l Annelise Hanshaw

https://www.kcur.org/education/2024-06-04/missouri-attorney-general-argues-to-block-biden-administrations-second-student-loan-relief-plan

-The lawsuit, filed last month by Missouri Attorney General Andrew Bailey and seven other states, seeks to block an income-driven repayment plan for borrowers proposed by President Joe Biden's administration. A United States District Court judge in St. Louis heard arguments Monday morning on whether the federal government can continue with a student-debt-forgiveness plan due to begin next month…..

KTTN/KGOZ Radio, Muddy River News, Salem News Online

Biden's revised student loan debt plan faces new legal challenge in federal court

WQAD via KSDK l Mark Maxwell

https://www.wqad.com/article/news/politics/national-politics/biden-revised-student-loan-debt-plan-legal-challenge-federal-court/63-b0ea344d-12ba-4d7e-8765-86599601e552

-Two months after President Joe Biden touted his revised student loan debt forgiveness plan on the campaign trail in the swing state of Wisconsin, his authority to implement the proposal came under judicial scrutiny in a federal courthouse in St. Louis. Missouri Solicitor General Josh Divine said the new plan would bring significant economic and political implications… Divine, who argued the case on behalf of Missouri Attorney General Andrew Bailey, said the Missouri Higher Education Loan Authority (MOHELA) would lose hundreds of millions of dollars in fees and interest from student loan borrowers if the president's plan was allowed to go into effect…

Missouri leads federal court battle against Biden's S.A.V.E. Plan

My Plain View l Dominic Genetti

https://www.myplainview.com/news/article/biden-save-plan-19494578.php

-The fate of President Joe Biden's S.A.V.E. (Saving on A Valuable Education) Plan, which would allow student loan borrowers to pay back their student debt on the basis of their income, family size and other financial factors, could all come down to a federal judge in St. Louis. A total of seven attorneys general from Republican-led states; Missouri, North Dakota, Ohio, Florida, Georgia, Oklahoma and Arkansas are behind the legal battle to block the President's initiative which is set to start July 1. Missouri Attorney General Andrew Bailey is leading the charge and the Show-Me State's Solicitor General Josh Divine presented to the U.S. District Court for the Eastern District of Missouri Monday simply saying Biden's plan was not

AMERICAN OVERSIGHT

approved by Congress, according to the Missouri Independent….

REPOST : Big Rapids News

Budding Enforcement On Synthetic Cannabinoids

Mondaq l Staff

https://www.mondaq.com/unitedstates/cannabis/1474478/budding-enforcement-on-synthetic-cannabinoids

-Cannabinoids have been a popular topic of conversation for regulators as the cannabis landscape continues to evolve. Since the days of the tobacco Master Settlement Agreement and related investigations, Attorneys General (AGs) have long focused on protecting minors from health effects of both legal and illegal drugs (see, e.g., here and here). AGs are continuing to use their consumer protection powers in unique ways to protect against alleged misrepresentations relating to THC containing products…. Missouri Attorney General Andrew Bailey issued civil investigative demands (CIDs) in April 2024 to multiple businesses that sell Delta-8 and Delta-9 goods after reports of alleged violations of the Missouri Merchandising Practices Act. AG Bailey stated that Missourians have a right to know if they will be subject to potentially dangerous side effects and highlighted the danger of marketing potentially harmful products directly to children. AG Bailey issued CIDs to both retailers selling Delta-8 and Delta-9 products, and manufacturers and distributors selling illicit vapes and e-cigarettes, showing that even those that don't directly engage with consumers can still be liable for committing unfair and deceptive acts and practices. Per the CIDs, General Bailey believes businesses are engaging in illegal means to market and sell the products to Missourians, including potential misrepresentation or omission of material facts. The CIDs demand information such as measures taken to ensure proper labeling of products, measures taken to ensure quality and safety of products, and whether sales comply with age restrictions….

Missouri News:

Missouri Supreme Court backs August election on Kansas City police funding

Missouri Independent l Rudi Keller

https://missouriindependent.com/2024/06/04/missouri-supreme-court-backs-august-election-on-kansas-city-police-funding/

Top Kansas Republicans pitch Chiefs on moving to state, back plan to help finance stadium

Yahoo via KC Star l Jonathan Shorman and Sam McDowell

https://finance.yahoo.com/news/top-kansas-republicans-pitch-chiefs-224221371.html

FBI investigating bank robbery in KCMO

KCTV l Gabe Swartz

https://www.kctv5.com/2024/06/04/fbi-investigating-bank-robbery-kcmo/?tbref=hp

Court sets execution date for Missouri man despite prosecutors arguing he's innocent

Yahoo via KC Star l Katie Moore

https://www.yahoo.com/news/court-sets-execution-date-missouri-204941416.html

St. Louis Circuit Attorney Gabe Gore on St. Louis City crime, improvements to office

KMOV l Staff

https://www.firstalert4.com/2024/06/05/st-louis-circuit-attorney-gabe-gore-st-louis-city-crime-improvements-office/

Missouri appeals court sides with transgender student in $4 million discrimination case

Missouri Independent l Annelise Hanshaw

https://missouriindependent.com/2024/06/04/missouri-appeals-court-sides-with-transgender-student-in-4-million-discrimination-case/

Mountain Grove man arrested 25 years after allegedly molesting multiple children

KOLR l Drew Tasset

https://www.ozarksfirst.com/news/mountain-grove-man-arrested-25-years-after-allegedly-molesting-multiple-children/

Police investigating after SUV caused bicyclist to fall 22 feet from bridge

KSDK l Kelsi Anderson, Justina Coronel

https://www.ksdk.com/article/news/local/police-investigating-after-suv-caused-bicyclist-to-fall-22-feet-from-bridge/63-617b396d-c635-4208-b9c4-5732e3bac8db

Missouri Supreme Court shields supervisors in death of MoDOT worker in South County

St. Louis Post-Dispatch l Kurt Erickson

https://archive.is/P5Ree#selection-3533.0-3533.83

FBI St. Louis warns of gold scam targeting elderly

FOX 2 STL l Andy Banker

https://fox2now.com/news/missouri/fbi-st-louis-warns-of-gold-scam-targeting-elderly/

Better Business Bureau warns of rising online ticket scams. Here's what you need to know

KMBC l Andy Alcock

https://www.kmbc.com/article/better-business-bureau-warns-of-rising-online-ticket-scams/60996127

Small businesses accuse Missouri city of forcing them out with baseless blight label to score lucrative deal

FOX l Megan Myers and Hannah RayLambert

https://www.foxnews.com/media/small-businesses-accuse-missouri-city-forcing-baseless-blight-label-score-lucrative-deal

AMERICAN OVERSIGHT

National News:

Biden order to block most illegal immigrants when crossings surge, as election nears
FOX | Adam Shaw
https://www.foxnews.com/politics/biden-order-block-most-illegal-immigrants-when-crossings-surge-election-nears
Arizona politicians, stakeholders react to Biden's border order
The Center Square | Cameron Arcand
https://www.thecentersquare.com/arizona/article_2bc073de-22c7-11ef-b16c-c76679d7b9aa.html
Illegal immigrant suspect in shooting of NYPD officers was set free by Chicago court in 2023
Post Millennial | Jarryd Jaeger
https://thepostmillennial.com/revealed-illegal-immigrant-suspect-in-shooting-of-nypd-officers-was-set-free-by-chicago-court-in-2023
Reform California chairman slams proposal mandating illegal immigrants be hired for taxpayer-funded state jobs
FOX | Stepheny Price
https://www.foxnews.com/politics/reform-california-chairman-slams-proposal-mandating-illegal-immigrants-hired-taxpayer-funded-state-jobs
Top four takeaways from D.C. primaries in first election allowing noncitizens to vote
Washington Examiner | Cami Mondeaux
https://www.washingtonexaminer.com/news/campaigns/3028507/top-four-takeaways-dc-primaries-first-election-allowing-noncitizens-vote/
334 Michiganders Registered to Vote After Their Deaths, Group Tells Court
Epoch Times | Steven Kovac
https://www.theepochtimes.com/us/334-michiganders-registered-to-vote-after-their-deaths-group-tells-court-5662381
Matt Gaetz Clashes With Merrick Garland During Congressional Hearing
Newsweek | Andrew Stanton
https://www.newsweek.com/matt-gaetz-clashes-merrick-garland-trump-legal-cases-1908074
Elon Musk's X Urges Supreme Court for Review After Jack Smith Obtained Trump Files
Epoch Times | Zachary Stieber
https://www.theepochtimes.com/business/elon-musks-x-urges-supreme-court-for-review-after-jack-smith-obtained-trump-files-5662629
Conservative legal watchdog sues DOJ for records related to key figure in NY v Trump case
FOX | Jamie Joseph
https://www.foxnews.com/politics/conservative-legal-watchdog-sues-doj-records-related-key-figure-ny-v-trump-case
Modi claims victory in Indian election, vows to continue with his agenda despite drop in support
AP | Staff
https://apnews.com/article/india-election-results-2024-lok-sabha-modi-bjp-7893efecc83fa8225a611f174e6420ee
Amanda Knox reconvicted of slander in Italy for accusing innocent man in roommate's 2007 murder
AP | Colleen Barry
https://apnews.com/article/italy-knox-slander-kercher-killing-bceb926ace28263036a10bf2dd77bc6e
Justice Department Condemns Supreme Court's 'Racist' Century-Old Insular Cases
Epoch Times | Matthew Vadum
https://www.theepochtimes.com/us/justice-department-condemns-supreme-courts-racist-insular-cases-5662515
Biden's DOJ charges Epoch Times CFO in alleged $67 million transnational money laundering scheme
Post Millennial | Hannah Nightingale
https://thepostmillennial.com/bidens-doj-charges-epoch-times-cfo-in-alleged-67-million-transnational-money-laundering-scheme
Western Washington University president caves to demands of Gaza campers
Post Millennial | Ari Hoffman
https://thepostmillennial.com/western-washington-university-president-caves-to-demands-of-gaza-campers
Thanks for reading and have a great day!
Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Goodwin, Gregory[Gregory.Goodwin@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; Hammond, Wyatt[Wyatt.Hammond@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Lewis, Jason[Jason.Lewis@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Woodard, Winderlyn[winderlyn.woodard@ago.mo.gov]
From: Rathert, Branden[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6862523A4FCB4692B7523E7B2723AB70-RATHERT, BRANDEN]
Sent: Wed 6/5/2024 8:58:30 AM (UTC-05:00)
Subject: Daily News/Media Roundup -Wednesday June 5, 2024

Good morning all,

Below is the relevant news relating to the AGO, Missouri, and Nation for today:

AGO News:

AG's lawsuit against Wentzville schools postponed again. Trial date still unset.
St. Louis Post-Dispatch l Monica Obradovic
https://archive.is/LKCmS#selection-3487.0-3487.80

- A hearing for the Missouri attorney general's lawsuit against the Wentzville Board of Education has been postponed again, this time until September. St. Charles County judge on Monday granted a third delay for a hearing in the suit, which accuses Wentzville schools of breaking the state's open records law by discussing bathroom policies for transgender students behind closed doors. Attorney General Andrew Bailey sued the district in September 2023, but a status hearing has now been delayed until Sept. 23 of this year. It was initially scheduled for this past February. Both parties anticipate setting a trial date at the Sept. 23 hearing…..

REPOST: News-Press Now, Gladstone Dispatch, My Courier Tribune

Trial for Jackson County property tax lawsuit delayed
KCTV l Cyndi Fahrlander
https://www.kctv5.com/2024/06/04/trial-jackson-county-propert-tax-lawsuit-delayed/

- A Jackson County judge has delayed the trial in the lawsuit filed over the latest Jackson County tax assessment. The lawsuit, filed by the Missouri Attorney General and the state Tax Commission was set to be heard on Thursday, but late Tuesday, a Jackson County judge continued the case until June 27. In arguing for the delay, the Jackson County attorney claimed the Attorney Generals office refused to name an expert witness and an auditor in time for the county to depose them. The Attorney Generals office argued that the county had been uncooperative throughout the discovery process and was trying to get the trial delayed. The lawsuit claims laws were broken in the 2023 assessment and wants the judge to void the increases in property taxes that owners paid last year. County executive Frank White claims the lawsuit was politically motivated, and could be devastating for school funding.

Judge agrees to delay start of Jackson County property assessment trial
KSHB l Sam Hartle
https://www.kshb.com/news/local-news/property-tax/judge-agrees-to-delay-start-of-jackson-county-property-assessment-trial

- A Missouri judge set a new trial date Tuesday in a lawsuit filed by Missouri Attorney General Andrew Bailey and the State Tax Commission over Jackson County's 2023 tax assessment process. The trial was to begin Thursday, June 6, and continue on Friday, June 7. Clay County Judge Karen Krauser ruled the trial will now start on June 27 and continue June 28 and July 8. Jackson County's attorneys said in the Tuesday hearing they had problems obtaining information from the AG's office, including a violation of the judge's discovery order…..

A Supreme Court weighs abortion pill case, three states wait in the wings (article locked)
Washington Post l Staff
https://www.washingtonpost.com/politics/2024/06/04/abortion-pill-states-challenge-supreme-court/

- When the Supreme Court debated this spring whether to limit access to a widely used abortion medication, a majority of

AMERICAN OVERSIGHT

justices seemed inclined to rule against the lawsuit by finding that the antiabortion doctors behind it had no legal basis to bring the...

University of Missouri files petition to remove racial criteria from scholarship donations
Columbia Missourian l Katelyn McIlwain and Finnegan Belleau
https://www.columbiamissourian.com/news/higher_education/university-of-missouri-files-petition-to-remove-racial-criteria-from-scholarship-donations/article_f824fffc-220a-11ef-83e8-2bff654efa5f.html#tncms-source=Top%20Story

- The University of Missouri Curators filed a petition last week to change the use of donations from their original purpose of providing financial opportunities to students from specific racial and ethnic backgrounds. According to the filing, the change would impact a minimum of 53 funds across UM's four campuses by removing any "racial criteria" and leaving all other wording intact. A review of some of the funds shows they can range from several thousand dollars to more than $100,000 each. "The courts have authority to modify these gift instruments that private people and corporations have created to set up trusts, gifts, etc. with nonprofit institutions," said Steven Hoffmann, a licensed attorney in St. Louis…. SCOTUS decided in the case that race cannot be used as a factor in the admissions process of universities receiving federal assistance. On the day of the ruling, Missouri Attorney General Andrew Bailey warned in a letter that the decision further applies to other aspects of education, like scholarships….

REPOST: KOMU, KBIA, KCUR, Higher Ed Dive, Maryville Daily Forum

Be like Trump, says adviser to embattled Missouri House speaker (article locked)
St. Louis Post-Dispatch l Kurt Erickson
https://www.stltoday.com/news/local/government-politics/be-like-trump-says-adviser-to-embattled-missouri-house-speaker/article_65863620-2296-11ef-86b2-77ce128c1ae9.html#tracking-source=home-top-story

- A top adviser to Missouri's politically hobbled House speaker said the Des Peres Republican should take a page out of convicted felon Donald Trump's playbook. In a podcast interview Tuesday, political consultant Jonathan Ratliff said House Speaker Dean Plocher could bolster his bid to become Missouri's next secretary of state by playing up a whistleblower lawsuit filed against him and his chief of staff Friday. Rather than addressing allegations of retaliation, mismanagement and fear-mongering made by the top administrator in the House, Plocher should mimic Trump and say he's being attacked by insiders, Ratliff said during an episode of "This Week in Missouri Politics." "We have a story just like President Trump. We have fought the swamp in Jefferson City. We took on the bureaucracy. We beat them. Now they are using lawfare to come after us, just like President Trump," Ratliff said. The lawsuit filed by House Chief Clerk Dana Rademan Miller came after Plocher pushed back against a seven-month investigation by the House Ethics Committee in response to his attempt to steer an $800,000 software contract for the House around the standard bidding process, possibly in pursuit of a campaign donation. He also repaid a series of travel bills that he had charged to taxpayers, fired two long-time House aides and hired former House Speaker Rod Jetton to help him right the ship. The ethics case was eventually dismissed by the panel, but Plocher was accused of obstructing the investigation with Jetton's assistance. In her lawsuit, Miller said she privately counseled Plocher about complaints she had received about his treatment of female Republican lawmakers, including former Rep. Sara Walsh of Ashland, whom he called "stupid." "Plocher's reaction to plaintiff's sharing of those concerns was to be dismissive. He replied, 'They are like an invasive species.' "When Miller expressed her confusion over that statement, Plocher clarified, 'Stupid Republican women … they are an invasive species.'" The lawsuit also says Jetton allegedly told another employee that "that they needed to 'choke'" Miller's authority and "made a physical choking gesture with both hands." Jetton, who served as speaker from 2005 to 2009, was charged with felony assault from a 2009 sexual encounter where he choked a woman to the point of unconsciousness. He pleaded guilty to a reduced charge of misdemeanor assault. Plocher, in a separate interview Tuesday on KSSZ-FM in Columbia, signaled he is taking Ratliff's advice, calling the pushback he received from House employees an attempted "coup." "This has been a coup for a long time now," he said. "The bureaucrats in the House are trying to take us down. We are not going to let the bureaucrats run the place just because they are whining." Ratliff said the timing of the lawsuit and Trump's conviction on 34 counts in a New York City courtroom last week were a gift to Plocher's campaign to be the state's top election official. "From a stagecraft perspective we couldn't honestly have coordinated it any better," Ratliff said. Ratliff, who is the former political director for the Missouri House Republican Campaign Committee, is a partner with Palm Strategic Group, which has received $37,000 from Plocher's political action committee this year. He downplayed the controversy swirling around his client. "Don't believe anything you read in the funny papers," he said. "He's a generally good guy." Plocher, meantime, has not said whether he will ask Attorney General Andrew Bailey's office to represent him in the whistleblower case. If that occurs, any damages Miller may be awarded would come from taxpayer funds, not out of Plocher's pocket. A similar scenario facing three state senators accused of defamation spurred Gov. Mike Parson to say the state won't pay their legal bills, but Bailey has nonetheless moved forward with those cases. Plocher, a former municipal judge, is leading the fundraising race to replace Secretary of State Jay Ashcroft, who is running for governor. In April, Plocher reported more than $1.3 million between his campaign account and an allied political action committee. His closest competitor in the campaign finance arena was Sen. Denny Hoskins, R-Warrensburg, who had nearly $255,000 on hand. Other Republicans

AMERICA OVERSIGHT

running include state Rep. Adam Schwadron, state Sen. Mary Elizabeth Coleman, Valentina Gomez, Greene County Clerk Shane Schoeller, Jamie Corley and Mike Carter.

Execution date set for Missouri inmate, even as he awaits hearing on claim of actual innocence
AP | Jim Salter
https://apnews.com/article/missouri-death-row-inquiry-board-state-supreme-court-0103d6047d1caa04eefbb6ef262063fb

- The Missouri Supreme Court on Tuesday set a Sept. 24 execution date for Marcellus Williams, even as the inmate awaits a court hearing on his claim that he was not involved in the murder that landed him on death row. The state Supreme Court set the date hours after it ruled that Republican Gov. Mike Parson was within his rights last year when he dissolved a board of inquiry convened six years earlier by Parson's predecessor to investigate Williams' innocence claim….The day after Parson dissolved the board, Missouri Attorney General Andrew Bailey asked the state Supreme Court to set an execution date….

REPOST: The Independent, ABC, Yahoo, MSN, Newsbreak, Yahoo UK, WTOP, NW Arkansas Democrat, Niagara Falls Review, KOMU, WAND, WACO Trib, My Mother Lode, Bowling Green Daily News, Joplin Globe, SC Now, SM News, Imperial Valley Press, KZRG, Canadian Press, KBSI, Okaloosa Herald, Bharat Express News, Richmond Sentinel

Missouri takes Biden Administration to court over student loan plan
KZRG | Steve Scott
https://newstalkkzrg.com/2024/06/04/missouri-takes-biden-administration-to-court-over-student-loan-plan/

- Missouri takes its case to court against the Biden Administration's student loan plan. A federal judge in St. Louis is considering arguments in Missouri versus Biden – whether President Joe Biden's administration went too far in canceling student loan debt without the approval of Congress. Missouri Attorney General Andrew Bailey is suing the Biden Administration because he argues Biden is sidestepping the Constitution by "saddling working Missourians with a half trillion dollars in college debt." Bailey cites a 2023 U.S. Supreme Court ruling striking down a Biden administration attempt to forgive student loan debt.

Missouri Attorney General argues to block Biden administration's second student loan relief plan
KCUR via Missouri Independent | Annelise Hanshaw
https://www.kcur.org/education/2024-06-04/missouri-attorney-general-argues-to-block-biden-administrations-second-student-loan-relief-plan

- The lawsuit, filed last month by Missouri Attorney General Andrew Bailey and seven other states, seeks to block an income-driven repayment plan for borrowers proposed by President Joe Biden's administration. A United States District Court judge in St. Louis heard arguments Monday morning on whether the federal government can continue with a student-debt-forgiveness plan due to begin next month…..

REPOST: KTTN/KGOZ Radio, Muddy River News, Salem News Online

Biden's revised student loan debt plan faces new legal challenge in federal court
WQAD via KSDK | Mark Maxwell
https://www.wqad.com/article/news/politics/national-politics/biden-revised-student-loan-debt-plan-legal-challenge-federal-court/63-b0ea344d-12ba-4d7e-8765-86599601e552

- Two months after President Joe Biden touted his revised student loan debt forgiveness plan on the campaign trail in the swing state of Wisconsin, his authority to implement the proposal came under judicial scrutiny in a federal courthouse in St. Louis. Missouri Solicitor General Josh Divine said the new plan would bring significant economic and political implications… Divine, who argued the case on behalf of Missouri Attorney General Andrew Bailey, said the Missouri Higher Education Loan Authority (MOHELA) would lose hundreds of millions of dollars in fees and interest from student loan borrowers if the president's plan was allowed to go into effect…

Missouri leads federal court battle against Biden's S.A.V.E. Plan
My Plain View | Dominic Genetti
https://www.myplainview.com/news/article/biden-save-plan-19494578.php

- The fate of President Joe Biden's S.A.V.E. (Saving on A Valuable Education) Plan, which would allow student loan borrowers to pay back their student debt on the basis of their income, family size and other financial factors, could all come down to a federal judge in St. Louis. A total of seven attorneys general from Republican-led states; Missouri, North Dakota, Ohio, Florida, Georgia, Oklahoma and Arkansas are behind the legal battle to block the President's initiative which is set to start July 1. Missouri Attorney General Andrew Bailey is leading the charge and the Show-Me State's Solicitor General Josh Divine presented to the U.S. District Court for the Eastern District of Missouri Monday simply saying Biden's plan was not approved by Congress, according to the Missouri Independent….

REPOST : Big Rapids News

AMERICAN OVERSIGHT

Budding Enforcement On Synthetic Cannabinoids
Mondaq | Staff
https://www.mondaq.com/unitedstates/cannabis/1474478/budding-enforcement-on-synthetic-cannabinoids

- Cannabinoids have been a popular topic of conversation for regulators as the cannabis landscape continues to evolve. Since the days of the tobacco Master Settlement Agreement and related investigations, Attorneys General (AGs) have long focused on protecting minors from health effects of both legal and illegal drugs (see, e.g., here and here). AGs are continuing to use their consumer protection powers in unique ways to protect against alleged misrepresentations relating to THC containing products…. Missouri Attorney General Andrew Bailey issued civil investigative demands (CIDs) in April 2024 to multiple businesses that sell Delta-8 and Delta-9 goods after reports of alleged violations of the Missouri Merchandising Practices Act. AG Bailey stated that Missourians have a right to know if they will be subject to potentially dangerous side effects and highlighted the danger of marketing potentially harmful products directly to children. AG Bailey issued CIDs to both retailers selling Delta-8 and Delta-9 products, and manufacturers and distributors selling illicit vapes and e-cigarettes, showing that even those that don't directly engage with consumers can still be liable for committing unfair and deceptive acts and practices. Per the CIDs, General Bailey believes businesses are engaging in illegal means to market and sell the products to Missourians, including potential misrepresentation or omission of material facts. The CIDs demand information such as measures taken to ensure proper labeling of products, measures taken to ensure quality and safety of products, and whether sales comply with age restrictions….

Missouri News:

Missouri Supreme Court backs August election on Kansas City police funding
Missouri Independent | Rudi Keller
https://missouriindependent.com/2024/06/04/missouri-supreme-court-backs-august-election-on-kansas-city-police-funding/

Top Kansas Republicans pitch Chiefs on moving to state, back plan to help finance stadium
Yahoo via KC Star | Jonathan Shorman and Sam McDowell
https://finance.yahoo.com/news/top-kansas-republicans-pitch-chiefs-224221371.html

FBI investigating bank robbery in KCMO
KCTV | Gabe Swartz
https://www.kctv5.com/2024/06/04/fbi-investigating-bank-robbery-kcmo/?tbref=hp

Court sets execution date for Missouri man despite prosecutors arguing he's innocent
Yahoo via KC Star | Katie Moore
https://www.yahoo.com/news/court-sets-execution-date-missouri-204941416.html

St. Louis Circuit Attorney Gabe Gore on St. Louis City crime, improvements to office
KMOV | Staff
https://www.firstalert4.com/2024/06/05/st-louis-circuit-attorney-gabe-gore-st-louis-city-crime-improvements-office/

Missouri appeals court sides with transgender student in $4 million discrimination case
Missouri Independent | Annelise Hanshaw
https://missouriindependent.com/2024/06/04/missouri-appeals-court-sides-with-transgender-student-in-4-million-discrimination-case/

Mountain Grove man arrested 25 years after allegedly molesting multiple children
KOLR | Drew Tasset
https://www.ozarksfirst.com/news/mountain-grove-man-arrested-25-years-after-allegedly-molesting-multiple-children/

Police investigating after SUV caused bicyclist to fall 22 feet from bridge
KSDK | Kelsi Anderson, Justina Coronel
https://www.ksdk.com/article/news/local/police-investigating-after-suv-caused-bicyclist-to-fall-22-feet-from-bridge/63-617b396d-c635-4208-b9c4-5732e3bac8db

AMERICAN OVERSIGHT

Missouri Supreme Court shields supervisors in death of MoDOT worker in South County
St. Louis Post-Dispatch | Kurt Erickson

https://archive.is/P5Ree#selection-3533.0-3533.83

FBI St. Louis warns of gold scam targeting elderly
FOX 2 STL | Andy Banker
https://fox2now.com/news/missouri/fbi-st-louis-warns-of-gold-scam-targeting-elderly/

Better Business Bureau warns of rising online ticket scams. Here's what you need to know
KMBC | Andy Alcock
https://www.kmbc.com/article/better-business-bureau-warns-of-rising-online-ticket-scams/60996127

Small businesses accuse Missouri city of forcing them out with baseless blight label to score lucrative deal
FOX | Megan Myers and Hannah Ray Lambert
https://www.foxnews.com/media/small-businesses-accuse-missouri-city-forcing-baseless-blight-label-score-lucrative-deal

National News:

Biden order to block most illegal immigrants when crossings surge, as election nears
FOX | Adam Shaw
https://www.foxnews.com/politics/biden-order-block-most-illegal-immigrants-when-crossings-surge-election-nears

Arizona politicians, stakeholders react to Biden's border order
The Center Square | Cameron Arcand
https://www.thecentersquare.com/arizona/article_2bc073de-22c7-11ef-b16c-c76679d7b9aa.html

Illegal immigrant suspect in shooting of NYPD officers was set free by Chicago court in 2023
Post Millennial | Jarryd Jaeger
https://thepostmillennial.com/revealed-illegal-immigrant-suspect-in-shooting-of-nypd-officers-was-set-free-by-chicago-court-in-2023

Reform California chairman slams proposal mandating illegal immigrants be hired for taxpayer-funded state jobs
FOX | Stepheny Price
https://www.foxnews.com/politics/reform-california-chairman-slams-proposal-mandating-illegal-immigrants-hired-taxpayer-funded-state-jobs

Top four takeaways from D.C. primaries in first election allowing noncitizens to vote
Washington Examiner | Cami Mondeaux
https://www.washingtonexaminer.com/news/campaigns/3028507/top-four-takeaways-dc-primaries-first-election-allowing-noncitizens-vote/

334 Michiganders Registered to Vote After Their Deaths, Group Tells Court
Epoch Times | Steven Kovac
https://www.theepochtimes.com/us/334-michiganders-registered-to-vote-after-their-deaths-group-tells-court-5662381

Matt Gaetz Clashes With Merrick Garland During Congressional Hearing
Newsweek | Andrew Stanton
https://www.newsweek.com/matt-gaetz-clashes-merrick-garland-trump-legal-cases-1908074

Elon Musk's X Urges Supreme Court for Review After Jack Smith Obtained Trump Files
Epoch Times | Zachary Stieber
https://www.theepochtimes.com/business/elon-musks-x-urges-supreme-court-for-review-after-jack-smith-obtained-trump-files-5662629

Conservative legal watchdog sues DOJ for records related to key figure in NY v Trump case
FOX | Jamie Joseph
https://www.foxnews.com/politics/conservative-legal-watchdog-sues-doj-records-related-key-figure-ny-v-trump-case

Modi claims victory in Indian election, vows to continue with his agenda despite drop in support

AMERICAN OVERSIGHT

AP l Staff
https://apnews.com/article/india-election-results-2024-lok-sabha-modi-bjp-7893efecc83fa8225a611f174e6420ee

Amanda Knox reconvicted of slander in Italy for accusing innocent man in roommate's 2007 murder
AP l Colleen Barry
https://apnews.com/article/italy-knox-slander-kercher-killing-bceb926ace28263036a10bf2dd77bc6e

Justice Department Condemns Supreme Court's 'Racist' Century-Old Insular Cases
Epoch Times l Matthew Vadum
https://www.theepochtimes.com/us/justice-department-condemns-supreme-courts-racist-insular-cases-5662515

Biden's DOJ charges Epoch Times CFO in alleged $67 million transnational money laundering scheme
Post Millennial l Hannah Nightingale
https://thepostmillennial.com/bidens-doj-charges-epoch-times-cfo-in-alleged-67-million-transnational-money-laundering-scheme

Western Washington University president caves to demands of Gaza campers
Post Millennial l Ari Hoffman
https://thepostmillennial.com/western-washington-university-president-caves-to-demands-of-gaza-campers

Thanks for reading and have a great day!

Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355

AMERICAN OVERSIGHT

To: Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]
Cc: Prestage, Holly[Holly.Prestage@ago.mo.gov]; Engle, Evelyn[Evelyn.Engle@ago.mo.gov]; Kessler, Lauren[Lauren.Kessler@ago.mo.gov]; Finn, Ethan[Ethan.Finn@ago.mo.gov]; George, Charlotte[Charlotte.George@ago.mo.gov]; Brewer, Zachary[Zachary.Brewer@ago.mo.gov]
From: Scott, Todd[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1DAF1E35615D4B2E8DBB3F318306291A-SCOTT, TODD]
Sent: Wed 6/5/2024 11:52:06 AM (UTC-05:00)
Subject: Re: Daily News/Media Roundup -Wednesday June 5, 2024

Good morning everyone – I hope everyone is getting settled in for what will be an exciting internship this summer. Unfortunately, I am out on a family vacation for the next two weeks. 'm looking forward to seeing you all on the 17th!
Todd

Sent from my iPhone

On Jun 5, 2024, at 4:47 AM, Monroe, Kathryn <Kathryn.Monroe@ago.mo.gov> wrote:

In case you are interested, below are snippets of articles and other media related to the work of the office.
Best,
Kathryn Monroe | Assistant Attorney General
Missouri Attorney General's Office
221 West High Street
Jefferson City, MO 65101
(573) 751-9199
Kathryn.Monroe@ago.mo.gov

From: Rathert, Branden <Branden.Rathert@ago.mo.gov>
Sent: Wednesday, June 5, 2024 8:59 AM
To: Atkins, Jay <Jay.Atkins@ago.mo.gov>; Beal, Bryce <Bryce.Beal@ago.mo.gov>; Bryson, Isabelle <Isabelle.Bryson@ago.mo.gov>; Childers, Cooper <Cooper.Childers@ago.mo.gov>; Clausner, Evan <Evan.Clausner@ago.mo.gov>; Davis, Clifton <Clifton.Davis@ago.mo.gov>; Divine, Josh <Josh.Divine@ago.mo.gov>; Donohue, Peter <Peter.Donohue@ago.mo.gov>; Dusheke, Sheala <Sheala.Dusheke@ago.mo.gov>; Freedlund, Samuel <Samuel.Freedlund@ago.mo.gov>; Goodwin, Gregory <Gregory.Goodwin@ago.mo.gov>; Haines, Diana <Diana.Haines@ago.mo.gov>; Hammond, Wyatt <Wyatt.Hammond@ago.mo.gov>; King, Kelly <Kelly.King@ago.mo.gov>; Lanahan, Maria <Maria.Lanahan@ago.mo.gov>; Lewis, Jason <Jason.Lewis@ago.mo.gov>; Mackelprang, Shaun <shaun.mackelprang@ago.mo.gov>; Meyer, Rhonda <rhonda.meyer@ago.mo.gov>; Monroe, Kathryn <Kathryn.Monroe@ago.mo.gov>; Morgan, Jeremiah <jeremiah.morgan@ago.mo.gov>; McCuien, Grace <Grace.McCuien@ago.mo.gov>; Rathert, Branden <Branden.Rathert@ago.mo.gov>; Rutledge, Caleb <Caleb.Rutledge@ago.mo.gov>; Scott, Todd <Todd.Scott@ago.mo.gov>; Sieren, Madeline <Madeline.Sieren@ago.mo.gov>; Woodard, Winderlyn <winderlyn.woodard@ago.mo.gov>
Subject: Daily News/Media Roundup -Wednesday June 5, 2024
Good morning all,
Below is the relevant news relating to the AGO, Missouri, and Nation for today:

AGO News:

AG's lawsuit against Wentzville schools postponed again. Trial date still unset.
St. Louis Post-Dispatch I Monica Obradovic
https://archive.is/LKCmS#selection-3487.0-3487.80

-A hearing for the Missouri attorney general's lawsuit against the Wentzville Board of Education has been postponed again, this time until September. Charles County judge on Monday granted a third delay for a hearing in the suit, which accuses Wentzville schools of breaking the state's open records law by discussing bathroom policies for transgender students behind closed doors. Attorney General Andrew Bailey sued the district in September 2023, but a status hearing has now been delayed until Sept. 23 of this year. It was initially scheduled for this past February. Both parties anticipate setting a trial date at the Sept. 23 hearing.....
REPOST: News-Press Now, Gladstone Dispatch, My Courier Tribune

AMERICA OVERSIGHT

Trial for Jackson County property tax lawsuit delayed
KCTV | Cyndi Fahrlander
https://www.kctv5.com/2024/06/04/trial-jackson-county-propert-tax-lawsuit-delayed/

-A Jackson County judge has delayed the trial in the lawsuit filed over the latest Jackson County tax assessment. The lawsuit, filed by the Missouri Attorney General and the state Tax Commission was set to be heard on Thursday, but late Tuesday, a Jackson County judge continued the case until June 27. In arguing for the delay, the Jackson County attorney claimed the Attorney Generals office refused to name an expert witness and an auditor in time for the county to depose them. The Attorney Generals office argued that the county had been uncooperative throughout the discovery process and was trying to get the trial delayed. The lawsuit claims laws were broken in the 2023 assessment and wants the judge to void the increases in property taxes that owners paid last year. County executive Frank White claims the lawsuit was politically motivated, and could be devastating for school funding.

Judge agrees to delay start of Jackson County property assessment trial
KSHB | Sam Hartle
https://www.kshb.com/news/local-news/property-tax/judge-agrees-to-delay-start-of-jackson-county-property-assessment-trial

-A Missouri judge set a new trial date Tuesday in a lawsuit filed by Missouri Attorney General Andrew Bailey and the State Tax Commission over Jackson County's 2023 tax assessment process. The trial was to begin Thursday, June 6, and continue on Friday, June 7. Clay County Judge Karen Krauser ruled the trial will now start on June 27 and continue June 28 and July 8. Jackson County's attorneys said in the Tuesday hearing they had problems obtaining information from the AG's office, including a violation of the judge's discovery order…..

A Supreme Court weighs abortion pill case, three states wait in the wings (article locked)
Washington Post | Staff
https://www.washingtonpost.com/politics/2024/06/04/abortion-pill-states-challenge-supreme-court/

-When the Supreme Court debated this spring whether to limit access to a widely used abortion medication, a majority of justices seemed inclined to rule against the lawsuit by finding that the antiabortion doctors behind it had no legal basis to bring the...

University of Missouri files petition to remove racial criteria from scholarship donations
Columbia Missourian | Katelyn McIlwain and Finnegan Belleau
https://www.columbiamissourian.com/news/higher_education/university-of-missouri-files-petition-to-remove-racial-criteria-from-scholarship-donations/article_f824fffc-220a-11ef-83e8-2bff654efa5f.html#tncms-source=Top%20Story

-The University of Missouri Curators filed a petition last week to change the use of donations from their original purpose of providing financial opportunities to students from specific racial and ethnic backgrounds. According to the filing, the change would impact a minimum of 53 funds across UM's four campuses by removing any "racial criteria" and leaving all other wording intact. A review of some of the funds shows they can range from several thousand dollars to more than $100,000 each. "The courts have authority to modify these gift instruments that private people and corporations have created to set up trusts, gifts, etc. with nonprofit institutions," said Steven Hoffmann, a licensed attorney in St. Louis…. SCOTUS decided in the case that race cannot be used as a factor in the admissions process of universities receiving federal assistance. On the day of the ruling, Missouri Attorney General Andrew Bailey warned in a letter that the decision further applies to other aspects of education, like scholarships….

REPOST: KOMU, KBIA, KCUR, Higher Ed Dive, Maryville Daily Forum

Be like Trump, says adviser to embattled Missouri House speaker (article locked)
St. Louis Post-Dispatch | Kurt Erickson
https://www.stltoday.com/news/local/government-politics/be-like-trump-says-adviser-to-embattled-missouri-house-speaker/article_65863620-2296-11ef-86b2-77ce128c1ae9.html#tracking-source=home-top-story

-A top adviser to Missouri's politically hobbled House speaker said the Des Peres Republican should take a page out of convicted felon Donald Trump's playbook. In a podcast interview Tuesday, political consultant Jonathan Ratliff said House Speaker Dean Plocher could bolster his bid to become Missouri's next secretary of state by playing up a whistleblower lawsuit filed against him and his chief of staff Friday. Rather than addressing allegations of retaliation, mismanagement and fear-mongering made by the top administrator in the House, Plocher should mimic Trump and say he's being attacked by insiders, Ratliff said during an episode of "This Week in Missouri Politics." "We have a story just like President Trump. We have fought the swamp in Jefferson City. We took on the bureaucracy. We beat them. Now they are using lawfare to come after us, just like President Trump," Ratliff said. The lawsuit filed by House Chief Clerk Dana Rademan Miller came after Plocher pushed back against a seven-month investigation by the House Ethics Committee in response to his attempt to steer an $800,000 software contract for the House around the standard bidding process, possibly

AMERICAN OVERSIGHT

in pursuit of a campaign donation. He also repaid a series of travel bills that he had charged to taxpayers, fired two long-time House aides and hired former House Speaker Rod Jetton to help him right the ship. The ethics case was eventually dismissed by the panel, but Plocher was accused of obstructing the investigation with Jetton's assistance. In her lawsuit, Miller said she privately counseled Plocher about complaints she had received about his treatment of female Republican lawmakers, including former Rep. Sara Walsh of Ashland, whom he called "stupid." "Plocher's reaction to plaintiff's sharing of those concerns was to be dismissive. He replied, 'They are like an invasive species.' "When Miller expressed her confusion over that statement, Plocher clarified, 'Stupid Republican women … they are an invasive species.'" The lawsuit also says Jetton allegedly told another employee that "that they needed to 'choke'" Miller's authority and "made a physical choking gesture with both hands." Jetton, who served as speaker from 2005 to 2009, was charged with felony assault from a 2009 sexual encounter where he choked a woman to the point of unconsciousness. He pleaded guilty to a reduced charge of misdemeanor assault. Plocher, in a separate interview Tuesday on KSSZ-FM in Columbia, signaled he is taking Ratliff's advice, calling the pushback he received from House employees an attempted "coup." "This has been a coup for a long time now," he said. "The bureaucrats in the House are trying to take us down. We are not going to let the bureaucrats run the place just because they are whining." Ratliff said the timing of the lawsuit and Trump's conviction on 34 counts in a New York City courtroom last week were a gift to Plocher's campaign to be the state's top election official. "From a stagecraft perspective we couldn't honestly have coordinated it any better," Ratliff said. Ratliff, who is the former political director for the Missouri House Republican Campaign Committee, is a partner with Palm Strategic Group, which has received $37,000 from Plocher's political action committee this year. He downplayed the controversy swirling around his client. "Don't believe anything you read in the funny papers," he said. "He's a generally good guy." Plocher, meantime, has not said whether he will ask Attorney General Andrew Bailey's office to represent him in the whistleblower case. If that occurs, any damages Miller may be awarded would come from taxpayer funds, not out of Plocher's pocket. A similar scenario facing three state senators accused of defamation spurred Gov. Mike Parson to say the state won't pay their legal bills, but Bailey has nonetheless moved forward with those cases. Plocher, a former municipal judge, is leading the fundraising race to replace Secretary of State Jay Ashcroft, who is running for governor. In April, Plocher reported more than $1.3 million between his campaign account and an allied political action committee. His closest competitor in the campaign finance arena was Sen. Denny Hoskins, R-Warrensburg, who had nearly $255,000 on hand. Other Republicans running include state Rep. Adam Schwadron, state Sen. Mary Elizabeth Coleman, Valentina Gomez, Greene County Clerk Shane Schoeller, Jamie Corley and Mike Carter.

Execution date set for Missouri inmate, even as he awaits hearing on claim of actual innocence

AP l Jim Salter

https://apnews.com/article/missouri-death-row-inquiry-board-state-supreme-court-0103d6047d1caa04eefbb6ef262063fb

-The Missouri Supreme Court on Tuesday set a Sept. 24 execution date for Marcellus Williams, even as the inmate awaits a court hearing on his claim that he was not involved in the murder that landed him on death row. The state Supreme Court set the date hours after it ruled that Republican Gov. Mike Parson was within his rights last year when he dissolved a board of inquiry convened six years earlier by Parson's predecessor to investigate Williams' innocence claim….The day after Parson dissolved the board, Missouri Attorney General Andrew Bailey asked the state Supreme Court to set an execution date….

REPOST: The Independent, ABC, Yahoo, MSN, Newsbreak, Yahoo UK, WTOP, NW Arkansas Democrat, Niagara Falls Review, KOMU, WAND, WACO Trib, My Mother Lode, Bowling Green Daily News, Joplin Globe, SC Now, SM News, Imperial Valley Press, KZRG, Canadian Press, KBSI, Okaloosa Herald, Bharat Express News, Richmond Sentinel

Missouri takes Biden Administration to court over student loan plan

KZRG l Steve Scott

https://newstalkkzrg.com/2024/06/04/missouri-takes-biden-administration-to-court-over-student-loan-plan/

-Missouri takes its case to court against the Biden Administration's student loan plan. A federal judge in St. Louis is considering arguments in Missouri versus Biden – whether President Joe Biden's administration went too far in canceling student loan debt without the approval of Congress. Missouri Attorney General Andrew Bailey is suing the Biden Administration because he argues Biden is sidestepping the Constitution by "saddling working Missourians with a half trillion dollars in college debt." Bailey cites a 2023 U.S. Supreme Court ruling striking down a Biden administration attempt to forgive student loan debt.

Missouri Attorney General argues to block Biden administration's second student loan relief plan

KCUR via Missouri Independent l Annelise Hanshaw

https://www.kcur.org/education/2024-06-04/missouri-attorney-general-argues-to-block-biden-administrations-second-student-loan-relief-plan

-The lawsuit, filed last month by Missouri Attorney General Andrew Bailey and seven other states, seeks to block

AMERICAN OVERSIGHT

an income-driven repayment plan for borrowers proposed by President Joe Biden's administration. A United States District Court judge in St. Louis heard arguments Monday morning on whether the federal government can continue with a student-debt-forgiveness plan due to begin next month…..

KTTN/KGOZ Radio, Muddy River News, Salem News Online

Biden's revised student loan debt plan faces new legal challenge in federal court

WQAD via KSDK l Mark Maxwell

https://www.wqad.com/article/news/politics/national-politics/biden-revised-student-loan-debt-plan-legal-challenge-federal-court/63-b0ea344d-12ba-4d7e-8765-86599601e552

-Two months after President Joe Biden touted his revised student loan debt forgiveness plan on the campaign trail in the swing state of Wisconsin, his authority to implement the proposal came under judicial scrutiny in a federal courthouse in St. Louis. Missouri Solicitor General Josh Divine said the new plan would bring significant economic and political implications… Divine, who argued the case on behalf of Missouri Attorney General Andrew Bailey, said the Missouri Higher Education Loan Authority (MOHELA) would lose hundreds of millions of dollars in fees and interest from student loan borrowers if the president's plan was allowed to go into effect…

Missouri leads federal court battle against Biden's S.A.V.E. Plan

My Plain View l Dominic Genetti

https://www.myplainview.com/news/article/biden-save-plan-19494578.php

-The fate of President Joe Biden's S.A.V.E. (Saving on A Valuable Education) Plan, which would allow student loan borrowers to pay back their student debt on the basis of their income, family size and other financial factors, could all come down to a federal judge in St. Louis. A total of seven attorneys general from Republican-led states; Missouri, North Dakota, Ohio, Florida, Georgia, Oklahoma and Arkansas are behind the legal battle to block the President's initiative which is set to start July 1. Missouri Attorney General Andrew Bailey is leading the charge and the Show-Me State's Solicitor General Josh Divine presented to the U.S. District Court for the Eastern District of Missouri Monday simply saying Biden's plan was not approved by Congress, according to the Missouri Independent….

REPOST : Big Rapids News

Budding Enforcement On Synthetic Cannabinoids

Mondaq l Staff

https://www.mondaq.com/unitedstates/cannabis/1474478/budding-enforcement-on-synthetic-cannabinoids

-Cannabinoids have been a popular topic of conversation for regulators as the cannabis landscape continues to evolve. Since the days of the tobacco Master Settlement Agreement and related investigations, Attorneys General (AGs) have long focused on protecting minors from health effects of both legal and illegal drugs (see, e.g., here and here). AGs are continuing to use their consumer protection powers in unique ways to protect against alleged misrepresentations relating to THC containing products…. Missouri Attorney General Andrew Bailey issued civil investigative demands (CIDs) in April 2024 to multiple businesses that sell Delta-8 and Delta-9 goods after reports of alleged violations of the Missouri Merchandising Practices Act. AG Bailey stated that Missourians have a right to know if they will be subject to potentially dangerous side effects and highlighted the danger of marketing potentially harmful products directly to children. AG Bailey issued CIDs to both retailers selling Delta-8 and Delta-9 products, and manufacturers and distributors selling illicit vapes and e-cigarettes, showing that even those that don't directly engage with consumers can still be liable for committing unfair and deceptive acts and practices. Per the CIDs, General Bailey believes businesses are engaging in illegal means to market and sell the products to Missourians, including potential misrepresentation or omission of material facts. The CIDs demand information such as measures taken to ensure proper labeling of products, measures taken to ensure quality and safety of products, and whether sales comply with age restrictions….

Missouri News:

Missouri Supreme Court backs August election on Kansas City police funding

Missouri Independent l Rudi Keller

https://missouriindependent.com/2024/06/04/missouri-supreme-court-backs-august-election-on-kansas-city-police-funding/

Top Kansas Republicans pitch Chiefs on moving to state, back plan to help finance stadium

Yahoo via KC Star l Jonathan Shorman and Sam McDowell

https://finance.yahoo.com/news/top-kansas-republicans-pitch-chiefs-224221371.html

FBI investigating bank robbery in KCMO

KCTV l Gabe Swartz

https://www.kctv5.com/2024/06/04/fbi-investigating-bank-robbery-kcmo/?tbref=hp

Court sets execution date for Missouri man despite prosecutors arguing he's innocent

AMERICAN OVERSIGHT

Yahoo via KC Star | Katie Moore
https://www.yahoo.com/news/court-sets-execution-date-missouri-204941416.html

St. Louis Circuit Attorney Gabe Gore on St. Louis City crime, improvements to office
KMOV | Staff
https://www.firstalert4.com/2024/06/05/st-louis-circuit-attorney-gabe-gore-st-louis-city-crime-improvements-office/

Missouri appeals court sides with transgender student in $4 million discrimination case
Missouri Independent | Annelise Hanshaw
https://missouriindependent.com/2024/06/04/missouri-appeals-court-sides-with-transgender-student-in-4-million-discrimination-case/

Mountain Grove man arrested 25 years after allegedly molesting multiple children
KOLR | Drew Tasset
https://www.ozarksfirst.com/news/mountain-grove-man-arrested-25-years-after-allegedly-molesting-multiple-children/

Police investigating after SUV caused bicyclist to fall 22 feet from bridge
KSDK | Kelsi Anderson, Justina Coronel
https://www.ksdk.com/article/news/local/police-investigating-after-suv-caused-bicyclist-to-fall-22-feet-from-bridge/63-617b396d-c635-4208-b9c4-5732e3bac8db

Missouri Supreme Court shields supervisors in death of MoDOT worker in South County
St. Louis Post-Dispatch | Kurt Erickson
https://archive.is/P5Ree#selection-3533.0-3533.83

FBI St. Louis warns of gold scam targeting elderly
FOX 2 STL | Andy Banker
https://fox2now.com/news/missouri/fbi-st-louis-warns-of-gold-scam-targeting-elderly/

Better Business Bureau warns of rising online ticket scams. Here's what you need to know
KMBC | Andy Alcock
https://www.kmbc.com/article/better-business-bureau-warns-of-rising-online-ticket-scams/60996127

Small businesses accuse Missouri city of forcing them out with baseless blight label to score lucrative deal
FOX | Megan Myers and Hannah RayLambert
https://www.foxnews.com/media/small-businesses-accuse-missouri-city-forcing-baseless-blight-label-score-lucrative-deal

National News:

Biden order to block most illegal immigrants when crossings surge, as election nears
FOX | Adam Shaw
https://www.foxnews.com/politics/biden-order-block-most-illegal-immigrants-when-crossings-surge-election-nears

Arizona politicians, stakeholders react to Biden's border order
The Center Square | Cameron Arcand
https://www.thecentersquare.com/arizona/article_2bc073de-22c7-11ef-b16c-c76679d7b9aa.html

Illegal immigrant suspect in shooting of NYPD officers was set free by Chicago court in 2023
Post Millennial | Jarryd Jaeger
https://thepostmillennial.com/revealed-illegal-immigrant-suspect-in-shooting-of-nypd-officers-was-set-free-by-chicago-court-in-2023

Reform California chairman slams proposal mandating illegal immigrants be hired for taxpayer-funded state jobs
FOX | Stepheny Price
https://www.foxnews.com/politics/reform-california-chairman-slams-proposal-mandating-illegal-immigrants-hired-taxpayer-funded-state-jobs

Top four takeaways from D.C. primaries in first election allowing noncitizens to vote
Washington Examiner | Cami Mondeaux
https://www.washingtonexaminer.com/news/campaigns/3028507/top-four-takeaways-dc-primaries-first-election-allowing-noncitizens-vote/

334 Michiganders Registered to Vote After Their Deaths, Group Tells Court
Epoch Times | Steven Kovac
https://www.theepochtimes.com/us/334-michiganders-registered-to-vote-after-their-deaths-group-tells-court-5662381

Matt Gaetz Clashes With Merrick Garland During Congressional Hearing
Newsweek | Andrew Stanton
https://www.newsweek.com/matt-gaetz-clashes-merrick-garland-trump-legal-cases-1908074

Elon Musk's X Urges Supreme Court for Review After Jack Smith Obtained Trump Files
Epoch Times | Zachary Stieber

AMERICAN OVERSIGHT

https://www.theepochtimes.com/business/elon-musks-x-urges-supreme-court-for-review-after-jack-smith-obtained-trump-files-5662629

Conservative legal watchdog sues DOJ for records related to key figure in NY v Trump case

FOX | Jamie Joseph

https://www.foxnews.com/politics/conservative-legal-watchdog-sues-doj-records-related-key-figure-ny-v-trump-case

Modi claims victory in Indian election, vows to continue with his agenda despite drop in support

AP | Staff

https://apnews.com/article/india-election-results-2024-lok-sabha-modi-bjp-7893efecc83fa8225a611f174e6420ee

Amanda Knox reconvicted of slander in Italy for accusing innocent man in roommate's 2007 murder

AP | Colleen Barry

https://apnews.com/article/italy-knox-slander-kercher-killing-bceb926ace28263036a10bf2dd77bc6e

Justice Department Condemns Supreme Court's 'Racist' Century-Old Insular Cases

Epoch Times | Matthew Vadum

https://www.theepochtimes.com/us/justice-department-condemns-supreme-courts-racist-insular-cases-5662515

Biden's DOJ charges Epoch Times CFO in alleged $67 million transnational money laundering scheme

Post Millennial | Hannah Nightingale

https://thepostmillennial.com/bidens-doj-charges-epoch-times-cfo-in-alleged-67-million-transnational-money-laundering-scheme

Western Washington University president caves to demands of Gaza campers

Post Millennial | Ari Hoffman

https://thepostmillennial.com/western-washington-university-president-caves-to-demands-of-gaza-campers

Thanks for reading and have a great day!

Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Goodwin, Gregory[Gregory.Goodwin@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; Hammond, Wyatt[Wyatt.Hammond@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Lewis, Jason[Jason.Lewis@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Woodard, Winderlyn[winderlyn.woodard@ago.mo.gov]; Wheeler, Addison[Addison.Wheeler@ago.mo.gov]
From: Rathert, Branden[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6862523A4FCB4692B7523E7B2723AB70-RATHERT, BRANDEN]
Sent: Fri 6/7/2024 8:47:19 AM (UTC-05:00)
Subject: Daily News/Media Roundup -Friday June 7, 2024

Good morning all,

Below is the relevant news relating to the AGO, Missouri, and Nation for today:

AGO News:

Media Matters Wants Order Blocking Missouri AG's X Probe (article may be locked)
Law 360 l Ali Sullivan
https://www.law360.com/articles/1845013

- Media Matters for America returned to D.C. federal court on Thursday to seek a court order barring Missouri Attorney General Andrew Bailey from investigating the progressive media watchdog over its reporting on X Corp., roughly two months after a D.C. federal judge barred Texas' attorney general from doing the same. During a hearing in Washington, D.C., attorneys for Media Matters and Bailey sparred over whether the Republican attorney general has been acting in bad faith by pursuing an investigation into the media watchdog, which describes itself as a progressive research center focused on combating conservative misinformation. While Media Matters is seeking a temporary restraining order and preliminary injunction, Bailey wants the court to toss the litigation. Missouri Solicitor General Joshua M. Divine argued there is no bad faith, meaning Media Matters cannot get around the so-called Younger abstention doctrine that generally bars federal courts from meddling with state court proceedings. Bailey has sued Media Matters in state court to enforce his investigative demand, and an injunction from the D.C. court would "in effect shut down the courts in Missouri," Divine told U.S. District Judge Amit P. Mehta. "We would ask the court not to do that," Divine said. Bailey issued a "civil investigative demand" for a host of records from Media Matters in March, after the organization published an article in November 2023 saying major brands' advertisements were appearing next to extremist content on X, formerly Twitter. X Corp. owner Elon Musk has sued Media Matters over the same report — litigation that is playing out in Texas federal court. The same day Bailey issued his March CID, he filed a petition in Missouri state court to enforce the demand. Judge Mehta on Thursday questioned that timing, asking Divine for any example of the attorney general filing an investigative demand and state court enforcement action simultaneously. Divine called the situation "uncharted territory," but Judge Mehta seemed unswayed. "You can just say no," Judge Mehta said. "There's nothing." Texas Attorney General Ken Paxton has also sought to probe Media Matters in the wake of its reporting, but Judge Mehta halted the investigation with a preliminary injunction in April. Judge Mehta didn't make any rulings following the roughly two-hour hearing on Thursday, but he said both sides had given him "a lot of food for thought." Christopher D. Dodge of Elias Law Group LLP, who represents Media Matters, argued that the Younger abstention doctrine doesn't apply. That's because Bailey has, at every step of the way, "shown himself not to be acting in good faith," Dodge said. As grounds for his probe, Bailey claimed Media Matters is defrauding Missourians by soliciting donations under the guise of combating conservative misinformation while actually using the funds to target X Corp. But Media Matters has argued that the probe is really about punishing the organization for its speech. Judge Mehta, however, seemed unsure his court could make a bad faith finding at the early stage of the litigation. "You're asking me to make that determination based upon the papers," the judge said. "How do I get there?" Dodge said the attorney general has made numerous public statements evincing that the investigation is about Bailey's animus toward Media Matters, including liking a post on X that referred to the organization as a "cancer in our society." Bailey also retweeted a post praising the suits from Bailey and Musk for prompting a recent round of layoffs at Media Matters, Dodge said. "He's trying to drain their resources through bad faith litigation," Dodge added. Media Matters is represented by Abha Khanna, Christopher D. Dodge, Aria C. Branch, Jacob D. Shelly, Elena A. Rodriguez Armenta, Elisabeth C. Frost, Daniela

AMERICAN OVERSIGHT

Lorenzo, Samuel T. Ward-Packard and Omeed Alerasool of Elias Law Group LLP, and Theodore J. Boutrous Jr. and Amer S. Ahmed of Gibson Dunn & Crutcher LLP. Bailey is represented by Joshua M. Divine, Jeremiah J. Morgan and Reed C. Dempsey of the Missouri Office of the Attorney General. The case is Media Matters for America et al. v. Paxton, case number 1:24-cv-00147, in U.S. District Court for the District of Columbia.

AG's lawsuit against Wentzville schools postponed again. Trial date still unset.
Lake Gazette via St. Louis Post –Dispatch l Monica Obradovic
https://www.lakegazette.net/news/state/ag-s-lawsuit-against-wentzville-schools-postponed-again-trial-date-still-unset/article_1b1ec2b9-bcb4-53df-9849-694585240d31.html

- A hearing for the Missouri attorney general's lawsuit against the Wentzville Board of Education has been postponed again, this time until September. A St. Charles County judge on Monday granted a third delay for a hearing in the suit, which accuses Wentzville schools of breaking the state's open records law by discussing bathroom policies for transgender students behind closed doors. Attorney General Andrew Bailey sued the district in September 2023, but a status hearing has now been delayed until Sept. 23 of this year. It was initially scheduled for this past February….

Marshall, 20 AGs demand American Bar Association end diversity requirements for law schools
1819 News l Caleb Taylor
https://1819news.com/news/item/marshall-20-ags-demand-american-bar-association-end-diversity-requirements-for-law-schools

- Alabama Attorney General Steve Marshall and 20 other state attorneys general sent a letter to the American Bar Association (ABA) on Thursday demanding it immediately stop requiring law schools to treat students and faculty differently based on race as part of the accreditation process…Joining Alabama on the Tennessee-led letter to the American Bar Association are Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Oklahoma, South Carolina, South Dakota, Texas, Utah and Virginia.

Missouri News:

Judge increases bond for suspect charged in Hereford House food contamination case
KMBC l Nick Sloan
https://www.kmbc.com/article/judge-increases-bond-suspect-charged-in-hereford-house-food-contamination-case-leawood-kansas/61021067

St. Louis murder suspect received bond, GPS monitoring days before police say he killed man at gas station
KMOV l Jon Kipper
https://www.firstalert4.com/2024/06/07/st-louis-murder-suspect-received-bond-gps-monitoring-days-before-police-say-he-killed-man-gas-station/

U.S. Marshals coming to town to launch crime task force
KMOV l Melanie Johnson
https://www.firstalert4.com/2024/06/07/us-marshals-coming-town-launch-crime-task-force/

Police chief suggests ShotSpotters in Dutchtown, Mount Pleasant to curb crime
FOX 2 STL l Mallory Thomas
https://fox2now.com/news/missouri/police-chief-suggests-shotspotters-in-dutchtown-mount-pleasant-to-curb-crime/

'What a joke' – Hawley, Schmitt slam Biden's border executive order
FOX 2 STL l Joey Schneider
https://fox2now.com/news/missouri/what-a-joke-hawley-schmitt-slam-bidens-border-executive-order/

Missouri's deployment to the southern border expires soon. Will Gov. Parson extend it?
Yahoo via KC Star l Kacen Bayless
https://news.yahoo.com/news/missouri-deployment-southern-border-expires-185027539.html

Missouri Ethics Commission finally has a quorum — but still can't meet or take action
Missouri Independent l Jason Hancock
https://missouriindependent.com/briefs/missouri-ethics-commission-finally-has-a-quorum-but-still-cant-meet-or-take-action/

AMERICAN OVERSIGHT

Class action lawsuit filed against Tyson Foods

KFVS | Kathy Sweeney
https://www.kfvs12.com/2024/06/06/class-action-lawsuit-filed-against-tyson-foods/

Records expunged for St. Louis couple who waved guns at protesters. They want their guns back
AP | Staff
https://apnews.com/article/mark-mccloskey-record-expunged-e078710c51815fd00db9ba21b987b5ef

Fake lien battle finally ends in victory for Platte City woman
FOX 4 KC | Linda Wagar
https://fox4kc.com/news/problem-solvers/fake-lien-battle-finally-ends-in-victory-for-platte-city-woman/

Another international mob group targets St. Louis
FOX 2 STL | Chris Hayes, Kevin S. Held
https://fox2now.com/news/fox-files/credit-card-scammers-believed-to-be-linked-to-romani-crime-group-police/

DNA identifies St. Louis County rape suspect after 31 years
FOX 2 STL | Joe Millitzer
https://fox2now.com/news/missouri/dna-identifies-st-louis-county-rape-suspect-after-31-years/

Chiefs defensive end stable after having seizure, going into cardiac arrest at team facility
KMBC | Connor Hills
https://www.kmbc.com/article/chiefs-practice-player-medical-emergency-hospital/61016049

Missouri communities divided over spreading meatpacking sludge
Missouri Independent | Teagan King and Athens Fosler-Brazil
https://missouriindependent.com/2024/06/06/missouri-communities-divided-over-spreading-meatpacking-sludge/

National News:

US job growth jumps by 272K in May while unemployment unexpectedly rises
FOX | Megan Henney
https://www.foxbusiness.com/economy/us-jobs-report-may-2024

Biden campaign's 2020 narrative about Hunter's laptop collapses after Biden DOJ enters into trial evidence
FOX | Andrew Mark Miller , Cameron Cawthorne
https://www.foxnews.com/politics/biden-campaigns-2020-narrative-hunters-laptop-collapses-after-biden-doj-enters-trial-evidence

Biden Says He Won't Pardon Son Hunter If He's Convicted in Gun Trial
Epoch Times | Jacob Burg
https://www.theepochtimes.com/us/president-biden-says-he-wont-pardon-son-hunter-if-hes-convicted-in-gun-trial-5664064

Florida Supreme Court Upholds Governor Ron DeSantis's Firing of Soros-Backed Prosecutor
Red State | Ward Clark
https://redstate.com/wardclark/2024/06/06/florida-supreme-court-upholds-governor-ron-desantiss-firing-of-soros-backed-prosecutor-n2175137

Trump STILL Leads in Two National Post-Conviction Polls
Mediate | Isaac Schorr
https://www.mediaite.com/election-2024/trump-still-leads-in-two-national-post-conviction-polls/

Arizona voters will decide fate of Texas-style border law at the ballot box
FOX | Michael Lee
https://www.foxnews.com/politics/arizona-voters-decide-fate-texas-style-border-law-ballot-box

AMERICAN OVERSIGHT

Illegal immigrant arrests in May defy odds: Leaked government data

Washington Examiner | Anna Giaritelli
https://www.washingtonexaminer.com/policy/immigration/3030601/illegal-immigrant-arrests-may-defies-odds-border/

SPLC expands 'hate watch' to doctors who oppose child sex changes
Post Millennial | Hayden Cunningham
https://thepostmillennial.com/splc-expands-hate-watch-to-doctors-who-oppose-child-sex-changes

Court Rules Meta Must Face Lawsuit Over Fraudulent Ads
Epoch Times | Zachary Stieber
https://www.theepochtimes.com/us/court-rules-meta-must-face-lawsuit-over-fraudulent-ads-5664468

Court Rules 8 Books Containing Sexual, Racial Content Must Return to Texas County's Library Shelves
Epoch Times | Katabella Roberts
https://www.theepochtimes.com/us/court-rules-8-books-containing-sexual-racial-content-must-be-returned-to-texas-countys-library-shelves-5664348

Auto parts suppliers fear a crash with shift to EVs
Roll Call | Mike Magner
https://rollcall.com/2024/05/29/auto-parts-suppliers-fear-a-crash-with-shift-to-evs/

BBB: Phishing schemes surge, reach record highs in 2023
KOAM | Payton Williams
https://www.koamnewsnow.com/news/money/bbb-phishing-schemes-surge-reach-record-highs-in-2023/article_093ceef6-2401-11ef-9738-97ed1a51ad7b.html

Idaho bar owner behind 'Heterosexual Awesomeness Month' speaks out: 'Boy, did it take off'
FOX | Lindsay Kornick
https://www.foxnews.com/media/idaho-bar-owner-behind-heterosexual-awesomeness-month-speaks-out-boy-did-take-off

China says open to space cooperation with US but 'hurdles' remain
MSN via AP | Staff
https://www.msn.com/en-us/news/world/china-says-open-to-space-cooperation-with-us-but-hurdles-remain/ar-BB1nJ2on?ocid=Peregrine

Thanks for reading and have a great day!

Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; Hankinson, Jared[Jared.Hankinson@ago.mo.gov]; Johnson, Jeff[Jeff.Johnson@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; Noteboom, Grace[Grace.Noteboom@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Wagner, Ray[Ray.Wagner@ago.mo.gov]
From: Lyday, Bennett[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EACD91D740F2406EB8A1385B65BBDDED-LYDAY, BENNETT]
Sent: Wed 11/1/2023 8:58:05 AM (UTC-05:00)
Subject: Daily News/Media Roundup - Wednesday, November 1st, 2023

Good morning all,
Below is the relevant news relating to the AGO, Missouri, and Nation:

AGO News:

Missouri appeals court rules against ballot summary language that described 'dangerous' abortions
AP | Summer Ballentine
https://apnews.com/article/abortion-missouri-ballot-constitution-ruling-edb5f44fc0f9799d01cda22cd1f70b40

-"A three-judge panel of the Western District Court of Appeals found the summaries written by Republican Secretary of State Jay Ashcroft, who is running for governor in 2024, are politically partisan… Ashcroft's original description of the amendments, which could go on the ballot in 2024 if supporters gather enough voter signatures, would have asked voters whether they want to "allow for dangerous, unregulated, and unrestricted abortions, from conception to live birth, without requiring a medical license or potentially being subject to medical malpractice." But the appeals-court panel wrote that allowing unrestricted abortion "during all nine months of pregnancy is not a probable effect of initiatives." The judges largely upheld summaries that were rewritten by a lower court judge to be more impartial… Ashcroft said he plans to appeal the ruling. "We stand by our language and believe it fairly and accurately reflects the scope and magnitude of each petition," Ashcroft said in a statement… Republican Attorney General Andrew Bailey's office is defending Ashcroft's summary language in court… Missouri is among several states, including Ohio, where abortion opponents are fighting efforts to ensure or restore access to the procedure following the fall of Roe v. Wade last year…"

-**Reposted:** ABC; PBS; NewsMax; Idaho State Journal; KMBC; KLTO; Huff Post; Caledonian Record; Newstimes; The Daily Sentinel; KOB4; JC Post;

Missouri Court Quickly Rejects Ashcroft's 'Politically Partisan' Wording for Abortion Proposals
MissouriNet | Alisa Nelson
https://www.missourinet.com/2023/10/31/missouri-court-quickly-rejects-ashcrofts-politically-partisan-wording-for-abortion-proposals/

-"The Missouri Court of Appeals for the Western District has unanimously struck down Secretary of State Jay Ashcroft's attempts to change ballot wording on six abortion proposals. The three-judge panel heard the case Monday and issued a decision Tuesday, saying the secretary chose to use politically partisan language to explain to voters what the potential proposals would do… The court rewrote some of the descriptions revised by a lower court… Ashcroft said his office will appeal the decision and stands by the wording used. "My office will continue the fight to preserve an accurate summary for Missouri voters," he said. In a related case, a separate state appeals court upheld today State Auditor Scott Fitzpatrick's estimated cost of allowing some abortions. According to Fitzpatrick, the impact on state agencies is unknown… State Rep. Hannah Kelly, R-Mountain Grove, state Sen. Mary Elizabeth Coleman, R-Arnold, and New Bloomfield resident Kathy Forck say Fitzpatrick, a fellow Republican, is underestimating the potential cost. They say the projection should be based on every Missouri county – not just Greene County. In order to get on the 2024 election ballot, more than 170,000 valid signatures from registered voters would be required by next May."

Ashcroft critical of appeals court's abortion initiative petitions decision
KZRG | Ty Albright
https://newstalkkzrg.com/2023/10/31/ashcroft-critical-of-appeals-courts-abortion-initiative-petitions-decision/

-"Secretary of State Jay Ashcroft vowed to keep fighting for fair and accurate ballot language after the Western District Court of Appeals blocked his ballot summary language and for all practical purposes upheld a ruling by the lower court. "Once again Missouri courts refused to allow the truth to be known. The Western District essentially approved the language that was entirely rewritten by Judge Beetem. Not only is the language misleading but it is categorically false," said Ashcroft… Through an Entry of Appearance filed with the Kansas City based court. Ashcroft was a representative on the legal team arguing the case alongside counsel from the attorney general's office. Ashcroft plans to appeal the decision and said, "My office will continue the fight to preserve an accurate summary for Missouri voters."

Missouri appeals court tosses 'partisan' summaries of abortion rights ballot measures

AMERICAN OVERSIGHT

The KC Star l Jonathan Shorman, Kacen Bayless
https://news.yahoo.com/missouri-appeals-court-tosses-partisan-205933027.html

-"A Missouri appeals court on Tuesday rejected an effort by top Republicans to officially describe several proposed ballot measures as allowing "dangerous" abortions. The court also tossed out a conservative challenge to a fiscal summary of the measures prepared by Missouri State Auditor Scott Fitzpatrick, a Republican… The cases are almost certain to end up in front of the Missouri Supreme Court… A three-judge panel of the Missouri Court of Appeals Western District unanimously rejected an appeal from Republican Missouri Secretary of State Jay Ashcroft, who sought to reimpose his original summaries after a Cole County judge rewrote them last month… The decision came just a day after oral arguments were held in Kansas City – a lightning-fast pace for an appeals court opinion. Ashcroft, who is running for governor, in a statement said that the court "refused to allow the truth to be known."… A separate panel of judges also ruled against three abortion opponents who challenged how much Republican Auditor Scott Fitzpatrick estimated the petitions would cost. The abortion opponents, which include two Republican lawmakers, argued that the proposals could cost the state billions."

-**Reposted:** The Pitch; KCUR;

Missouri Appeals Court rejects Ashcroft's plea on ballot language on abortion question

ABC 17 l Ryan Shiner
https://abc17news.com/news/missouri/2023/10/31/missouri-appeals-court-rejects-ashcrofts-plea-on-ballot-language-on-abortion-question/

-"Last month, Cole County Judge Jon Beteem rewrote the ballot summary language. Secretary of State Jay Ashcroft and Attorney General Andrew Bailey sought the Appeals Court to overrule that judge's decision to rewrite the ballot language… Ashcroft issued a statement on Tuesday indicating that he plans to appeal the decision... "The circuit court's opinion admits the real issue is about abortion.The Western District today continued to gloss over the issue in its affirmation. We stand by our language and believe it fairly and accurately reflects the scope and magnitude of each petition."…"

Missouri Appeals Court issues decisions on challenges to abortion rights ballot issues

KCTV l Heidi Schmidt
https://www.kctv5.com/2023/10/31/missouri-appeals-court-issues-decisions-challenges-abortion-rights-ballot-issues/

-"Missouri Secretary of State Jay Ashcroft says he will fight an Appeals Court decision over the wording of an abortion issue on the ballot. The Western District Court of Appeals upheld a lower court's ruling that a ballot summary included 'dangerous' and inaccurate information… A judge in a lower court ruled that the language written by Ashcroft, an opponent of abortion rights and a current candidate for governor, was unfairly biased against the issue… Ashcroft says he plans to appeal Monday's decision and will continue to fight for the ballot language he supports. "The circuit court's opinion admits the real issue is about abortion. The Western District today continued to gloss over the issue in its affirmation. We stand by our language and believe it fairly and accurately reflects the scope and magnitude of each petition." A separate panel of judges also threw out a challenge to a fiscal summary of the ballot measures. It was prepared by Missouri State Auditor Scott Fitzpatrick… The two decisions come one day after the the appeals court heart oral arguments in Kansas City. If Ashcroft follows through on his promise to continue the legal fight, the issue will end up in front of the Missouri Supreme Court."

Appeals court swats down Ashcroft arguments on Missouri abortion rights petitions

The KC Star l Rudi Keller
https://missouriindependent.com/2023/10/31/appeals-court-swats-down-ashcroft-arguments-on-missouri-abortion-rights-petitions/

-"In an expedited decision issued a day after hearing arguments, a three-judge panel of the Western District Court of Appeals upheld, with only minor revisions, the revised ballot titles written by Cole County Circuit Judge Jon Beetem. In a decision by a separate panel, the court upheld the fiscal note summary written by State Auditor Scott Fitzpatrick. Rejecting arguments from two lawmakers and an anti-abortion activist, the court said Fitzpatrick's summary was "fair and sufficient." Ashcroft issued a statement that he would appeal the decision to the Missouri Supreme Court, a process likely to take several weeks. The ongoing court battle narrows the time for gathering signatures to put the proposal on the 2024. Backers must secure more than 170,000 signatures from registered voters by early May… The lengthy battle to get ballot titles written began when Anna Fitz-James, a St. Louis physician, filed 11 proposed constitutional amendments with Ashcroft's office in March on behalf of a political action committee called Missourians for Constitutional Freedom… Each version of the proposed amendment says there must be a "compelling governmental interest" for abortion restrictions to be put in place. But while some allow the legislature to regulate abortion after "fetal viability," others draw the line at 24 weeks of gestation… Under Missouri law, Ashcroft had up to 56 days to obtain certifications of the form and fiscal note, write a ballot title and certify the petition for circulation. Attorney General Andrew Bailey tested his authority during that process, refusing to certify the fiscal note summary written by Fitzpatrick until the Missouri Supreme Court ruled in July that his role was limited to determining whether it fit the form required by law… Bailey also said in a statement that he disagreed with the decision. "We remain undeterred in our fight to protect the health and safety of women and children from the radical abortion activists working to turn Missouri into California," Bailey said… In the decision on the fiscal note summary, Judge Alok Ahuja, also writing for an unanimous panel, ruled that Fitzpatrick had accurately summarized the fiscal note."

AMERICAN OVERSIGHT

Ashcroft, abortion opponents lose latest round of court challenges to ballot language
STL Post-Dispatch | Kurt Erickson, Jack Suntrup
https://www.stltoday.com/news/local/crime-courts/ashcroft-abortion-opponents-lose-latest-round-of-court-challenges-to-ballot-language/article_7a3e97c6-782b-11ee-a324-837217f829f5.html#tracking-source=home-top-story

-"Acting quickly on a hot-button issue that has been slowed by litigation, the Missouri Court of Appeals at Kansas City unanimously rejected the gubernatorial candidate's appeal to reverse a lower court decision to strike and rewrite summary statements for six reproductive freedom ballot initiatives… In a ruling written by Judge Thomas Chapman, a three-judge panel of the appeals court agreed Ashcroft crossed a line… Ashcroft also appealed over the way Cole County Circuit Court Judge Jon Beetem rewrote the summaries, arguing that he didn't include language outlining the dangers of abortion. Again, the court sided with Beetem, saying his summary was "fair and sufficient."… Again, the court sided with Beetem, saying his summary was "fair and sufficient."… Ashcroft, who has been endorsed by Missouri Right to Life as he runs for governor, plans to appeal the ballot summary decision, despite now losing in court two times… If initiating a series of courtroom delays is part of the strategy to keep the question off the 2024 ballot, it's working. Supporters of ballot initiatives must collect 170,000 signatures in six of the state's eight congressional districts to get a question on the ballot. As the courtroom fights have continued, no campaign has emerged to collect signatures for any of the proposals submitted by Missourians for Constitutional Freedom in March."

Missouri Joins Social Media Lawsuit
KMMO | No Author Listed
https://www.kmmo.com/2023/10/31/missouri-joins-social-media-lawsuit/

-"General Bailey joined with 33 other states filing suit, that alleges social media technology giant, designed and deployed harmful features to Faceboo0k and Instagram to addict young users to its platforms and fill their pockets. The federal lawsuit asserts that Meta violated state consumer protection laws assuring the public it was safe and suitable for young users, The lawsuit says the platform's algorithm pushed users into descending rabbit holes with the objective of keeping users on the platform for long periods. An example of this would be the never ending scroll on a Facebook timeline. Such manipulative tactics entice teens and tween to continually return to platforms. The lawsuit claims that Meta, instead of working to mitigate the damage inflicted by its social-media platforms, publicity concealed the severity of the psychological harm they cause, including the addiction to sites which could and in some cases did result in physical harm."

Congressman [Jason] Smith['s] Capitol Report
Daily Journal | Victoria Kemper
https://dailyjournalonline.com/2023/10/31/congressman-smith-capitol-report-4/

-"Americans are growing increasingly alarmed over the Left's relentless efforts to force their values, ideals, and way of life onto the rest of society, whether it's in the classroom, the media, and even the health care system. And as we have seen over the last decade, Big Tech has become one of the Left's most powerful tools in forcing their radical values and beliefs on the rest of America. What's most alarming about this collusion between Big Tech and the Left is the threat it poses to one of our most important freedoms – the First Amendment. Recently, the Supreme Court announced it will take up one of the most important cases involving the First Amendment in years. The lawsuit, led by Missouri Attorney General Andrew Bailey, accuses the federal government of teaming up with Big Tech to censor social media posts – including ones about the COVID-lab leak theory – that the Left deemed "controversial" or "misinformation." Lower courts found that the federal government engaged in a coordinated effort to pressure Big Tech companies to censor conservative viewpoints without any legal authority to do so. If the Supreme Court sides with Attorney General Bailey and the people of Missouri, then the Biden administration – or any other future administration – will be prohibited from contacting social media companies to influence content decisions. Big Tech and government officials shouldn't be able to decide what is acceptable speech, but what's even more infuriating is that more and more experts and even officials in the Biden administration believe that the lab-leak theory is credible, and in many cases the most likely explanation for the origin of COVID. The same was true with the coordinated effort to stop anyone from sharing the story about Hunter Biden's laptop. But it shouldn't take conservatives having to prove that what they are saying is 100% true; the federal government has no business censoring Americans' speech. That's exactly why we have the First Amendment. The bottom line is that the First Amendment MUST be applied equally. But as we've seen time and again, that's something the Left refuses to accept… The Twitter Files also confirmed that high-ranking Liberal employees at the social media company invented wild excuses to justify censoring and suppressing the New York Post's bombshell – and factually correct – article that was published weeks before the 2020 elections about Hunter Biden's laptop, which included information related to the Biden family's shady business deals… I hope that when the Supreme Court reviews this critical First Amendment case next year, it will do the right thing and rule that the federal government's actions were unconstitutional, and make sure these attacks on our freedom of speech never happen again. But regardless of the outcome, House Republicans are committed to stopping the Left and Big Tech's never-ending attacks on our freedoms. Whether it's in our schools, on social media, and so much more, I will fight tooth and nail to stop the Left's non-stop efforts to force their radical beliefs and liberal values on Missouri farmers, ranchers, and workers."

AMERICAN OVERSIGHT

Rand Paul Spars With FBI Director On Pressuring Social Media Companies To Censor Speech

Daily Caller | James Lynch
https://dailycaller.com/2023/10/31/rand-paul-spars-christopher-wray-pressuring-social-media-companies-censor-speech/

-"Republican Kentucky Sen. Rand Paul sparred with FBI Director Christopher Wray on Tuesday about the FBI's meetings with social media companies and how the bureau changed its behavior in response to the Missouri v. Biden lawsuit… "Director Wray … is the FBI still meeting with social media companies?" Paul asked. "We're having some interaction with social media companies but all of those interactions have changed fundamentally in the wake of the court's rulings," Wray answered. Paul followed up by asking Wray whether he was acknowledging that the FBI's meetings with social media companies included discussions of constitutionally protected speech. Wray said the FBI changed its behavior "out of an abundance of caution" to comply with an injunction from the Fifth Circuit Court of Appeals preventing the Biden administration from working with social media companies to censor speech. The Supreme Court issued a stay on the Fifth Circuit injunction as it prepares to hear the Missouri v. Biden First Amendment case… Wray also touted the FBI's assessment that COVID-19 most likely came from a lab in Wuhan, China, where bat coronaviruses were being researched. "The 'Twitter Files' and other indications as well as Missouri v. Biden list many cases of both DHS and FBI discussing constitutionally protected speech, vaccine efficacy, mask efficacy, people who said 'my brother got the vaccine and died yesterday' and the brother actually did die … But taking down posts like that was part of the discussion in these meetings," Paul pressed Wray… In a court filing for the Missouri v. Biden lawsuit, the Department of Justice (DOJ) said that about half of the FBI's attempts to censor speech were successful. The House Judiciary Committee is also investigating coordination between the federal government and social media platforms to censor stories like the New York Post's Hunter Biden laptop reporting. The Judiciary Committee is still seeking testimony from FBI agent Elvis Chan because of the central role he appeared to play in coordinating online censorship."

'I Helped Pioneer It': Influential Gender Identity Doctor Sounds Alarm On 'Dangerous' Sex Change Treatments For Kids

Daily Caller | Sarah Weaver
https://dailycaller.com/2023/10/31/gender-identity-doctor-dangerous-kids-sex-changes/

-"Adolescent psychiatrist and gender identity expert Dr. Riittakerttu Kaltiala has come out against so-called "gender-affirming care" in a Monday essay for The Free Press.

-Kaltiala, who describes herself as a "pioneer" of irreversible sex change treatments for kids, was appointed in 2011 as the chief psychiatrist to head up a gender identity clinic at Finland's Tampere University Hospital. Kaltiala has since overseen the medical transition of over 500 adolescents, according to the brief bio in her essay. "Even so, I had some serious questions about all this," Kaltiala writes about the pediatric gender clinic's founding. "We were being told to intervene in healthy, functioning bodies simply on the basis of a young person's shifting feelings about gender. Adolescence is a complex period in which young people are consolidating their personalities, exploring sexual feelings, and becoming independent of their parents." Kaltiala said she was surprised that the patients who flocked to her new clinic were mostly girls with "severe psychiatric conditions." Many came from difficult family situations and a history of developmental difficulties, while still more were on the autism spectrum… Kaltiala and some colleagues conducted a study out of Finland which challenged the Dutch studies that inspired much of the current medical establishments' pediatric guidance for gender dysphoric kids. The paper raised "serious questions" about the wisdom of pediatric sex change procedures by looking at the patients Kaltiala saw at her clinic. The Finnish Heath Authority in 2021 backed psychotherapy, instead of irreversible puberty blockers and cross-sex hormones, as the first medical treatment gender dysphoric individuals should receive… The American Academy of Child and Adolescent Psychiatry reportedly rejected panels led by Kaltiala which would've urged Europe's medical establishment to move away from advocating for cross-sex hormones and puberty blockers for kids. A case manager at the Washington University Transgender Center at St. Louis Children's Hospital said in February that doctors rushed children into puberty blockers and irreversible sex-change procedures at the facility. Jamie Reed, who identifies as "queer" and is married to a transgender man, detailed how, in one case, a mother of a 11-year-old "tomboy" brought her daughter in for irreversible sex change treatments. When the girl's father objected to his daughter's transition, a judge sided with the mother after a hospital worker testified against him. Reed's allegations have prompted an investigation into the clinic by Missouri Attorney General Andrew Bailey, who said in a statement that his office is "thoroughly investigating to make sure children are not harmed by individuals who may be more concerned with a radical social agenda than the health of children.'"

Missouri sued again over meatpacking sludge

STL Post-Dispatch | Kurt Erickson
https://www.stltoday.com/news/local/crime-courts/missouri-sued-again-over-meatpacking-sludge/article_58428c94-7809-11ee-997b-83d30919e020.html#tracking-source=home-top-story

-"A group of residents in Newton County, located in southwest Missouri, filed a 22-page environmental lawsuit Oct. 29 against the Missouri Department of Natural Resources 10 days after 6,000 gallons of slaughterhouse waste leaked into a ditch and a field near Fairview. The lawsuit asks a judge to order DNR to require Arkansas-based Denali Water Solutions to "cease any and all activities and operations" at any facility it uses to store waste… The legal action comes as a judge has already barred DNR from issuing a permit to Denali for an animal waste lagoon in Randolph County, located north of Columbia, after citizens there banded together in response to concerns about odors, land degradation and water pollution. That case, as

AMERICAN OVERSIGHT

well as the new lawsuit, reveals regulatory loopholes in how the state issues permits for companies that collect waste from meatpacking facilities. Previously, the material was classified as fertilizer, but a change in policy earlier this year has moved oversight to DNR, which is grappling with reports of leaks and spills and odors. Denali has said it is a soil preparation company, but also has received permits in Arkansas as a "refuse" company, resulting in questions over which state environmental laws should apply to the permitting process. The practice has become controversial among rural residents at the same time Parson, a cattle farmer, has led the charge to expand meatpacking facilities in Missouri. Along with concerns about Denali's practices, property owners in St. Charles County have expressed concern about wastewater discharges from a new beef processing facility being built near Wright City… DNR is reviewing the company's permit request… But, DNR has taken action against Denali in other spill incidents. In July, Denali agreed to pay $30,000 in fines related to a McDonald County spill and is pursuing action on a separate spill in early October near Noel… Denali said in a statement to the Joplin Globe that the break occurred on a hose that was transporting liquid food processing residuals from a storage basin to a field. The substance was being spread as a fertilizer on cropland… Lawmakers could wade into the dispute next year. Senate Majority Leader Cindy O'Laughlin, R-Shelbina, earlier raised red flags about the company's practices."

AGO Tweets:



AMERICAN OVERSIGHT

Attorney General Andrew Bailey @AGAndrewBailey · 18h

Proud that Missouri is leading the way in defense of free speech.

@RandPaul, thank you for continuing that fight in Congress.

> **James Lynch** @jameslynch32 · 22h
>
> Rand Paul confronts FBI Director Christopher Wray about the FBI meeting with social media companies and how the Missouri v. Biden First Amendment lawsuit caused the bureau to change its behavior @DailyCaller



26 79 383 8.7K

Attorney General Andrew Bailey @AGAndrewBailey · 17h

We remain undeterred in our fight to protect the health and safety of women and children from the radical abortion activists working to turn Missouri into California.



30 19 76 4.2K

AMERICAN OVERSIGHT

Attorney General Andrew Bailey reposted

Rep. Jim Jordan @Jim_Jordan · 18h

The Missouri v. Biden ruling did more for free speech than the FBI.

> **Daily Caller** @DailyCaller · 21h
>
> PAUL: "Is the FBI still meeting with social media companies?"
>
> WRAY: " We're having some interaction with social media companies but all of those interactions have changed fundamentally in the wake of the courts rulings."



308 934 3.6K 188K

AMERICAN OVERSIGHT



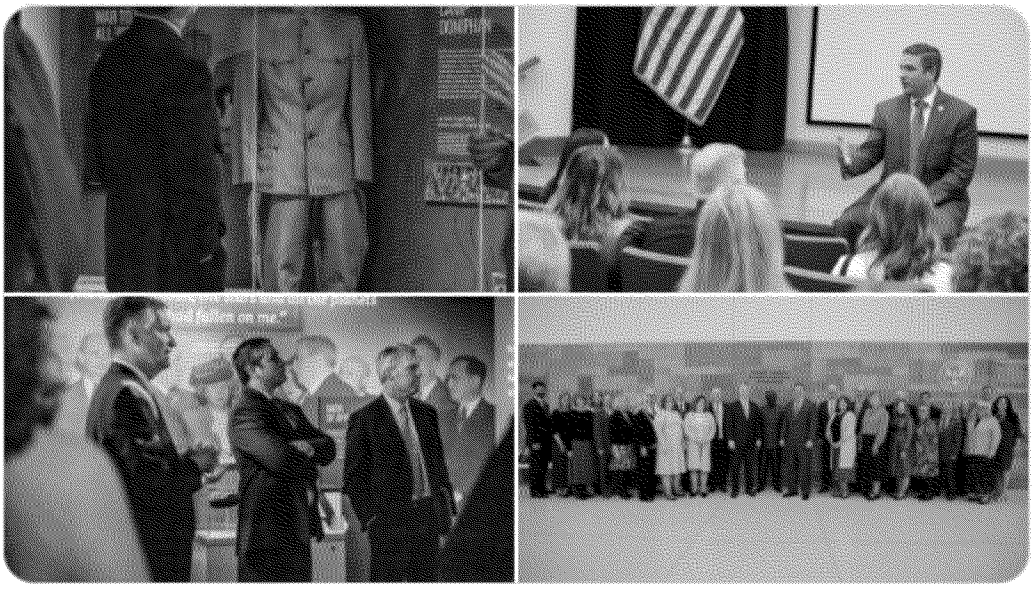
Attorney General Andrew Bailey @AGAndrewBailey · 14h

Enjoyed my time at the Harry S. Truman Presidential Library with the Church of Jesus Christ of Latter-day Saints last week in Kansas City.

"America was built on courage, on imagination, and an unbeatable determination to do the job at hand." -President Truman

We're committed...

Show more



1 4 21 2.2K

Missouri News:

Missouri ethics panel probes Speaker Plocher's firing of top aide as new complaint surfaces

The KC Star l Kacen Bayless

https://news.yahoo.com/missouri-ethics-panel-probes-speaker-194044154.html

-"The Missouri House Ethics Committee's probe into embattled House Speaker Dean Plocher has so far focused on the top Republican lawmaker's decision to fire his chief of staff earlier this month. The ethics panel of five Republicans and five Democrats, which typically reviews complaints against House lawmakers, last week met behind closed doors for more than four hours to discuss a "personnel inquiry." The committee is scheduled to meet again next week. As the committee prepares to meet, a complaint of "ethical misconduct" has been filed against an unnamed House lawmaker. Documents obtained by The Star show that a House lawmaker on Thursday filed a complaint against another House lawmaker. Plocher, who as speaker is in charge of referring complaints to the ethics committee, recused himself from the matter. Plocher's legislative assistant said in an email she would get back with a reporter as to why Plocher recused himself. It's unclear whether the complaint is related to the ethics committee's personnel inquiry discussion on Friday. A source with knowledge of Friday's inquiry told The Star that the committee is examining whether House Chief Clerk Dana Miller has the authority to continue paying Kenny Ross, Plocher's former chief of staff whom he fired earlier this month. The concern, the source said, is whether Ross was protected as a whistleblower when he was fired. The committee is also examining whether Plocher followed proper procedure when he fired Ross, the source said… Ross could be considered a whistleblower because he has "knowledge of potential illegal activity that he came forward with," the source said. That appears to be related to Plocher's unsuccessful push for the House to hire a company to manage constituent information. Miller, the chief clerk since 2018, wrote about Plocher's push for the contract in an email last month to a Republican lawmaker. In the email, obtained through a public records request, Miller mentioned "threats made by Speaker Plocher concerning my future employment." She wrote that Plocher made a statement to her "connecting this contract with campaign activity."… Miller was in the room during several parts of Friday's closed-door ethics hearing. She declined comment for this story. The documents obtained by The Star are letters showing that a House lawmaker on Thursday filed a complaint of "ethical misconduct" against another lawmaker. Neither of the lawmakers are mentioned in the letters. Plocher received the complaint, which was not included in the records obtained by The Star due to confidentially rules. House rules require that when the House speaker receives a complaint against another lawmaker, the speaker has 14 days

AMERICAN OVERSIGHT

to refer the complaint to the ethics committee. On Friday, Plocher sent the complaint to the office of House Speaker Pro Tem Mike Henderson, a Bonne Terre Republican, saying in a letter that he was recusing himself from the matter… In an interview last week with "This Week in Missouri Politics," a state politics livestream from the Missouri Times, Plocher said that the rearrangement of staff in his office was not related to the controversy surrounding the constituent management contract… On Oct. 17, the day that Plocher fired Ross, Senate President Pro Tem Caleb Rowden, a Columbia Republican, announced that he had hired Ross to serve as his director of strategic initiatives."

US jury finds realtors liable for inflating commissions, awards $1.78 bln damages

Reuters l Mike Scarcella, Jonathan Stempel

https://www.reuters.com/legal/missouri-jury-hits-nar-real-estate-companies-with-18-bln-damages-2023-10-31/

-"A U.S. jury on Tuesday found the National Association of Realtors and some residential brokerages, including units of Warren Buffett's Berkshire Hathaway, liable to pay $1.78 billion in damages for conspiring to artificially inflate commissions for home sales. The verdict by a federal jury in Kansas City, Missouri, could upend decades-old practices that have allowed real estate agents to boost commissions as home prices and mortgage rates rise, hurting consumers by making housing transactions more expensive. Plaintiffs in the class action included sellers of more than 260,000 homes in Missouri, Kansas and Illinois between 2015 and 2022, who objected to the commissions they were obligated to pay buyers' brokers. The verdict followed a two-week trial, and the damages award can be tripled under U.S. antitrust law to more than $5.3 billion… The defendants included Berkshire-owned HomeServices of America and two subsidiaries, as well as the realty Keller Williams. NAR spokesperson Mantill Williams said the trade group plans to appeal, and seek reduced damages. HomeServices said it was disappointed in the verdict and planned to appeal, while Keller Williams spokesperson Darryl Frost said the realty company would consider its options for an appeal. Broker compensation in the U.S. has typically been about 5% to 6% of a home's sales price, with about half paid to a buyer's broker. Home sellers complained that this model suppressed competition by keeping commissions for buyer brokers in the 2-1/2 to 3% range despite the brokers' diminishing role, with many buyers able to find homes independently online… The defendants denied wrongdoing, with the NAR saying there was no evidence agents were required to "make offers of compensation at all, let alone at amounts that stabilize, fix, or raise commissions." Re/Max and Anywhere Real Estate, whose brands include Century 21, Coldwell Banker and Corcoran, had been defendants but settled before trial, with Re/Max paying $55 million and Anywhere paying $83.5 million, without admitting liability… The U.S. Department of Justice is separately asking a federal appeals court in Washington to let it revive an antitrust probe into the NAR's practices."

Education Department punishes Missouri-based student loan servicer for billing mistakes

KCUR l Cory Turner (NPR)

https://www.kcur.org/education/2023-11-01/education-department-punishes-missouri-based-student-loan-servicer-for-billing-mistakes

-"The department said on Monday that it would withhold $7.2 million in payment owed to the Higher Education Loan Authority of the State of Missouri, better known as MOHELA, for the month of October. It announced that, of those 2.5 million borrowers, more than 800,000 failed to make an on-time loan payment in October, the first month that payments are due since the pandemic pause began in March 2020. "The actions we've taken send a strong message to all student loan servicers that we will not allow borrowers to suffer the consequences of gross servicing failures," Education Secretary Miguel Cardona said in a statement… MOHELA did not respond to a request for comment. The department's announcement comes amid widespread reports of loan servicing errors and of borrowers waiting on hold for hours before reaching servicer workers who can explain and ultimately fix those mistakes. In fact, the department itself cataloged these errors — extensively — in a recent internal memo obtained by NPR and first reported by The Washington Post. In that memo, dated Oct. 17, the office of Federal Student Aid (FSA) listed multiple large groups of borrowers who have been hurt by servicers' errors during the return to repayment. In addition to those 2.5 million borrowers who did not receive timely billing statements from MOHELA, some 16,000 borrowers who had petitioned the department to cancel their loans because they had been defrauded by a for-profit college were erroneously returned to repayment, the memo says… A MOHELA call center worker told Szyman there had been a "system glitch." He remembers being told: "'We'll get it fixed for you.'" But it wasn't fixed. When he called again, a different call center worker told Szyman that his loan would be put into forbearance until the "glitch" could be sorted out. And there it remains. The internal Education Department memo suggests Szyman is in good company: 78,000 borrowers experienced something similar. All had their accounts transferred from one servicer to another and were shifted from an old income-driven repayment plan to the new SAVE plan. What was the glitch? According to the memo, "their monthly payments were incorrectly calculated based on incorrect family sizes, family income and spousal loan balances." It's unclear which of these factored into Szyman's six-times-larger payment… While borrowers welcomed the Education Department's announcement, Rep. Virginia Foxx, R-N.C., who chairs the House Education Committee, made clear that she believes the department deserves much of the blame for these failures. "Servicers need to be performing at their best. Period. But this doesn't mean the Department is off the hook," Foxx said in a statement… Congress too bears some responsibility for these mistakes, voting to flat-fund the office of Federal Student Aid and its loan servicing contractors this year, as congressional Republicans battled with the White House over Biden's broader student loan relief plans…"

AMERICAN OVERSIGHT

As charities struggle for funds, Missouri nonprofit leader indicted for fraud
The Center Square l Joe Mueller
https://www.thecentersquare.com/missouri/article_e0e0a996-782c-11ee-879d-4bbee626a98d.html

-"A month after federal research found disparities in funding for nonprofits serving people of color, a St. Charles charity leader was indicted and accused of stealing millions intended to feed low-income children in a racially diverse area. Connie Bobo, the executive director of New Heights Community Resource Center, was indicted on three felony counts of wire fraud, three counts of aggravated identity theft and two counts of obstruction of an official proceeding, according to information provided last week by the U.S. attorney of the Eastern District of Missouri. Bobo and New Heights, with headquarters in Bridgeton in north St. Louis County, according to its Facebook page, had its tax-exempt status revoked by the IRS for failure to file a return for three consecutive years, according to information compiled by GuideStar. New Heights' last IRS filing was in 2019 and stated revenue of $260,748 and expenses of $216,750, including Bobo's salary of $60,000 for 20 hours of work per week. The indictment states Bobo and New Heights fraudulently claimed to have served at least three million meals to children between February 2019 and March 2022, but the meals weren't purchased or supplied. The Missouri Department of Health and Senior Services paid Bobo approximately $11 million based on the false claims. The research found this group of nonprofits was less likely to see an increase in government funds compared with all other nonprofits. It also found the group was more likely to experience significant disruptions compared to other nonprofits, but they showed resiliency and met challenges arising from the pandemic… Bobo spent $4.3 million to purchase a home worth $1 million for herself, other homes for relatives, and $2.2 million in a commercial real estate investment, according to the indictment. She gave approximately $1.4 million "to her romantic partner," according to the indictment, who spent $211,907 on a 2017 Mercedes-Benz G550 Wagon. The indictment also states Bobo forged an invoice from a food vendor to falsely claim a purchase of hundreds of gallons of milk."

Ameren Missouri natural gas rates to drop
KFVS l Heartland News Repost
https://www.kfvs12.com/2023/11/01/ameren-missouri-natural-gas-rates-drop/

-"Natural gas customers with Ameren Missouri will be seeing gas rates change. Starting November 1, the rate will drop to $.60 per every 100 cubic feet. Before this, customers paid $.63. Around 50 to 55 percent of a customer's current natural gas bill reflects the cost of gas from wholesale suppliers. Ameren Missouri serves approximately135,400 natural gas customers…"

Missouri's cold weather rule to take effect Wednesday
KOMU l Justin Scott
https://www.komu.com/news/state/missouris-cold-weather-rule-to-take-effect-wednesday/article_3689e546-7770-11ee-8819-af018b510726.html

-"The Missouri Public Service Commission's (PSC) cold weather rule, designed to help customers with heat-related utility bills, begins Wednesday and will remain in effect through March 31. The rule applies to natural gas and electric utilities under PSC jurisdiction that provide heat-related service. Municipally operated systems, cooperatives and those that provide propane delivered by truck are not under PSC jurisdiction. Under the rule, the disconnection of heat-related service when the temperature is predicted to drop below 32 degrees during the following 24-hour period is prohibited… Customers who are registered with the utility company as elderly or disabled will receive additional notifications prior to a proposed discontinuance of service during the cold weather rule period. They also may also be eligible for additional minimum payment arrangements."

USPS considers moving some mail operations from mid-Missouri to St. Louis
Fox 2 l Joey Schneider
https://fox2now.com/news/missouri/usps-considers-moving-some-mail-operations-from-mid-missouri-to-st-louis/

-"USPS is currently conducting a mail processing facility review of processing operations at its Columbia Processing and Distribution Center. Leaders are considering a change that would modernize the facility as a local processing center… USPS did not further elaborate on what this would mean for St. Louis operations, but the news release notes the change is being considered to help the agency "modernize the nation's aging and outmoded postal network and achieve the organization's goal of 95% on-time delivery nationwide." Postal service officials plan to share the results of an impact study in Columbia on Nov. 16 at the Cedar Creek Resort & RV Park."

Missouri House Speaker-to-be Jon Patterson took unusual pathway to power
STL Public Radio l Jason Rosenbaum
https://www.kbia.org/missouri-news/2023-10-31/missouri-house-speaker-to-be-jon-patterson-took-unusual-pathway-to-power

-For anyone wanting to know more about Speaker-Elect Jon Patterson this is a profile piece of sorts.

National News:

Speaker Johnson draws battle lines ahead of government spending showdown
Fox News l Elizabeth Elkind
https://www.foxnews.com/politics/speaker-johnson-draws-battle-lines-ahead-government-spending-showdown

-"Speaker Mike Johnson is warning that the House and Senate could be at an "impasse" on government funding if the

AMERICAN OVERSIGHT

Democrat-controlled chamber tries to force the House GOP to bringing dense multi-subject spending bills to the House floor… The House has passed five of 12 individual spending bills that together will fund the government in the next fiscal year. They're slated to consider three more this week. None have come for a vote in the Senate, where Democrats have lambasted Republicans for writing spending bills at a lower level than what was agreed to under the bipartisan debt limit deal. However, Senate appropriators announced a bipartisan deal last week to combine three spending bills into a "minibus." Johnson told Fox News Digital the House and Senate were "going to be at an impasse" if Schumer sent a minibus or an omnibus to the House rather than taking up the 12 individual spending bills. "We are committed to returning to regular order, and that means…12 separate appropriations bills. And I think that people are with us on that," Johnson said…… "We owe that to the people, to restore some sort of common sense in this process and allow the citizens that we represent to be able to follow and understand what's happening here." Congress passed a short-term extension of last year's fiscal priorities, known as a continuing resolution (CR) on Sept. 30, narrowly avoiding a government shutdown. That funding expires on Nov. 17. Johnson suggested he would not bring another so-called "clean" CR but said the details of what House Republicans would need to add are still up in the air…"But I think at the end of the day, what we're trying to do is ensure that obviously the government remains in operation, but we do it in a fiscally responsible manner. And we cannot just print and borrow money and spend it anymore. We're past that," he said. The three spending bills House Republicans are looking to pass this week fund the Department of Interior, the legislative branch and transportation along with Housing and Urban Development.

Left-wing dark money network bankrolling anti-Israel groups drops millions pushing Ohio abortion amendment

Fox News l Andrew Mark Miller

https://www.foxnews.com/politics/left-wing-dark-money-network-bankrolling-anti-israel-groups-drops-millions-pushing-ohio-abortion-amendment

-"Recent filings reviewed by Fox News Digital show that the progressive Sixteen Thirty Fund, which the Washington, D.C.-based Arabella Advisors consulting firm manages, sent at least $5.4 million to the Ohioans United for Reproductive Rights Committee to support Ohio's constitutional amendment. The campaign also received $3.5 million from the George Soros-backed Open Society Policy Center. Both groups have sent millions of dollars to anti-Israel causes in recent years according to a recent report from the New York Post. Nonprofits in the Arabella Advisors-managed network have reportedly funneled at least $10,833,396 to a variety of groups that have sent funds opposing Israel since 2018, including entities that have backed pro-Palestinian protests, antisemitic figures and groups sympathetic to the Hamas terrorists that attacked Israel last month. The Open Society Policy Center has given $13.7 million, through the Tides Center, to groups that have reportedly expressed support for Hamas or justified attacks on Israel and a total of $15 million since 2016…Ohioans will vote on November 7th on whether to enshrine abortion into the state's constitution which opponents of the measure, "No" voters, argue will wipe out any abortion restrictions that are currently on the books and implement vague language that opens up the likelihood of parental rights being hindered…Ohio's Republican Attorney General Dave Yost put together a comprehensive analysis of what voting "Yes" on Issue one and approving the amendment would mean for abortions in the state and wrote that the language of the amendment "creates a new, legal standard that goes beyond what Roe and Casey said."… Last month, the Windward Fund and New Venture Fund, which are under the Arabella umbrella and serve as fiscal sponsors of dozens of far-left groups, announced they were cutting ties with Alliance for Global Justice, a far-left organization that received hundreds of thousands of dollars combined from the two funds. New Venture Fund President Lee Bodner told the Washington Examiner that they "condemn terrorism and violence against civilians in all forms" and that they are "discontinuing grants to any projects hosted by Alliance for Global Justice." Alliance for Global Justice previously faced backlash for sending funding to the Samidoun Palestinian Prisoner Solidarity Network, a group that Israel labeled a terrorist organization in 2021. Fox News Digital also previously reported on how the Louisville Community Bail Fund, which is a "fiscally sponsored project" of the Alliance for Global Justice (AFGJ), bailed out activist Quintez Brown, 21, after he was arrested and charged for the attempted murder of Jewish Democratic mayoral candidate Craig Greenberg early last year."

Supreme Court Considers Whether Public Officials May Block Constituents on Social Media

Epoch Times l Matthew Vandum

https://www.theepochtimes.com/us/supreme-court-considers-whether-public-officials-may-block-constituents-on-social-media-5520030?ea_src=frontpage&ea_med=special-coverage-constitutional-rights-medium-0

-"When can government officials block individuals on their social media accounts? The United States Supreme Court considered that question at an Oct. 31 hearing. The court's eventual ruling on the high-profile controversy, which involves two contradictory rulings by lower courts, is likely to have an impact on all levels of government as citizens increasingly use social media to interact with public officials… The Florida case is Moody v. NetChoice LLC (court file 22-277). The Texas case is NetChoice LLC v. Paxton (court file 22-555). The hearing brings to mind a lawsuit that several individuals previously filed against former President Donald Trump after he blocked them from accessing his Twitter account. The Supreme Court dismissed that case, Biden v. Knight First Amendment Institute, in April 2021 as moot because President Trump had already left office. At the time of the ruling, Twitter had banned President Trump. When Elon Musk took over the company he reversed that policy. Two cases—O'Connor-Ratcliff v. Garnier (court file 22-324) and a related case, Lindke v. Freed (court

AMERICAN OVERSIGHT

file 22-611)—were heard back-to-back on Oct. 31 by the Supreme Court. The legal issue is whether a public official is engaging in state or governmental action subject to the First Amendment to the U.S. Constitution when blocking someone from accessing the official's social media account. One federal appeals court found in favor of the citizens; another found for the public official… Respondents Christopher Garnier and Kimberly Garnier, parents of local students, "spammed Petitioners' posts and tweets with repetitive comments and replies" so the school board members blocked the respondents from the accounts, according to the petition filed by Ms. O'Connor-Ratcliff and Mr. Zane. But the Garniers said they were acting in good faith. "The Garniers left comments exposing financial mismanagement by the former superintendent as well as incidents of racism," the couple said in a brief. The U.S. Court of Appeals for the 9th Circuit found in favor of the Garniers, holding that elected officials using social media accounts were participating in a public forum. In the other case, respondent James Freed, the city manager of Port Huron, Michigan, used a public Facebook account to communicate with his constituents. Petitioner Kevin Lindke, a resident of Port Huron, criticized the municipality's response to the COVID-19 pandemic, including accusations of hypocrisy by local officials. Mr. Freed blocked Mr. Lindke and others and removed their comments, according to Mr. Lindke's petition. The U.S. Court of Appeals for the 6th Circuit ruled for Mr. Freed, finding that he was acting only in a personal capacity and that his activities did not constitute governmental action… Justice Samuel Alito pushed back. Does this mean that a "town manager can block comments based on viewpoint, so the town manager can block anybody who expresses criticism of what the town manager is doing and thereby create the impression that everybody in town thinks the town manager is doing the right thing?" the justice said. Justice Elena Kagan also questioned Mr. Mooppan's reasoning, "President Trump's Twitter account was also personal?" Justice Kagan asked. "Yes, Your Honor, then I think that he is engaging in his First Amendment rights … to talk about the government in his individual capacity," Mr. Mooppan said. "But he seems to be doing, you know, a lot of government on his Twitter account," Justice Kagan replied. Justice Brett Kavanaugh said: "local officials around the country need guidance. … They need a clear answer" about how to communicate with the public. Supporting Ms. O'Connor-Ratcliff and Mr. Zane, U.S. Department of Justice attorney Sopan Joshi told the court that social media accounts operated in a personal capacity function as private property… "There has to be some objective indicia that the government employees can reply upon so they know when they're using government resources … that they're acting on behalf of the state…"

What the 'Great Trucking Recession' is warning us about the economy

Washington Examiner l Salena Zito

https://www.washingtonexaminer.com/opinion/columnists/what-great-trucking-recession-warning-about-economy

-"Two months ago, 30,000 truckers at Yellow lost their jobs when one of the nation's oldest and largest trucking companies filed for Chapter 11 bankruptcy protection. Last week, Convoy, the digital freight broker that was supposed to reinvent the wheel and disrupt the trucking industry in a positive way, also abruptly shuttered its doors. These kinds of closings by both freight carriers lay bare the uncertain state of trucking, an industry that is an indicator of the mood of the consumer and also the beating heart of our economy… "The damage started when people went on a spending spree during COVID. The government was giving out cash, and people started ordering things in a way they have never done before," McQuaide explained. As a result, McQuaide said, new trucks were on the road to meet the consumers' needs. Beginning last year, that need started to recede when consumers' spending spree started to ebb, and, as a result, several different things have happened in the industry, beginning with too many trucks in comparison to the amount of freight that is available. That, McQuaide said, hits the truckers and truck companies hard: "The economy is slowing from its frenzy, people aren't buying anymore, which means there are more trucks on the road than there are loads, and it's forcing the rates down." McQuaide said his company's rates are about 20% lower than last year… Truckers are making less than they did in per-mile peak earnings, McQuaide said… McQuaide, who also owns and runs a logistics company that has a series of warehouses holding imports and exports, says the freight recession is real… He said he worries not enough people are considering the wider implications of people not spending and truckers not having anything to move… McQuaide said the trucking industry, or any form of transportation that is moving goods, is the ultimate economic indicator of where the country is heading. "It provides very valuable insights into the health of where the economy is going and into the mindset of the consumer: Are they spending, or are they feeling uncertain and moving within," he asked rhetorically. September data from the government contradicted McQuaide's concerns, showing a surge in consumer spending — 0.4% to be exact. But economists, like McQuaide, were cautious in reaction. The Associated Press reported that many households have been spending their money unwisely, tapping into shrinking savings accounts and pulling out the credit cards. Data also show that when people are spending, they are rethinking forking out money on the big things, such as dishwashers, shiny new stainless stoves, and refrigerators, which backs up what McQuaide is seeing on the freight side."

Senate Passes Joni Ernst Amendment Cracking Down On Federal Employees Abusing Telework

Daily Caller l Harold Hutchinson

https://dailycaller.com/2023/10/31/senate-passes-joni-ernst-amendment-cracking-down-on-federal-employees-abusing-telework/

-"The U.S. Senate passed an amendment by Republican Sen. Joni Ernst of Iowa Tuesday to address abuses of telework by federal government employees, particularly within the Department of Veterans Affairs (VA). Ernst previously called out abuses of telework, citing a media report of a VA employee who attended a staff meeting while taking a bubble bath. The

AMERICAN OVERSIGHT

amendment requires federal agencies funded by the Military Construction, Veterans Affairs, and Related Agencies Appropriations Act to submit a report on telecommuting employees and steps to oversee the remote work…Ernst spoke on the Senate floor Tuesday prior to her amendment passing. “Thousands of calls to the VA from veterans seeking mental health care went unanswered over the past year, and that was just at the Atlanta VA!” Ernst said in her remarks. “One veteran in the midst of a mental health crisis called TEN times over a three-month period and could not get the care she needed, much less anyone to answer her calls, so she ended up in an emergency room. Other veterans who made VA appointments say their therapists didn’t even show up.” A Government Accountability Office report released July 13 stated that 75% of office space was not being utilized…”

House Judiciary Committee To Investigate DOJ For Allegedly Spying On Congressional Staffers

Daily Caller l Harold Hutchinson

https://dailycaller.com/2023/10/31/house-judiciary-committee-to-investigate-doj-for-allegedly-spying-on-congressional-staffers/

-“The House Judiciary Committee announced an investigation into the Department of Justice (DOJ) Tuesday over reports of allegedly spying on staffers for congressional members investigating the agency. The committee sent letters to Verizon, Alphabet, Apple, T-Mobile, AT&T and the DOJ Tuesday, demanding information on the DOJ’s 2017 subpoenas to cell phone providers demanding the communications of congressional staffers who carried out oversight of the DOJ, according to a post on Twitter. The committee gave a deadline of Nov. 14 to provide the information. “We now know that they spied on congressional staffers. We want to know how far does it go, were they spying on members? Were they spying on other staffers?” Republican Rep. Jim Jordan of Ohio told Fox Business host Elizabeth MacDonald…Congress investigated the FBI and DOJ over the use of FISA warrants to spy on Donald Trump’s successful 2016 campaign for the White House based on claims made in the now-discredited Steele Dossier. Special Counsel John Durham released a report on the origins of the FBI investigation of allegations that Trump’s 2016 presidential campaign colluded with Russia May 15 that found that the FBI “did not and could not corroborate” the dossier’s claims. “They were investigating the very people who were investigating the Justice Department, because this is all in the context of the Crossfire Hurricane, the Trump-Russia issue,” Jordan said…”

Republicans Raise Terror Alarm After Illegal Immigrants Caught With Explosive Devices

Epoch Times l Tom Ozimek

https://www.theepochtimes.com/us/republicans-raise-terror-alarm-after-illegal-immigrants-caught-with-explosive-devices-5520541?ea_src=frontpage&ea_med=lead-story-0-large-0

-“Republican senators have sounded the alarm on the Biden administration's border policies after Border Patrol agents caught illegal border crossers who were carrying explosive devices that Sen. John Barrasso (R-Wyo.) said were "tailor-made for terrorism."… The senators said that over 8 million illegal border crossings have taken place under President Joe Biden's watch, while asserting that explosive devices found on some border crossers in recent days represent an elevated risk of terror acts against the homeland. "We have just returned from our southern border, and it is painfully clear that with Joe Biden's open border policy, our country is really at an increased threat for a terrorist attack," Mr. Barrasso said at Tuesday's press conference. Several days ago, U.S. Customs and Border Protection (CBP) agents seized illegal immigrants carrying with them improvised explosive devices that Mr. Barrasso said were the "size of cannonballs" and were "tailor-made for terrorism."… due to what he said were President Biden's "failed" border policies, there were 18 people on the terrorist watchlist caught entering the United States illegally in September—and 172 last year. "To put this in perspective, in years past, that number was single digits," Mr. Ricketts said…An elevated terror threat against the United States and its citizens has also been flagged by FBI Director Christopher Wray, who issued a stark warning while testifying before Congress on Oct. 31. Mr. Wray told lawmakers that, since the Oct. 7 attack by the Hamas terror group against Israeli civilians and soldiers, there have been multiple foreign terrorist organizations calling for attacks against Americans and the West, significantly raising the threat posed by what he described as "homegrown extremists."… But the terror threat has been on the rise for some time. Earlier this year, the Department of Homeland Security (DHS) issued a terror alert, saying that the United States is in a "heightened threat environment," citing in part individuals with links to foreign terrorist organizations who may target schools, government facilities, or critical infrastructure. In September, over 269,000 people were caught crossing the U.S.–Mexico border illegally, a record high for a single month…There have been 1.7 million "gotaways" since President Biden assumed office, according to the House Committee on Homeland Security.”

Senators Introduce 'Protect Our Bases Act' as China Continues Purchasing Land Near US Military Sites

Epoch Times l Katabella Roberts

https://www.theepochtimes.com/us/senators-introduce-protect-our-bases-act-as-china-continues-purchasing-land-near-us-military-sites-5520886?ea_src=frontpage&ea_med=top-news-us-politics-0-large-0

-“Sen. Tim Scott (R-S.C.), ranking member of the Senate Committee on Banking, Housing, and Urban Affairs, along with Sens. Mike Crapo (R-Idaho), Steve Daines (R-Mont.), Mike Rounds (R-S.D.), Bill Hagerty (R-Tenn.), and Katie Britt (R-Ala.) introduced the legislation, known as the "Protect Our Bases Act," on Oct. 24. The bill comes as experts have warned that China has been exploiting various loopholes in recent years in an effort to purchase large swathes of U.S. land with the aim of sabotaging America's national security. Under the newly introduced legislation, the Committee on Foreign Investment in the United States (CFIUS) would be allowed to review certain types of foreign land purchases if they are made near sensitive military, intelligence, and national laboratory sites. Specifically, the bill requires agencies represented by CFIUS to

AMERICAN OVERSIGHT

provide to Congress on an annual basis updated records of the military, intelligence, and national laboratory facilities that should be deemed sensitive sites for national security purposes. Additionally, the measure requires CFIUS to submit an annual report to Congress certifying the completion of such reviews, specifying whether or not the new list is up to date, and if not, providing an explanation as to why…The legislation, he said, was necessary to "protect sensitive military and government sites from encroachment by foreign adversaries on our own land."

Lawmakers seek information from Biden administration on Iran oil exports to China

Washington Examiner l Reese Gorman

https://www.washingtonexaminer.com/news/house/gallego-bacon-send-letter-biden-admin-info-iran-china

-"The letter was sent to Secretary of State Antony Blinken and Treasury Secretary Janet Yellen, and in the wake of Hamas's invasion of Israel, the two members of Congress raised concerns about Iran and its oil export to China and urged the administration to "use all available tools at its disposal to halt Iran's financing, arming, and training of terrorist organizations, including Hamas and Hezbollah." The representatives cited reports that estimate Chinese imports of sanctioned Iranian oil are at the highest level in decades. It is estimated China receives 1.5 million barrels a day of Iranian crude oil. The oil is sent to "semi-private refiners in Shandong" known as "teapots," they wrote in the letter. This allows China to obscure its role in the illicit oil purchases and "shield larger Chinese firms and the Chinese Communist Party from exposure to the U.S. financial system and associated sanctions."… In early October, Gallego teamed up with Rep. Mike Gallagher (R-WI) to call on the Biden administration to freeze the $6 billion America gave Iran in exchange for hostages and to enforce sanctions fully on Iranian oil exports to China."

Supreme Court will consider lawyer's bid to trademark 'Trump too small' slogan

Washington Examiner l Kaelan Deese

https://www.washingtonexaminer.com/policy/courts/supreme-court-considers-lawyers-bid-trademark-trump-too-small-slogan

-"An attorney seeking permission to trademark the phrase "Trump too small" and print it on T-shirts for profit will have his First Amendment case weighed by the Supreme Court on Wednesday. The nine justices will hear arguments over attorney Steve Elster's bid to trademark the phrase, which originates from the 2016 primary season when the size of then-candidate Donald Trump's hands became a humorous rebuttal from his then-primary opponent Sen. Marco Rubio (R-FL). Rubio aimed to knock his political opponent down a peg during a campaign stop after Trump had recently coined his characterization of him, "Little Marco."… That notorious exchange prompted Elster to create shirts and other merchandise sporting the phrase "Trump too small." The attorney also planned to include an image of a lewd hand gesture as commentary over the "smallness of Donald Trump's overall approach to governing as president of the United States." Fara Sunderji, a trademark attorney with Dorsey & Whitney, told the Washington Examiner the "outward appearances" of the case shouldn't be construed as a case about Trump nor the "size of his policies (or body parts.)" "This is a case about the intersection between trademark law, the First Amendment, rights of privacy, rights of publicity, and political criticisms," Sunderji said, adding the case presents an opportunity to decide if the denial of trademark registrations restricts speech because the act of the denial would be "chilling.'"

I hope everyone has a great day!

Best,

Bennett Lyday | Operations Specialist
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
O: (573) 751-4390
C: (573) 645-9671
Bennett.Lyday@ago.mo.gov

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: Leif Le Mahieu[llemahieu@dailywire.com]
Sent: Mon 11/20/2023 7:01:02 AM (UTC-06:00)
Subject: Media request for comment

Hi Madeline,
My name is Leif Le Mahieu and I am a reporter with The Daily Wire. I'm writing an article on Attorney General Andrew Bailey's tweet saying that he was looking into Media Matters over its hit piece targeting Elon Musk last week. I was wondering if there was any additional information you could tell me about what specificallyoffice was looking into and why the AG thinks this is an important issue to address.

Best,
Leif

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: Jack Suntrup[JSuntrup@post-dispatch.com]
Sent: Mon 11/20/2023 10:28:59 AM (UTC-06:00)
Subject: elon musk

Hi Madeline,
What exactly are you investigating related to Media Matters/Elon Musk? What possible violations of the law are there? Is this for Bailey to generate attention as Will Scharf argues in President Trump's defense today? Please let me know soonest.
Thanks,
Jack

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
Cc: Schwartz2, Brian (NBCUniversal)[Brian.Schwartz@nbcuni.com]
From: Kolodny, Lora (NBCUniversal)[Lora.Kolodny@nbcuni.com]
Sent: Mon 11/20/2023 11:01:55 AM (UTC-06:00)
Subject: CNBC (NBC Universal) press request - AG initiating probe into Media Matters?

Attn. Madeline Sieren, Public Affairs team
Missouri Attorney General's Office
I am a reporter with CNBC.com / NBC Universal based in San Francisco (originally from St. Louis, though). My colleague on the politics desk is on Cc as well, Brian Schwartz.
Over the weekend, we noticed that Missouri Attorney General Andrew Bailey posted on X (Twitter) that he intended to look into a conflict between the Elon Musk-owned social network, and the media watchdog group called Media Matters.
https://twitter.com/AGAndrewBailey/status/1726356598405136754
We would like to know…
Has the AG's office formally initiated a probe of Media Matters?
Would appreciate any information or statements you can provide.
Thank you,
--
Lora Kolodny, tech & climate reporter
Lora.Kolodny@nbcuni.com
1-415-939-5841

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: Rebecca Kern[rkern@politico.com]
Sent: Mon 11/20/2023 1:32:24 PM (UTC-06:00)
Subject: POLITICO request on AG Bailey tweet on Media Matters

HI Madeline,
I'm working on an article about the lawsuit X owner Elon Musk is planning to file today against Media Matters for America. I've also left you a voicemail.
I saw AG Andrew Bailey tweeted that his team is looking into this too – can you share if that mean's he'll also be filing a lawsuit today? Or some time soon – and what it'd be about – what laws this is violating?
Thank you,
--

Rebecca Kern
Tech Reporter
POLITICO
rkern@politico.com
703-653-0116

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: Rathert, Branden[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6862523A4FCB4692B7523E7B2723AB70-RATHERT, BRANDEN]
Sent: Mon 11/20/2023 11:54:14 AM (UTC-06:00)
Subject: FW: MEDIA INQUIRY: Media Matters Investigation (Deadline 11/20, 6 PM Eastern)

I'm assuming you got this press inquiry...

Branden Rathert | Deputy Communication Director
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8355
Branden.Rathert@ago.mo.gov

From: Rebecca Crosby <rebecca@popular.info>
Sent: Monday, November 20, 2023 11:29 AM
To: Rathert, Branden <Branden.Rathert@ago.mo.gov>
Subject: MEDIA INQUIRY: Media Matters Investigation (Deadline 11/20, 6 PM Eastern)

Hello,

My name is Rebecca Crosby and I write for Popular Information, a political newsletter that reaches 294,000 people.

As you are aware, Media Matters reported last week that X, the social media platform formerly known as Twitter, was placing ads for major brands "next to content that touts Adolf Hitler and his Nazi Party." On November 18, Elon Musk, the owner of X, announced that he was filing a lawsuit against Media Matters alleging that the report "misrepresented the real user experience" in an "attempt to undermine freedom of speech and mislead advertisers."

On X, Stephen Miller suggested that Media Matters could be subject to criminal and civil charges under state law. In response, Attorney General Andrew Bailey posted that his "team is looking into this matter."

My questions are:

Do you have any information about the status of the Media Matters investigation?

Do you have a statement about the investigation?

I can include any response I receive by Monday, November 20 at 6 PM Eastern.

Thank you,

Rebecca

AMERICAN OVERSIGHT

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

X CORP., a Nevada corporation,

Plaintiff,

v.

MEDIA MATTERS FOR AMERICA, a Washington, D.C. non-profit corporation, and **ERIC HANANOKI**,

Defendants.

Case No. 4:23-cv-1175

JURY TRIAL DEMANDED

COMPLAINT

1. Defendant Media Matters for America ("Media Matters") is a self-proclaimed media watchdog that decided it would not let the truth get in the way of a story it wanted to publish about X Corp. Looking to portray X's social networking platform as being dominated by "white nationalist and anti-Semitic conspiracy theories," Media Matters knowingly and maliciously manufactured side-by-side images depicting advertisers' posts on X Corp.'s social media platform beside Neo-Nazi and white-nationalist fringe content and then portrayed these manufactured images as if they were what typical X users experience on the platform. Media Matters designed both these images and its resulting media strategy to drive advertisers from the platform and destroy X Corp.

2. Plaintiff X Corp. operates the X social media platform with over 500 million active monthly users. X facilitates free expression and open discourse by enabling its users to create and share their own content and to message and comment on other users' posts. These posts appear

AMERICAN OVERSIGHT

sequentially to users in "feeds," which occasionally include paid advertisements—the overwhelming source of X Corp.'s revenue.

3. Users shape their own experiences on X. Users curate the content on their own feeds by choosing to "follow" other users, thereby determining which posts are presented to them. Most users are served a variety of content based on an algorithm that takes account of who that user follows and what that user engages with. But X also provides its users the option to forgo algorithmically suggested posts altogether, thereby enabling a user to view only the content that user chooses to view.

4. As the most prominent online platform dedicated to hosting free speech, X and its predecessor Twitter have long been the target of Media Matters. In just the last year, Media Matters has published a series of articles threatening X's relationships with massive multinational advertisers and global publishers, including Amazon, eBay, Major League Baseball, New York Times Co., Samsung, Sports Illustrated, The Wall Street Journal, USA Today, Office Depot, Nokia, Dish, Bayer, Tyson Foods, Honeywell, Discovery, FanDuel, Thermo Fisher, National Women's Soccer League, the Pittsburgh Steelers, the Atlanta Falcons, Manchester City, DraftKings, FanDuel, T-Mobile, and The Athletic.[1]

5. This November alone Media Matters released over twenty articles (and counting) disparaging both X Corp. and Elon Musk—a blatant smear campaign.

6. For the last several years, Media Matters has falsely portrayed Twitter, now X, as a risky, unsafe platform for advertisers. Contrary to these efforts, 99% of X's measured ad placement

[1] *See, e.g.*, Eric Hananoki, *X is placing ads for Amazon, NBA Mexico, NBCUniversal, and others next to content with white nationalist hashtags*, MEDIA MATTERS FOR AMERICA, (Nov. 17, 2023, 12:16 PM), https://www.mediamatters.org/twitter/x-placing-ads-amazon-nba-mexico-nbcuniversal-and-others-next-content-white-nationalist.

AMERICAN OVERSIGHT

in 2023 has appeared adjacent to content scoring above the Global Alliance for Responsible Media's brand safety floor.

7. Undeterred by the truth, Media Matters has opted for new tactics in its campaign to drive advertisers from X. Media Matters has manipulated the algorithms governing the user experience on X to bypass safeguards and create images of X's largest advertisers' paid posts adjacent to racist, incendiary content, leaving the false impression that these pairings are anything but what they actually are: manufactured, inorganic, and extraordinarily rare.

8. Media Matters executed this plot in multiple steps, as X's internal investigations have revealed. First, Media Matters accessed accounts that had been active for at least 30 days, bypassing X's ad filter for new users. Media Matters then exclusively followed a small subset of users consisting *entirely* of accounts in one of two categories: those known to produce extreme, fringe content, and accounts owned by X's big-name advertisers. The end result was a feed precision-designed by Media Matters for a single purpose: to produce side-by-side ad/content placements that it could screenshot in an effort to alienate advertisers.

9. But this activity *still* was not enough to create the pairings of advertisements and content that Media Matters aimed to produce.

10. Media Matters therefore resorted to endlessly scrolling and refreshing its unrepresentative, hand-selected feed, ***generating between 13 and 15 times more advertisements per hour than viewed by the average X user*** repeating this inauthentic activity until it finally received pages containing the result it wanted: controversial content next to X's largest advertisers' paid posts.

11. Media Matters omitted mentioning any of this in a report published on November 16, 2023 that displayed instances Media Matters "found" on X of advertisers' paid posts featured

AMERICAN OVERSIGHT

next to Neo-Nazi and white-nationalist content. Nor did Media Matters otherwise provide any context regarding the forced, inauthentic nature and *extraordinary rarity* of these pairings.

12. However, relying on the specious narrative propagated by Media Matters, the advertisers targeted took these pairings to be anything *but* rare and inorganic, with all but one of the companies featured in the Media Matters piece withdrawing all ads from X, including Apple, Comcast, NBCUniversal, and IBM—some of X's largest advertisers. Indeed, in pulling all advertising from X in response to this intentionally deceptive report, IBM called the pairings an "entirely unacceptable situation."[2] Only Oracle did not withdraw its ads.

13. The truth bore no resemblance to Media Matters' narrative. In fact, IBM's, Comcast's, and Oracle's paid posts appeared alongside the fringe content cited by Media Matters for ***only one*** viewer (out of more than 500 million) on all of X: ***Media Matters***. Not a single authentic user of the X platform saw IBM's, Comcast's, or Oracle's ads next to that content, which Media Matters achieved only through its manipulation of X's algorithms as described above. And in Apple's case, only two out of more than 500 million active users saw its ad appear alongside the fringe content cited in the article—at least one of which was Media Matters.

14. Media Matters could have produced a fair, accurate account of users' interactions with advertisements on X via basic reporting: following *real users*, documenting the *actual, organic* production of content and advertisement pairings. Had it done so, however, it would not have produced the outcome Media Matters so desperately desired, which was to tarnish X's reputation by associating it with racist content. So instead, Media Matters chose to maliciously misrepresent the X experience with the intention of harming X and its business.

---

[2] Hannah Murphy, *IBM pulls adverts from X after report finding they ran next to Nazi Content*, FINANCIAL TIMES (Nov. 16, 2023), https://www.ft.com/content/647b4c4d-f4d5-46cd-bc26-8c943b6995e7.l.

AMERICAN OVERSIGHT

PARTIES

15. Plaintiff X Corp. is a corporation organized and existing under the laws of the State of Nevada, with its principal place of business in San Francisco, California. Plaintiff conducts significant business in Texas, including maintaining significant offices in Texas. It operates the social media platform "X" (formerly "Twitter"), an internet-based service that enables users to create and share their own content, interact with other users, and curate feeds of content.

16. Defendant Media Matters is a web-based publisher incorporated under the laws of the District of Columbia with its principal place of business at 800 Maine Avenue SW, Suite 400, Washington, D.C. 20024. The organization's purpose is "to systematically monitor" conservative media and publish reports based on this purported reporting.

17. Defendant Eric Hananoki is a writer for Defendant Media Matters and is domiciled in Maryland.

JURISDICTION & VENUE

18. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because there exists complete diversity of citizenship between Plaintiff and Defendants and the amount in controversy exceeds $75,000.00.

19. This Court has personal jurisdiction over Media Matters because Media Matters' campaign against X Corp. was purposefully directed at, among others, relationships with advertisers who are located in, have a significant presence in, or transact substantial business in Texas. Likewise, this Court has personal jurisdiction over Media Matters because its attempts to harm X Corp.'s reputation potentially threatened X Corp.'s relationships with its hundreds of millions of users, including millions of Texas users. This Court has personal jurisdiction over Hananoki for substantially the same reasons.

AMERICAN OVERSIGHT

20. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims occurred herein, because a substantial part of the property that is subject of the action—that is, X's business and advertising—is situated in the district, and because all Defendants are subject to personal jurisdiction in this District.

GENERAL ALLEGATIONS

I. X is a Safe Platform for Users and Advertisers, Despite Media Matters' Deceptions.

21. X is a social media platform that remains in operation due to its loyal users and advertisers. X Corp. invests heavily in technologies that work in tandem to facilitate safe and effective interactions between users and advertisers—technologies that, under normal, organic conditions operate seamlessly.

22. As a first layer of protection for advertisers, X applies default protections to all posts. These protections are designed to prevent advertisements from being placed next to content that violates community guidelines. When users operate within X's community guidelines, these default mechanisms are effective and have a long history of successfully protecting X's advertisers from undesirable interactions with fringe content.

23. As a second layer of protection, X provides advertisers with opt-in options. These options allow advertisers to further address any specific concerns they may have about their advertisements being seen next to specific content. Here, advertisers can specify which key words and user handles they *do not* want their posts to appear by.

24. These protections and others create a safe environment for advertisers that allow them to reach their target audiences while protecting their brands, as Media Matters well knows.

AMERICAN OVERSIGHT

II. Media Matters Systematically Manipulated the X User Experience to Defame X.

25. On November 16, 2023, Media Matters published a false, defamatory, and misleading article with the headline, "*X has been placing ads* for Apple, Bravo, IBM, Oracle, and Xfinity[3] next to pro-Nazi content," claiming that X was responsible for anti-Semitic content being paired with X's advertisers' paid posts.[4] This statement was not true, and Media Matters knew it. As explained below and displayed in an X internal review, this title is false in that Media Matters itself—not X—was responsible for placement of the content it identified through its willful exploitation of X's user features—a result it *specifically intended* to bring about. X in fact has many default safeguards that *prevent* the platform from displaying content in the manner artificially achieved by Defendant.

26. Further, in the body of the piece, Media Matters falsely claims that it "recently *found* ads for Apple, Bravo, Oracle, Xfinity, and IBM next to posts that tout Hitler and his Nazi Party on X."[5] Media Matters did not *find* pairings that X passively allowed on the platform. Media Matters *created* these pairings in secrecy, to manufacture the harmful perception that X is at best an incompetent content moderator (a harmful accusation for any social media platform), or even worse that X was somehow indifferent or even encouraging to Nazi and racist ideology.

27. On X, users can control the content on their feeds. When users show interest in particular topics, ads will generate that relate to those topics. Media Matters exploited these

---

[3] XFinity is a Comcast service.

[4] *See* Eric Hananoki, *As Musk endorses antisemitic conspiracy theory, X has been placing ads for Apple, Bravo, IBM, Oracle, and Xfinity next to pro-Nazi content*, MEDIA MATTERS FOR AMERICA, (Nov. 16, 2023, 10:05AM), https://www.mediamatters.org/twitter/musk-endorses-antisemitic-conspiracy-theory-x-has-been-placing-ads-apple-bravo-ibm-oracle.

[5] *See id.* (emphasis added).

AMERICAN OVERSIGHT

features by creating a secret X account precision-designed to evade normal safeguards, manipulating every aspect of the system through which posts and advertisements appear, ultimately creating the side-by-side images of objectionable content and advertisements.

28. X's internal user data tells the story of just how far Media Matters went to manufacture an inorganic user experience strictly aimed at creating an interaction between controversial content and big-name advertisers that was seen only by the Media Matters account and then published broadly.

29. First, Media Matters set out on their attempt to evade X's content filters for new users by specifically using an account that had been in existence for more than thirty days.

30. Next, Media Matters set its account to follow only 30 users (far less than the average number of accounts followed by a typical active user, 219), severely limiting the amount and type of content featured on its feed. *All* of these users were either already known for posting controversial content or were accounts for X's advertisers. That is, *100% of the accounts* Media Matters followed were either fringe accounts or were accounts for national large brands. In all, this functioned as an attempt to flood the Media Matters account with content only from national brands and fringe figures, tricking the algorithm into thinking Media Matters *wanted* to view both hateful content and content from large advertisers.

31. Even this did not produce Media Matters' intended result. An internal review by X revealed that Media Matters' account started to alter its scrolling and refreshing activities in an attempt to manipulate inorganic combinations of advertisements and content. Media Matters' excessive scrolling and refreshing generated between 13 and 15 times more advertisements per hour than would be seen by a typical user, essentially seeking to force a situation in which a brand ad post appeared adjacent to fringe content.

AMERICAN OVERSIGHT

32. Eventually, through intentionally evading X's multiple safeguards by curating the content on its feed and then repeatedly attempting to create pairings of advertisements for major brands with controversial content, Media Matters finally achieved its goal. Accordingly, it took screenshots of posts from IBM, Apple, Bravo, Xfinity, and Oracle that Media Matters engineered to appear adjacent to inflammatory, fringe content.

III. To Defame X, Media Matters Hid Its Manipulation from Readers and Advertisers.

33. Media Matters generated a specific, intended result that was not only inorganic, but exceedingly (and demonstrably) rare, all while taking specific steps to obscure this in its November 16, 2023 article. The overall effect on advertisers and users was to create the false, misleading perception that these types of pairings were common, widespread, and alarming. Media Matters hid its manipulations through omissions, deceptive image selections, misrepresentations, and secrecy settings.

34. Media Matters omitted in its entirety its process of manufacturing these ad pairings. It did not include in its article that it created a user that *only* followed 30 accounts that either belonged to fringe figures or major national brands. Neither readers nor advertisers had any way of knowing that the entire feed was orchestrated to generate the remarkably rare combinations. Media Matters also omitted mentioning in its entirety its excessive scrolling and refreshing, allowing users to believe (falsely) that the "report" was produced under circumstances that were organic and unmanipulated.

35. Media Matters also omitted and made no attempt to clarify the rarity of these pairings. The representation put forth by Media Matters constituted 0.0000009090909 percent of impressions served on the day in question. Most or all of these pairings were not seen by literally

AMERICAN OVERSIGHT

anyone besides Media Matters' own manipulated account, and no authentic user of the platform has been confirmed to have seen any of these pairings.

36. Media Matters' image choice in its smear also functioned to hide the true nature of its report. All images selected contained *only* the ad and the controversial content, with all other posts absent from view. That is, had readers been able to see the posts above and below the pairings, they would have easily gleaned the highly-specific nature of the small number of accounts Media Matters chose to follow. Media Matters chose to show *every* pairing in its article using this deceptive technique—hiding its deceit through even more deceit.

37. Tellingly, Media Matters used X's privacy features in order to hide its methodology from its readers. That is, Media Matters set this account to "private," blocking anyone from seeing which accounts Media Matters actually followed, thus disallowing anyone from understanding how its feed was manipulated. Indeed, Media Matters at no point includes images *with any information about the account that was exposed to these images*; the cropped nature of Media Matters' deceptive screenshots leaves its profile picture out of frame.

38. Accordingly, Media Matters created the impression that these pairings were organic, accurate, and representative of the typical X user's experience, which actually and demonstrably misled users and advertisers, causing harm to X Corp.

V. Media Matters Caused Advertisers to Believe the Pairings Were Organic.

39. After the publication of Media Matters' false smear on November 16, 2023, advertisers pulled their ads from the site, which, as Media Matters admits, only happened after it reported that X was placing ads alongside white nationalist and pro-Nazi content. Included in these companies, which all referenced antisemitic content in their withdrawal from X, are:

AMERICAN OVERSIGHT

Comcast. After Media Matters' November article featured a contrived, misleading, and inflammatory image showing an ad for Xfinity next to a pro-Nazi post, its parent company Comcast decided to pull *all* ads for Comcast entities from X.

NBCUniversal. As the parent company of Bravo and a subsidiary of Comcast, NBCUniversal pulled all advertising from X after publication of the article.

Apple. The day after publication of the article, which also featured an Apple ad contrived to be placed next to fringe content, Apple—one of X's largest clients—pulled all of its ads from the platform.

IBM. As previously discussed, IBM pulled all ads immediately after the publication of the article.

40. Media Matters' manipulation was so severe that companies not even featured in the article also pulled ads from X. These companies include Lionsgate, Warner Bros. Discovery, Paramount, and Sony.

VII. Media Matters Intended to Harm X's Revenue Stream.

41. Media Matters represents itself as "a progressive research and information center dedicated to comprehensively monitoring, analyzing, and correcting *conservative misinformation* in the U.S. media."[6] Since its launch in 2004, it has engaged in an all-out campaign of "guerilla warfare and sabotage" on conservative news sources.[7] In this context, X Corp. and Elon Musk are a critical Media Matters target because X is the most prominent online platform that permits users to share all viewpoints, whether liberal or conservative, and Mr. Musk is the most prominent voice

[6] About US, MEDIA MATTERS FOR AMERICA (2023), https://www.mediamatters.org/about-us (emphasis added).

[7] Ben Smith, *Media Matters' war against Fox*, POLITICO (Mar. 26, 2011 7:23AM), https://www.politico.com/story/2011/03/media-matters-war-against-fox-051949.

AMERICAN OVERSIGHT

on the platform and a passionate supporter of free speech. In taking down two forces it already found objectionable, Media Matters had the chance to starve X of ad revenue and thereby silence *all* of the voices on X. Nothing in Media Matters' campaign was coincidental or accidental. And, its guerilla attack on X is working, driving away X's advertisers and revenue precisely as intended.

FIRST CAUSE OF ACTION

Interference With Contract

42. X Corp. re-alleges and incorporates by reference the above allegations.

43. At all relevant times, Defendants were aware that Plaintiff contracted with various third parties, including but not limited to Apple, NBCUniversal, Comcast, Bravo, Apple, and IBM, to sell ads on the X platform, as clearly demonstrated by the many articles written by Defendants on the topic.

44. Defendant Media Matters intentionally interfered with contracts between X Corp. and its advertisers, including but not limited to Apple, NBCUniversal, Comcast, Bravo, Apple, and IBM—all clients with existing advertisement agreements that were casualties of Defendant's misrepresentations and ceased advertising on the X platform as a direct result.

SECOND CAUSE OF ACTION

Business Disparagement

45. X Corp. re-alleges and incorporates by reference the above allegations.

46. Defendant Media Matters made statements that disparaged the quality of X Corp.'s product, X.

47. Defendant Media Matters made these statements as statements of fact, not opinion. Defendant Media Matters represented that X "has been placing" advertisements next to anti-Semitic and racist materials. It represented that it "found" these materials next to advertisements.

AMERICAN OVERSIGHT

48. As extensively explained above, these statements made by Defendant Media Matters were false.

49. Defendant Media Matters intentionally made these statements with clear malice, well aware of their falsity.

50. X Corp. suffered monetary loss as a result of these statements: companies mentioned in Defendant's false and misleading article pulled their advertising from X indefinitely.

THIRD CAUSE OF ACTION

Interference with Prospective Economic Advantage

51. X Corp. re-alleges and incorporates by reference the above allegations.

52. X Corp. was engaged in economic relationships that would have resulted in an economic benefit to X Corp. X Corp. had relationships with advertisers that pulled their spending in light of Defendant Media Matters' article and had every reason to suspect that these relationships would continue.

53. At all relevant times, Defendant Media Matters knew of these relationships, as they were described in its "reporting."

54. Defendant Media Matters engaged in wrongful conduct that disrupted X Corp.'s economic relationships. Through extensive deception and misrepresentation, Defendant Media Matters caused advertisers to lose faith in X Corp.'s abilities to monitor and curate content, thereby leading them to break off these lucrative relationships and any future continued relationships.

55. Defendant Media Matters acted with the intent to disrupt these relationships. Media Matters' actions continued its expressly declared "guerilla war" on media it dislikes and its systematic, harassing attacks on X Corp. and Elon Musk.

AMERICAN OVERSIGHT

56. X Corp. was harmed as a result of Defendant Media Matters' actions: it lost advertisers as a result of Defendant's interference.

57. Defendant Media Matters' actions were undoubtedly a substantial factor in causing this harm, with Defendant's website even noting that X Corp.'s relationships fell apart *after* Media Matters released its maliciously false piece.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff X Corp. prays for judgment in its favor and the following relief:

1. Actual and consequential damages caused by Defendants' misconduct, including but not limited to all general and special damages;

2. A preliminary and permanent injunction ordering Defendants to immediately delete, take down, or otherwise remove the article entitled "As Musk Endorses Antisemitic Conspiracy Theory, X Has Been Placing Ads for Apple, Bravo, IBM, Oracle, and Xfinity Next to Pro-Nazi Content From Its Web" from all websites and social media accounts owned, controlled, or operated, directly or indirectly, by Defendants;

3. X Corp.'s costs and attorneys' fees to litigate this action; and

4. For such other and further relief as the Court may deem just and proper.

AMERICAN OVERSIGHT

November 20, 2023

Respectfully submitted,

/s/ John C. Sullivan
John C. Sullivan
Texas Bar No. 24083920
S|L LAW PLLC
610 Uptown Boulevard, Suite 2000
Cedar Hill, TX 75104
Telephone: (469) 523-1351
Facsimile: (469) 613-0891
john.sullivan@the-sl-lawfirm.com

/s/ Judd E. Stone II
Judd E. Stone II*
Texas Bar No. 24076720
Christopher D. Hilton*
Texas Bar No. 24087727
STONE | HILTON PLLC
1115 W. Slaughter Lane
Austin, TX 78748
Telephone: (737) 465-7248
judd@stonehilton.com
chris@stonehilton.com

* Admission pending

Counsel for Plaintiff

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000790

To: Divine, Josh[Josh.Divine@ago.mo.gov]; Atkins, Jay[Jay.Atkins@ago.mo.gov]; Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: Scott, Todd[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1DAF1E35615D4B2E8DBB3F318306291A-SCOTT, TODD]
Sent: Mon 11/20/2023 6:41:08 PM (UTC-06:00)
Subject: Twitter – X lawsuit
gov.uscourts.txnd.383454.1.0_1.pdf

This might have some relevance to our investigation.

Sent from my iPhone

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; Hankinson, Jared[Jared.Hankinson@ago.mo.gov]; Johnson, Jeff[Jeff.Johnson@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; Noteboom, Grace[Grace.Noteboom@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Wagner, Ray[Ray.Wagner@ago.mo.gov]
From: Lyday, Bennett[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EACD91D740F2406EB8A1385B65BBDDED-LYDAY, BENNETT]
Sent: Mon 11/20/2023 9:19:16 AM (UTC-06:00)
Subject: Daily News/Media Roundup - Monday, November 20th, 2023

Good morning all,
Below is the relevant news for today and yesterday relating to the AGO, Missouri, and Nation:

AGO News:

BREAKING: Missouri AG office investigates allegations that Media Matters created accounts and gamed servers for hit piece targeting X
The Post Millennial | Katie Daviscourt
https://thepostmillennial.com/breaking-missouri-ag-office-investigates-allegations-that-media-matters-created-accounts-and-gamed-servers-for-hit-piece-targeting-x#google_vignette

-"On Sunday, Republican Missouri Attorney General Andrew Bailey announced that his team is investigating left-leaning news organization Media Matters over allegations of criminal and civil violations. This comes after Elon Musk announced that X-Corp will be launching a "thermonuclear lawsuit" against the company on claims that Media Matters enacted a "fraudulent attack" on X-Corp and in an attempt to "undermine freedom of speech and mislead advertisers." The specific allegations that Attorney General Bailey's Office is investigating pertain to recent findings that Media Matters allegedly created fake social media accounts to game the X servers in order to create false impressions for its hit piece on Elon Musk. These allegations went viral after they were shared on X by Human Events' Jack Posobiec. Attorney General Bailey responded to a comment posted by billionaire Elon Musk on X following a plea to US conservative attorneys general to investigate the organization and said: "My team is looking into this matter."... Attorney General Bailey has been a champion for freedom of speech and has a significant track record of defending the First Amendment. He has sued the Biden administration over free speech violations in Missouri v Biden and recently filed a joint-amicus brief, along with 18 other US attorneys general, against the gag order imposed on President Trump in his January 6 case."

-**Repost:** USSA News

Missouri Attorney General Promises Elon Musk He's Investigating Media Matters Over Nazi Report
Media ITE | Ken Meyer
https://www.mediaite.com/news/missouri-attorney-general-promises-elon-musk-hes-investigating-media-matters-over-nazi-report/

-"As Elon Musk threatens to sue Media Matters for their unflattering reporting on the social media platform once known as Twitter, Missouri Attorney General Andrew Bailey (R) seemed to offer Musk help in following through with that... Musk claimed Media Matters used alternate accounts and selectively curated data from the platform in order to misrepresent user experiences and how advertising works on the platform. In the middle of this pending legal showdown, X executive Joe Benarroch backed Musk up with a post about how Media Matters supposedly manipulated the data. Benarroch's post got picked up by...Jack Posobiec, and that got the attention of Stephen Miller, who offered some advice about how to sue Media Matters for fraud... Musk was clearly intrigued by Miller's reminder, and that's when Bailey more-or-less volunteered to lead the charge. "My team is looking into this matter," he said."

BREAKING: Missouri AG Office Investigates Allegations That Media Matters Created Accounts And Gamed Servers For Hit Piece Targeting X
Journal Posts | No Author Listed
https://journalposts.com/breaking-missouri-ag-office-investigates-allegations-that-media-matters-created-accounts-and-gamed-servers-for-hit-piece-targeting-x/

-"On Sunday, Republican Missouri Attorney General Andrew Bailey announced that his team is investigating left-leaning news organization Media Matters over allegations of criminal and civil violations. This comes after Elon Musk announced that X-Corp will be launching a "thermonuclear lawsuit" against the company on claims that Media Matters enacted a "fraudulent attack" on X-Corp and in an attempt to "undermine freedom of speech and mislead advertisers." The specific allegations that Attorney General Bailey's Office is investigating pertain to recent findings that Media Matters allegedly created fake social media accounts to game the X servers in order to create false impressions for its hit piece on Elon Musk. These

AMERICAN OVERSIGHT

allegations went viral after they were shared on X by Human Events' Jack Posobiec. Attorney General Bailey responded to a comment posted by billionaire Elon Musk on X following a plea to US conservative attorneys general to investigate the organization and said: "My team is looking into this matter."… Attorney General Bailey has been a champion for freedom of speech and has a significant track record of defending the First Amendment. He has sued the Biden administration over free speech violations in Missouri v Biden and recently filed a joint-amicus brief, along with 18 other US attorneys general, against the gag order imposed on President Trump in his January 6 case."

18 Republican attorneys general back Trump, file amicus brief against 'unconstitutional' gag order in J6 case

The Post Millennial l Katie Daviscourt

https://thepostmillennial.com/18-republican-attorneys-general-back-trump-file-amicus-brief-against-unconstitutional-gag-order-in-j6-case

-"On Thursday, Republican Attorney Generals from across the United States filed a joint-amicus brief calling on the courts to reverse the "unconstitutional" gag order against former President Donald J. Trump in the Jan. 6 conspiracy case against him. The states that signed onto the court filing include Alabama, Alaska… Missouri... In a press release, Missouri Attorney General Andrew Bailey argues that the gag order imposed on Trump is a "blatant violation of the First Amendment" that prevents Trump's "ability to speak freely ahead of the approaching presidential election and denies Americans the right to hear free, fair and open debate from all presidential candidates." "Missouri is a champion for free speech. President Trump, like so many Americans, has been silenced on social media platforms for daring to be a political opponent of Joe Biden, and now they're attempting to silence his right to speak at all," said AG Bailey. "This blatant weaponization of the criminal justice system is inherently un-American and goes against the very soul of our great nation. I'm proud to stand with President Trump in this new front in the war for free speech."… The attorney generals call on the courts to reinstate President Trump's right to freedom of speech, writing that "Given the magnitude—in importance and effect—of such an overly broad and vague prior restraint on President Trump's speech, this Court should reverse" the gag order… The order limits what Trump can say publicly about the conspiracy case leveled against him by political opponent Joe Biden's Department of Justice. The case, being tried by special prosecutor Jack Smith, alleges that Trump committed conspiracy to defraud the United States, conspiracy to obstruct an official proceeding, obstruction of and attempt to obstruct an official proceeding, and conspiracy against rights. Trump has pleaded not guilty."

Missouri AG issues report on axed Soros-backed prosecutor who 'let criminals take over the streets'

LifeSite l Ashley Sadler

https://www.lifesitenews.com/news/missouri-ag-issues-report-on-axed-soros-backed-prosecutor-who-let-criminals-take-over-the-streets/?utm_source=featured_news&utm_campaign=usa

-"The Republican attorney general of Missouri this week published a report concerning the recent ouster of a leftist St. Louis prosecutor, expressing hope that the document will help other states learn how to show "rogue, Soros-backed prosecutors" the door. Missouri Attorney General Andrew Bailey, who has made a name as a staunch opponent of transgender ideology and a defender of free speech against government censorship, filed the 62-page investigative document on Tuesday in a bid to "put into the public domain what went wrong here, how it happened, and what systems need to be put in place to prevent it from ever happening in the future." The so-called "Kim Gardner Report" details the steps taken by the attorney general to oust left-wing prosecutor Kim Gardner after her alleged mishandling of criminal cases… In comments to Fox News at the time, Bailey argued that nearly 12,000 criminal cases were dismissed under Gardner's watch, something he attributed to her failures as a prosecutor. "She bragged about coming to office with a new approach to criminal justice focused on racial equity," he told The Epoch Times. "She bragged about seeking to actively shrink the criminal justice system, and she did that by unlawfully refusing to do her job and let the criminals take over the streets."… Gardner became the subject of renewed scrutiny in February after a 21-year-old driver struck a 17-year-old volleyball player with his car, resulting in the loss of both of her legs. The situation sparked nationwide attention and outrage, particularly since the driver "was out on bond on a robbery charge despite nearly 100 bond violations including letting his GPS monitor die and breaking the terms of his house arrest," the AP reported. Gardner announced her resignation in May 2023 after Bailey filed a petition quo warrant calling for her removal following allegations of mishandling cases, the New York Post reported. Charges filed in the city more than doubled in the three months immediately after Gardner's resignation. "Kim Gardner hit the eject button and resigned as Circuit Attorney when it became clear that our lawsuit to remove her from office for her refusal to do her job was going to be successful," Bailey said in a press release issued by the attorney general's office. The attorney general told The Epoch Times he is exploring options to potentially bring civil or criminal charges against Gardner in relation to actions, including the alleged use of an unlicensed attorney, allegedly making a false public statement, and, according to state investigators, the pursuit of a nursing degree during work hours. He said he also hopes his report on Gardner serves as a model to help other states push out other progressive prosecutors "who, rather than protecting their victims, are creating more victims." "In a lot of major cities in the U.S., you have Soros-backed prosecutors who were like-minded with Kim Gardner," Bailey told The Epoch Times. "Any time you see that kind of dark money flowing into those races to buy those political offices, that creates enormous problems for the population."… The leftist billionaire's Open Society Foundation has provided massive funding for Democrats, including backing soft-on-crime progressive district attorneys and funneling millions of dollars into pro-abortion efforts, LifeSiteNews has reported."

AMERICAN OVERSIGHT

St. Louis Board of Aldermen pass bill to ban open carry of guns

Fox 2 l Joey Schneider

https://fox2now.com/news/missouri/st-louis-board-of-aldermen-pass-bill-to-ban-open-carry-of-guns/

-"Board Bill 107 now heads to the desk of Mayor Tishaura Jones after a third reading and board approval Friday. The bill is sponsored by 14th Ward Alderman Rasheen Aldridge.. As it stands, the legislation would prohibit the open carrying of firearms in the city of St. Louis except for law officers and those required to openly carry a gun as part of their official duty. The bill would not apply to those who are carrying a gun in a concealed manner and out of public view. According to the bill, anyone 18 or older who violates this new legislation could face a $500 fine and/or jail time of up to one month. Minors who violate the ordinance could face fines of $100 or be required to perform community service. This bill goes a step further than one that Mayor Jones signed this past summer. The newly-approved Board Bill 29 allows people to openly carry guns in the city if they have a concealed carry permit. Jones is also pushing for legislation that would prohibit military-grade weapons on city streets and prevent the transfer or sale of guns to minors, among other measures. Recent developments have come with some political pushback from Missouri Attorney General Andrew Bailey and Gov. Mike Parson. As for Board Bill 107, there would still be an obstacle to enforcing it, even if approved locally. It would either need approval through a Republican-heavy Missouri legislature or Missouri voters would need to pass a ballot initiative that allows local municipalities to control gun laws. The Missouri Secretary of State's Office lists three ballot initiatives (2024-114, 20224-115, 2024-117) that would authorize "the regulation by ordinance of the possession or carrying of firearms" to the City of St. Louis. One also calls for the same action in St. Louis County. These proposed ballot initiatives would need around 172,000 signatures to make way onto a 2024 ballot."

-**See More:** St. Louis aldermen ban open gun carry – now they have to persuade state legislators to agree

-**Reposted:** WebTimes

Missouri's voter ID law is back in court. Here's a look at what it does

Fox News l AP Repost

https://www.foxnews.com/politics/missouris-voter-id-law-court-heres-look-what-does

-"The lawsuit was filed in January on behalf of 13 Christian, Jewish and Unitarian Universalist leaders who support abortion rights. It seeks a permanent injunction barring the state from enforcing its abortion law, and a declaration that provisions of the law violate the Missouri Constitution…The lawsuit states the Missouri Constitution "does not tolerate this establishment into law of one particular religious view at the expense of others' religious freedom and of the health and lives of millions of Missourians." Missouri Senate President Pro Tem Caleb Rowden, a Republican, has called the lawsuit "foolish" and said lawmakers "were acting on the belief that life is precious and should be treated as such," not a religious belief…The lawsuit, filed on behalf of the faith leaders by Americans United for Separation of Church & State and the National Women's Law Center, said sponsors and supporters of the Missouri measure "repeatedly emphasized their religious intent in enacting the legislation."

Hancock & Kelley – Real political fist fights?

Fox 2 l Andy Banker

https://fox2now.com/news/hancock-kelley/hancock-kelley-real-political-fist-fights/

-"It was another Sunday morning of sometimes heated but always civil political debate on Hancock and Kelley, Sunday, November 19, 2023. John Hancock, Republican consultant, on the right and Michael Kelley, Democratic consultant, on the left took on the following topics…Missouri Attorney General, Andrew Bailey, releases a scathing report on former St. Louis Circuit Attorney, Kim Gardner, and pushes the state to ban people who resign from office from running for that office again."

This Supreme Court Term Will Have Big Implications For The First Amendment

Daily Caller l Katelynn Richardson

https://dailycaller.com/2023/11/18/this-supreme-court-term-will-have-big-implications-for-the-first-amendment/

-"One of the major themes emerging for the 2023-2024 term, alongside challenges to the administrative state, is the justices' interest in clarifying First Amendment law as it applies to social media and questions of government action. The high court's docket now includes multiple First Amendment cases, including one landmark case brought by the attorneys general of Missouri and Louisiana that revealed wide ranging government censorship efforts in which officials pressured social media companies to restrict speech on topics ranging from COVID-19 to elections. "This term is shaping up to be the most consequential one for the First Amendment in decades," Aaron Terr, Foundation for Individual Rights and Expression (FIRE) director of Public Advocacy, told the Daily Caller News Foundation…These cases include Murthy v. Missouri, challenging the federal government's communication with social media companies to censor speech, and NRA v. Vullo, a lawsuit brought by the National Rifle Association (NRA) against a New York official who pressured banks not to do business with them. Terr said there are "clear parallels" between the two cases…Murthy v. Missouri — formerly known as Missouri v. Biden — attracted heightened attention after a federal district court judge issued an injunction in July barring the Biden administration from coordinating with social media companies to censor speech. Judge Terry A. Doughty, a Trump appointee, found that the plaintiffs had "produced evidence of a massive effort by Defendants, from the White House to federal agencies, to suppress speech based on its content." The Supreme Court chose to pause the injunction while it hears

AMERICAN OVERSIGHT

the Biden administration's appeal, a decision Justice Samuel Alito worried would empower state actors to continue censoring speech…The NRA case deals with similar issues, though not on social media. The Second Circuit found in 2022 that the NRA failed to prove New York's Department of Financial Services Maria Vullo "crossed the line between attempts to convince and attempts to coerce." The organization argues this rationale gives government officials "free rein to financially blacklist their political opponents—from gun-rights groups, to abortion-rights groups, to environmentalist groups, and beyond." Two challenges against laws in Texas and Florida intended to crack down on censorship brought by NetChoice, a trade association whose members include tech companies like Google and Meta, have also made their way before the justices. The Fifth Circuit backed Texas' law prohibiting viewpoint censorship in September 2022, writing that corporations do not "have a freewheeling First Amendment right to censor what people say." But in May 2022 the Eleventh Circuit found Florida's law, which more narrowly restricts platforms from suspending political candidates and "journalistic enterprises," was likely unconstitutional... The Supreme Court could also still agree to hear a First Amendment case challenging bias response teams on university campuses, along with another case involving a county's "buffer zone" law around abortion clinics aimed at restricting pro-life sidewalk counseling."

Editorial: St. Louis needs immigrants. Ignore St. Charles County's unAmerican screed.

STL Post-Dispatch l Editorial Board

https://www.stltoday.com/opinion/editorial/editorial-st-louis-needs-immigrants-ignore-st-charles-countys-unamerican-screed/article_2e52cb30-8563-11ee-b3db-538bcbc4556d.html

AGO Tweets:



AMERICAN OVERSIGHT

Jack Poso @JackPosobiec · 22h

BREAKING: Media Matters created accounts and gamed the X server to create false impressions for their article

This isn't journalism, this is a hoax

> **Joe Benarroch**
> @benarroch_joe
>
> Media Matters created 3 accounts and followed 30 accounts similar to the ones in the article. They then constantly refreshed the timeline of posts (13X the number of ads served to this user as opposed to the median.) 50 impressions served agains the the content in the article, out of 5.5B served the whole day,
> points to the fact of how efficiently our model avoids content for advertisers. Data wins over allegations.
>
> 11:29 · 11/18/23 · **316K** Views
>
> **274** Reposts **42** Quotes
>
> **1,622** Likes **99** Bookmarks

474 6.1K 26K 3.7M

Show more replies

Elon Musk @elonmusk · 19h

Interesting. Both civil and criminal ...

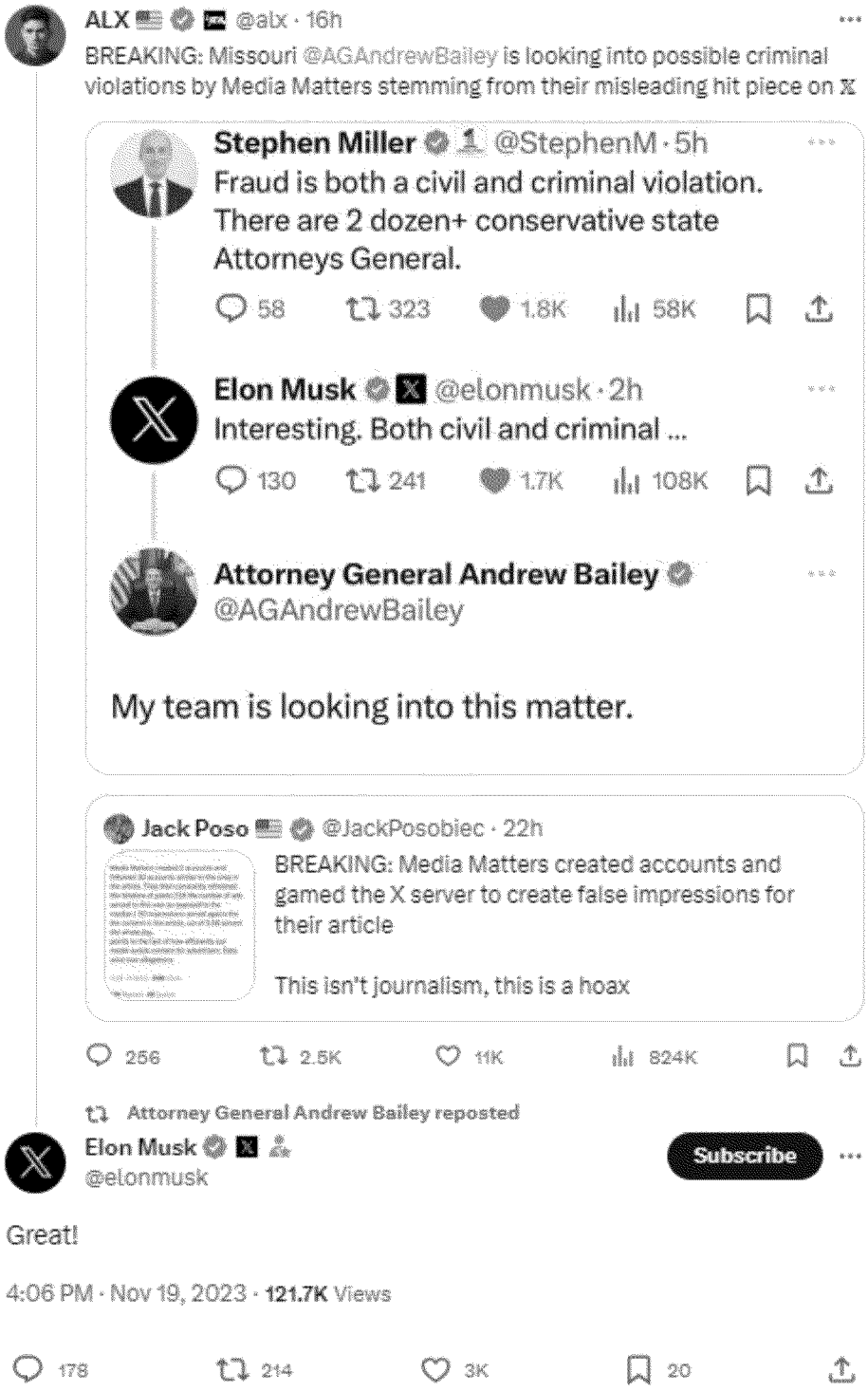
338 1.3K 21K 1.3M

Attorney General Andrew Bailey @AGAndrewBailey · 17h

My team is looking into this matter.

525 1.3K 18K 1.6M

AMERICAN OVERSIGHT



Missouri News:

Ethanol Industry Looking for Permanent Fix for Year-Round E15

Brownfeild Ag News l Mark Dorenkamp

https://brownfieldagnews.com/news/ethanol-industry-looking-for-permanent-fix-for-year-round-e15/

-"American Coalition for Ethanol CEO Brian Jennings tells Brownfield Congress continues to work on legislation to remove outdated EPA regulations that prohibit the sale of E15 during the summer. "The trick would be can we find a way to attach it to a must-pass vehicle between now and the end of the year, knowing there are very few legislative days (and) know there are very few legislative vehicles moving." Growth Energy CEO Emily Skor says seven Midwestern governors have also asked the EPA to allow their states to opt out of the program that limits E15 sales. "And they're simply waiting for EPA to say 'yes, that's fine.' And they say 'yes that's fine' with a rulemaking, but there is an official process that has to come to completion so at least those seven states can offer E15." She says those states, Iowa, Illinois, Missouri, Nebraska, Ohio, South Dakota, and Wisconsin, make up about 11 percent of the U.S. fuel market. Brownfield interviewed Skor and Jennings during the 2023 National Association of Farm Broadcasting Convention in Kansas City, Missouri this week (listen in link).

Missouri pension board rejects push by Vivek Malek for China divestment

Missouri Independent l Rudi Keller

https://missouriindependent.com/2023/11/20/missouri-pension-board-rejects-push-by-vivek-malek-for-china-divestment/

AMERICAN OVERSIGHT

-"The board overseeing Missouri's state employee pension plan voted down a proposal by state Treasurer Vivek Malek to sell off any investments in Chinese stocks and other securities. On a voice vote last week, the 11-member board of the Missouri State Employees Retirement System rejected Malek's call to punish the Asian economic powerhouse for COVID-19, spy balloons and the fentanyl crisis by pulling its pension investments in the Asian economic powerhouse. China has become a bad investment in recent years as its economy suffers from deflation, low population growth and an overbuilt housing market, Malek said in a Friday interview with The Independent. He also said China's threatening posture towards Taiwan, and friendship with Russia, make investments there a bad choice. "Given the economic decisions, and the economic projections, it is very clear that we should not be investing in China," Malek said…MOSERS provides pensions to most of the state government workforce. It is supported by contributions from the state treasury, employee payroll deductions and investment income. In recent years, returns on the system's portfolio, valued at $8.8 billion in June 2022, have not kept pace with growing liabilities. In 2001, Missouri contributed 12.3% of the state's covered payroll to MOSERS. The state contribution rate for fiscal 2022 was 23.51% and the trustees have asked that it be set at 28.75% for the coming fiscal year. Investments in China represent about $200 million of MOSERS's investment portfolio, Malek said…Malek has a seat on the 11-member MOSERS board because of his office, as does Commissioner of Administration Ken Zellers. The others are legislators, members of the pension system elected by other members, and appointees of the governor. Two legislators reached for comment on Thursday's vote were split. Senate Minority Leader John Rizzo, anIndependence Democrat, voted against divestment, while Rep. Don Mayhew, a Crocker Republican, voted for it. The MOSERS board should wait for guidance from the General Assembly on investments in China, Rizzo said…Mayhew said he supported Malek's proposal and thinks it will be revisited at a future meeting."

Columbia police expects an increase in vehicle break-ins this year

KOMU l Julius Evans

https://www.komu.com/news/midmissourinews/columbia-police-expects-an-increase-in-vehicle-break-ins-this-year/article_500157f4-86eb-11ee-9f13-db0a7970bed1.html

-"Attempted car break-ins and theft are on the rise throughout Columbia and the Columbia Police Department urges people to stay vigilant. "Over the last couple of years, attempted vehicle break-ins and vehicle break-ins have become one of the highest reported crimes in Columbia," police department spokesperson Christian Tabak said. "There's been a literal boom." According to Columbia police, officers investigated 503 incidents in 2020, 754 in 2021, and 916 in 2022. Tabak says the department expects incidents to exceed numbers reported in 2022. Tabak says there's no particular area where it all the break-ins are concentrated. He said this is a prevalent issue in not just Columbia, but also in Boone County, the state and nationally…Tabak said he highly encourages people to lock their doors, roll their windows up and for the community to work with each other and the police department."

'Guns should go silent' — Kansas City Congressman Emanuel Cleaver joins calls for cease-fire

KCUR l George Russell

https://www.kcur.org/news/2023-11-18/kansas-city-democrat-emanuel-cleaver-supports-ceasefire-now-resolution

-"U.S. Rep. Emanuel Cleaver II said for the first time on Saturday that he is in favor of a cease-fire in Gaza. The Kansas City Democrat also committed to withdrawing House Bill 6367, the Armed Conflict Migration Act, which is meant to facilitate humanitarian aid in Gaza but which critics say could inadvertently enable the displacement of Palestinians. "We have to have a cessation of hostilities," Cleaver told KCUR. "I think guns should go silent. We need to cease the fighting." Cleaver's comments echoed those he made during a meeting with 15 constituents and advocates at his Kansas City, Missouri, office…"

Pro-Israel rally held in St. Charles Sunday

Fox 2 l Joe Millitzer

https://fox2now.com/news/missouri/pro-israel-rally-held-in-st-charles-sunday/

-"Several St. Louis area groups continue to rally over the Israel-Hamas war. This afternoon, a pro-Israel rally was held for victims of anti-Semitism at Frontier Park on South Riverside Drive. Those attending the rally displayed pictures of those missing and presumed taken by Hamas in the October 7th attack on Israel. Chants were led for the return of the hostages."

Franklin County GOP to begin vetting candidates

EMissourian l Bill Miller Jr.

https://www.emissourian.com/local_news/franklin-county-gop-to-begin-vetting-candidates/article_71c179b8-863d-11ee-a047-4bb55f174d7d.html

-"The Franklin County Republican Central Committee (FCRCC) announced this week that it will begin vetting all GOP applicants for county elected positions to ensure that the "people who represent us truly believe in Republican values." According to a press release, "unless a candidate is vetted, checks to cover the filing fee will not be submitted to the County Clerk's office by the Central Committee nor will they be accepted by the county clerk without the approval of the Central Committee." The committee said the vetting process will include a multiple-choice test taken on a computer, as well as background and social media check. "As a final step those who do not pass the process will have the benefit of a full Central Committee vote for or against their candidacy" the FCRCC said in a statement. The FCRCC said the goal of the vetting process is to be able to identify and prevent candidates from running for office who are "elected as Republicans and govern as Democrats." But

AMERICAN OVERSIGHT

whether the committee's vetting process can prevent any candidate from appearing on a ballot is unclear. An attorney for the Missouri Republican Party issued an opinion Nov. 8, after other statewide GOP central committees announced they would begin similar vetting procedures saying he believed courts would ultimately find it unconstitutional…Franklin County Clerk Tim Baker said he has requested an opinion from the Missouri Secretary of State as to whether the FCRCC could actually prevent someone from appearing on a ballot through a vetting process. The Missourian was unable to reach Amy DeClue, FCRCC chair, prior to the publication of this article, but Carolyn Roettger, Lyon Township committeewoman, said there are questions the public may want to know about the legalities of the new policy and the risk of potential lawsuits. "The committee has studied the legal issues and is confident about these subjects," she said in an email. She added that vetting is used or being adopted in other Missouri counties. Roettger's statement is contrary to a recent warning issued by the Missouri Republican Party which stated that any county committee considering a vetting test would likely be sued and the state party would not reimburse them for their legal bills. The proposed vetting process has sparked debate among local Republicans over whether it is legal or appropriate. Some of the back and forth has taken place on social media…In response to the committee's post, Rep. Brad Banderman, R-St. Clair, noted that the applicable state statute "has a bit more detail than what's in this post and has direct bearing on some of what you have stated." Candidates "can pay to the treasurer of either the State or County political committee, additionally, it can also be submitted to the official accepting their declaration of candidacy," Banderman wrote."

St. Louis, Kansas City working to land state money for international flights

STL Post-Dispatch l Jack Suntrup

https://www.stltoday.com/news/local/business/st-louis-kansas-city-working-to-land-state-money-for-international-flights/article_3494ba42-849d-11ee-9f6b-83a42e7a72e0.html

-"St. Louis officials say they will work "aggressively" to secure state funds for new international flights from St. Louis Lambert International Airport… State legislators and Gov. Mike Parson this year set aside $5 million in federal COVID-19 relief funds to help sweeten the deal for airlines considering direct international flights from Missouri. The $5 million now available from the Missouri Department of Economic Development is for a minimum revenue guarantee to airlines for new international flights. With limited funds, and both cities expected to apply, neither may ultimately land enough state support to cover the entire cost of luring a route — meaning local matching funds could also play a role in drawing any new flights…Sen. Greg Razer, a Kansas City Democrat and member of the Senate Transportation Committee, said it would be "fantastic" to have international service in place for the 2026 games…Only nonprofits are eligible to apply for the funds, so Greater St. Louis Inc. and the Kansas City Area Development Council were expected to submit proposals…State guidance says a request for proposal should be submitted to the Department of Economic Development once prospective applicants engage an airline and are ready to enter negotiations. Information sought in the state's request for proposals includes the name of the airline and the proposed route and award amount, a description of the need and likely demand for the potential flight, potential effects on the community and state, as well as information to "explain sustainability after the Program has ended." The Department of Economic Development will then issue a proposal and enter negotiations with the applicant. After the applicant accepts the state's proposal, both parties will sign a grant agreement."

Governor Parson signs Executive Order 23-10, extending Missouri's drought alert until May 1, 2024.

KTTN l Missouri News

https://www.kttn.com/governor-parson-signs-executive-order-23-10-extending-missouris-drought-alert-until-may-1-2024/

-"Currently, the U.S. Drought Monitor indicates that all or portions of at least 85 Missouri counties are experiencing moderate, severe, or extreme drought conditions. The Executive Order declares a Drought Alert in these Missouri counties and any additional county that begins experiencing drought conditions…In response to Governor Parson's initial Executive Order declaring a drought alert on May 31, 2023, the Missouri Department of Natural Resources activated the Drought Assessment Committee, a workgroup set up to assess drought levels and work with impact teams on response and recovery recommendations. The Executive Order was set to expire on December 1, 2023. Extending the order will allow the Drought Assessment Committee and associated impact teams to continue supporting affected communities throughout the winter and continue to expand the state's capabilities to respond to and lessen the impacts of future droughts. During drought, local condition reports are crucial to understanding impacts to provide timely and appropriate assistance. Citizens can submit information about local drought conditions at Condition Monitoring Observer Reports (CMOR).

National News:

Former first lady Rosalynn Carter dead at 96

Fox News l Brianna Herlihy

https://www.foxnews.com/politics/former-first-lady-rosalynn-carter-dead

-"Former first lady Rosalynn Carter died with her family by her side at her home in Plains, Georgia, on Sunday, according to a statement by The Carter Center. She was 96. The wife of the 39th president of the United States died after she was admitted to hospice care on Friday. "Rosalynn was my equal partner in everything I ever accomplished," President Jimmy Carter said. "She gave me wise guidance and encouragement when I needed it. As long as Rosalynn was in the world, I always knew somebody loved and supported me." She is survived by her husband, her four children, 11 grandchildren and 14 great-grandchildren."

AMERICAN OVERSIGHT

Biden admin poised to green-light tribal gambling expansion despite opposition from Native Americans, Dems
Fox News l Thomas Catenacci
https://www.foxnews.com/politics/biden-admin-poised-green-light-tribal-gambling-expansion-despite-opposition-native-americans-dems

-"The Department of the Interior's Bureau of Indian Affairs (BIA) is expected to issue a final environmental impact statement (EIS) potentially green-lighting the Oregon-based Coquille Indian Tribe's proposal to develop and operate a casino outside its territory in Medford, Oregon, as soon as this week, people familiar with the federal review process told Fox News Digital. The BIA issued its draft EIS in November 2022 for the proposal and the public comment period for that action lasted until late February. A wide range of voices, including several regional tribes, tribes nationwide and bipartisan lawmakers, blasted the draft EIS which recommended the federal government approve Coquille's move to build an off-reservation casino, the so-called Cedars at Bears Creek…In a similar letter to Newland, the California Nations Indian Gaming Association, which represents dozens more federally-recognized tribal governments on issues related to gaming, similarly argued that finalizing the draft EIS would threaten its members' "sovereign rights" as tribes. The issue over whether to approve the Coquille's casino has been hotly-contested since the tribe first proposed the plan about a decade ago. The plan was proposed under an Obama administration policy that eased gaming and trust-land acquisition restrictions, an action that critics have worried the Biden administration is doubling down on. But opponents of the Cedars at Bear Creek proposal — including the California Nations Indian Gaming Association, Tribal Alliance of Sovereign Indian Nations, other tribes and lawmakers — have particularly argued that developing the project would infringe upon other nearby tribes' rights and have the impact of lowering their gaming revenue…"

Supreme Court to Hear Challenge to Development Impact Fees
Epoch Times l Matthew Vandum
https://www.theepochtimes.com/us/supreme-court-to-hear-challenge-to-development-impact-fees-5532459?ea_src=frontpage&ea_med=lead-special-judiciary-medium-0

-"The Supreme Court will soon hear a California case challenging the power of governments to use the permitting process to force property owners to pay large development fees. The court announced last week that it will hear oral argument in the case, Sheetz v. County of El Dorado (court file 22-1074), on Jan. 9. The homeowner is suing El Dorado County, California, which is near the state's border with Nevada, claiming the county violated his rights under the Fifth Amendment's takings clause and the Fourteenth Amendment…In 2016, Mr. Sheetz purchased a vacant lot with the intention of building a small, manufactured home in which he and his wife would live in retirement and raise their grandson. But when he sought a building permit from the county, he was told he would have to pay a so-called traffic impact fee of $23,420. The county told Mr. Sheetz that he was required to pay the fee because of local legislation that aimed to shift the cost of addressing existing and future road deficiencies onto new development. This means, his lawyers argue, that the fee was imposed without any evidence tying the construction project to any specific public costs or impacts. The fee financing the unrelated road improvements bore neither an "essential nexus" or "rough proportionality" to whatever local impact his construction project would result in, Mr. Sheetz argued in his petition (pdf). He said the fee was an unconstitutional "exaction" according to the Supreme Court precedents of Nollan v. California Coastal Commission (1987) and Dolan v. City of Tigard (1994). An exaction is a condition for development imposed on a developer to offset the costs of the development to a local government. An exaction is similar to an impact fee, which is a direct payment made to a municipality in lieu of conditions being imposed on the development. Mr. Sheetz paid the fee under protest and sued, arguing the fee was an unconstitutional permit condition under the Supreme Court's 2013 ruling in Koontz v. St. Johns River Water Management District, a case in which PLF acted…But a state court ruled against him, finding the required fee was authorized by legislation. The California Court of Appeal and the California Supreme Court also ruled against him. Mr. Sheetz filed his opening brief (pdf) in the case last week, arguing that legislatures cannot use the permit process to coerce owners into paying development fees."

Appeals Court to Hear Arguments on Trump Gag Order
Epoch Times l Catherine Yang
https://www.theepochtimes.com/us/appeals-court-to-hear-arguments-on-trump-gag-order-5532412?ea_src=frontpage&ea_med=lead-special-judiciary-title-0

-"A panel of three judges in the U.S. Court of Appeals for the D.C. Circuit will hear arguments on Nov. 20 regarding the gag order on former President Donald Trump, which has prohibited him from speaking about his prosecutors and others as he campaigns for reelection. The order has since been temporarily lifted while the defense appeals it. President Trump's team is expected to argue that the order is overly broad, highly speculative, and a violation of the candidate's First Amendment rights. Attorneys from special counsel Jack Smith's office are expected to counter that the order is narrowly tailored, and thus admissible, because it allows the former president to freely criticize his chief political rival, President Joe Biden, and his administration."

US Supreme Court Asked to Rule on Illinois Semi-Automatic Weapons Ban
Epoch Times l Jack Phillips
https://www.theepochtimes.com/us/u-s-supreme-court-asked-to-rule-on-illinois-ban-on-semiautomatic-weapons-5532431

AMERICAN OVERSIGHT

-"State Rep. Dan Caulkins, a Republican, told local media outlets that he is petitioning the high court because he believes the Illinois Supreme Court's decision to uphold the ban is tainted. He argued that Justices Elizabeth Rochford and Mary Kay O'Brien should have recused themselves from the case earlier this year, saying that both judges received donations from the Gun Violence Prevention PAC, which has called for "banning assault weapons and large-capacity magazines." Justice Rochford and Justice O'Brien received "disproportionate campaign contributions, and both made a commitment to support the legislative policy of banning assault weapons," Mr. Caulkins told ABC20-TV, adding that Illinois Gov. J.B. Pritzker and other Democrats have also given donations to those justices…His filing with the top U.S. court, he said, is about the "thousands of plaintiffs who joined [the] lawsuit and were denied a fair proceeding at the Illinois State Supreme Court," adding that the court "does not have an objective standard for recusals."… The petition argues, in part, that the Illinois Supreme Court's 4–3 August ruling upholding the law banning a range of semi-automatic weapons and magazines violated due process under the Constitution's 14th Amendment. It also asks for a review of the case based on the Second Amendment, the 14th Amendment's equal protection clause, and the state Constitution. "There exists no rational basis to criminalize one person indistinguishable in any manner based on conduct from another immunized from the criminal liability or to speculate that the prohibited present a greater risk for mass shootings than the grandfathered based on the date an assault weapon was acquired," the lawmaker's petition to the Supreme Court reads…The "time of acquisition" of a firearm also "bears no connection to safety or danger," according to the petition. "The resulting arbitrary classification on the face of the Assault Weapons Partial Ban fails all levels of scrutiny test and should be invalidated on this additional basis." The law prohibits the possession, manufacture, and sale of those weapons and magazines, banning a large number of different rifles and handguns. Those who owned such guns and accessories when the law went into effect were required to register them with the Illinois State Police…While it's unclear whether the U.S. Supreme Court will take up the case, the high court has recently shown interest in taking up gun-related cases. In 2022, the top court issued a 6–3 ruling against a New York state law establishing that a person has the right to carry a pistol in public under the Constitution's Second Amendment. The court will rule on whether people who are under domestic violence protection orders should lose access to their firearms. It also will issue a ruling on whether a former superintendent of the New York State Department of Financial Services violated the National Rifle Association's (NRA) rights after her office issued guidance memos to banks and insurance companies encouraging them to monitor risks associated with NRA-endorsed insurance products after a shooting in Parkland, Florida, several years ago."

Supreme Court Schedules Oral Argument in Challenge to Bureaucrats' Power

Epoch Times I Matthew Vandum

https://www.theepochtimes.com/us/supreme-court-schedules-oral-argument-in-challenge-to-bureaucrats-power-5531659

-"The Supreme Court has scheduled several high-profile cases for oral argument in January 2024, including an important challenge to the power of the so-called administrative state…The court's ultimate ruling could alter the current balance of power among Congress, executive agencies, and the nation's judiciary by curbing the legal underpinnings of the modern administrative state. The authority of federal agencies has been increasingly questioned in recent years as the conservative majority on the Supreme Court has grown. Another case to be heard in January concerns whether a Muslim man from Oregon can continue suing the FBI after the agency removed his name from the "no-fly list" but wouldn't promise to keep it off. Yet another involves a Texas farmer who is suing his state's transportation department for damaging his family's farm. Ten cases in all were scheduled on Nov. 17 for hearing dates running from Jan. 8 to Jan. 17…The two most-watched cases, Relentless Inc. v. Department of Commerce (court file 22-1219) and Loper Bright Enterprises Inc. v. Raimondo (court file 22-451), will be heard back-to-back on Jan. 17…The two cases date to 2020, when the U.S. Department of Commerce's National Oceanic and Atmospheric Administration and its National Marine Fisheries Service implemented a final rule to compel fishing companies such as those involved in the case to pay for human monitors aboard their vessels…They argue that the federal Magnuson-Stevens Fishery Conservation and Management Act, which regulates fisheries, doesn't support such a rule and that Congress never authorized the government to create such a program. In Relentless and Loper Bright, the court may narrow the application of the so-called Chevron deference doctrine that the Supreme Court articulated in the 1984 landmark ruling Chevron v. Natural Resources Defense Council…Attorney Curt Levey, president of the Committee for Justice, a conservative legal advocacy nonprofit, told The Epoch Times in a recent interview that the Supreme Court accepted the Loper Bright and Relentless cases for a reason. The court will probably overturn Chevron deference, he said. In the two cases, the court specifically granted certiorari on the question of whether Chevron should be overruled, Mr. Levey said. He noted that the question the court agreed to decide states: "Whether the Court should overrule Chevron or at least clarify that statutory silence concerning controversial powers expressly but narrowly granted elsewhere in the statute does not constitute an ambiguity requiring deference to the agency." The court isn't "necessarily even going to rule on whether the fishermen have to pay for observers on their boats," and may not even address whether the regulation is constitutional, he said. "It's going to do something significant," he said…"

Wave Of Retirement Announcements Could Mean Major Shakeup On Capitol Hill

Daily Caller I Jake Smith

https://dailycaller.com/2023/11/19/wave-retirement-announcements-mean-major-shakeup-capitol-hill/

-"Dozens of members of Congress have announced they will not run to keep their seats in 2024, throwing a wrench in the race

AMERICAN OVERSIGHT

for control of the House and Senate. Democratic Michigan Rep. Dan Kildee announced on Thursday that he will not seek reelection for his current seat in 2024, making him the ninth member of Congress to make such an announcement in November alone, according to Ballotpedia. In total, 34 members of both the House and Senate have said they will not seek reelection for their current seats next year, decisions that could prove crucial in the fight for control of the narrowly divided House and Senate. In the Republican-controlled House, 27 members are not seeking reelection for their current seats, according to Ballotpedia. In the Senate, five Democratic and two Republican members will not seek reelection…Nov. 9 was an even bigger day for Capitol Hill reporters, as Democratic West Virginia Sen. Joe Manchin, having served in Congress for over a decade, announced that he will not run for reelection in 2024. Manchin's seat is now characterized by Cook Political Report as a "Solid R," and Republican West Virginia Gov. Jim Justice is the frontrunner candidate to fill the vacancy…All 435 seats in the House are open to contest in 2024, as are 34 seats in the Senate, including one in a special election. Republicans currently hold a five-seat majority in the House, while Democrats have 51 Senate seats, including independents who caucus with the Democrats, to the Republicans' 49."

I hope everyone has a great day!

Best,

Bennett Lyday | Policy & Operations Specialist
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
O: (573) 751-4390
C: (573) 645-9671
Bennett.Lyday@ago.mo.gov

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: Joe McLean[joe.mclean@gray.tv]
Sent: Tue 11/21/2023 9:02:17 AM (UTC-06:00)
Subject: TWO MEDIA QUESTIONS -- Gray TV

Good morning, Madeline!

Two quick things:

- Can you provide me with AG Bailey's assessment of Elon Musk's endorsement of an antisemitic post on X? How does/will this factor into his decision to get involved in the dispute?
- With the Missouri Supreme Court's decision not to consider the appeals of the ballot language or fiscal note issues, what is Bailey's prediction about the law taking effect if voters approve this version of the initiative? Does he plan to challenge the amendment if it passes (perhaps in the same way that some Ohio lawmakers are doing?)

Thanks so much!

Mc

Joe McLean
Missouri Capitol Bureau Chief
joe.mclean@gray.tv
816-777-8401
205 E Capitol Ave. • Jefferson City, MO



gray
Television • Digital • Mobile
KMOV4 KCTV5 KY3 KFVS12 WGEM

AMERICAN OVERSIGHT

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

X CORP., a Nevada corporation,

Plaintiff,

v.

MEDIA MATTERS FOR AMERICA, a Washington, D.C. non-profit corporation, and **ERIC HANANOKI**,

Defendants.

Case No. 4:23-cv-1175

JURY TRIAL DEMANDED

COMPLAINT

1. Defendant Media Matters for America ("Media Matters") is a self-proclaimed media watchdog that decided it would not let the truth get in the way of a story it wanted to publish about X Corp. Looking to portray X's social networking platform as being dominated by "white nationalist and anti-Semitic conspiracy theories," Media Matters knowingly and maliciously manufactured side-by-side images depicting advertisers' posts on X Corp.'s social media platform beside Neo-Nazi and white-nationalist fringe content and then portrayed these manufactured images as if they were what typical X users experience on the platform. Media Matters designed both these images and its resulting media strategy to drive advertisers from the platform and destroy X Corp.

2. Plaintiff X Corp. operates the X social media platform with over 500 million active monthly users. X facilitates free expression and open discourse by enabling its users to create and share their own content and to message and comment on other users' posts. These posts appear

AMERICAN OVERSIGHT

sequentially to users in "feeds," which occasionally include paid advertisements—the overwhelming source of X Corp.'s revenue.

3. Users shape their own experiences on X. Users curate the content on their own feeds by choosing to "follow" other users, thereby determining which posts are presented to them. Most users are served a variety of content based on an algorithm that takes account of who that user follows and what that user engages with. But X also provides its users the option to forgo algorithmically suggested posts altogether, thereby enabling a user to view only the content that user chooses to view.

4. As the most prominent online platform dedicated to hosting free speech, X and its predecessor Twitter have long been the target of Media Matters. In just the last year, Media Matters has published a series of articles threatening X's relationships with massive multinational advertisers and global publishers, including Amazon, eBay, Major League Baseball, New York Times Co., Samsung, Sports Illustrated, The Wall Street Journal, USA Today, Office Depot, Nokia, Dish, Bayer, Tyson Foods, Honeywell, Discovery, FanDuel, Thermo Fisher, National Women's Soccer League, the Pittsburgh Steelers, the Atlanta Falcons, Manchester City, DraftKings, FanDuel, T-Mobile, and The Athletic.[1]

5. This November alone Media Matters released over twenty articles (and counting) disparaging both X Corp. and Elon Musk—a blatant smear campaign.

6. For the last several years, Media Matters has falsely portrayed Twitter, now X, as a risky, unsafe platform for advertisers. Contrary to these efforts, 99% of X's measured ad placement

[1] *See, e.g.*, Eric Hananoki, *X is placing ads for Amazon, NBA Mexico, NBCUniversal, and others next to content with white nationalist hashtags*, MEDIA MATTERS FOR AMERICA, (Nov. 17, 2023, 12:16 PM), https://www.mediamatters.org/twitter/x-placing-ads-amazon-nba-mexico-nbcuniversal-and-others-next-content-white-nationalist.

AMERICAN OVERSIGHT

in 2023 has appeared adjacent to content scoring above the Global Alliance for Responsible Media's brand safety floor.

7. Undeterred by the truth, Media Matters has opted for new tactics in its campaign to drive advertisers from X. Media Matters has manipulated the algorithms governing the user experience on X to bypass safeguards and create images of X's largest advertisers' paid posts adjacent to racist, incendiary content, leaving the false impression that these pairings are anything but what they actually are: manufactured, inorganic, and extraordinarily rare.

8. Media Matters executed this plot in multiple steps, as X's internal investigations have revealed. First, Media Matters accessed accounts that had been active for at least 30 days, bypassing X's ad filter for new users. Media Matters then exclusively followed a small subset of users consisting *entirely* of accounts in one of two categories: those known to produce extreme, fringe content, and accounts owned by X's big-name advertisers. The end result was a feed precision-designed by Media Matters for a single purpose: to produce side-by-side ad/content placements that it could screenshot in an effort to alienate advertisers.

9. But this activity *still* was not enough to create the pairings of advertisements and content that Media Matters aimed to produce.

10. Media Matters therefore resorted to endlessly scrolling and refreshing its unrepresentative, hand-selected feed, ***generating between 13 and 15 times more advertisements per hour than viewed by the average X user*** repeating this inauthentic activity until it finally received pages containing the result it wanted: controversial content next to X's largest advertisers' paid posts.

11. Media Matters omitted mentioning any of this in a report published on November 16, 2023 that displayed instances Media Matters "found" on X of advertisers' paid posts featured

AMERICAN OVERSIGHT

next to Neo-Nazi and white-nationalist content. Nor did Media Matters otherwise provide any context regarding the forced, inauthentic nature and *extraordinary rarity* of these pairings.

12. However, relying on the specious narrative propagated by Media Matters, the advertisers targeted took these pairings to be anything *but* rare and inorganic, with all but one of the companies featured in the Media Matters piece withdrawing all ads from X, including Apple, Comcast, NBCUniversal, and IBM—some of X's largest advertisers. Indeed, in pulling all advertising from X in response to this intentionally deceptive report, IBM called the pairings an "entirely unacceptable situation."[2] Only Oracle did not withdraw its ads.

13. The truth bore no resemblance to Media Matters' narrative. In fact, IBM's, Comcast's, and Oracle's paid posts appeared alongside the fringe content cited by Media Matters for ***only one*** viewer (out of more than 500 million) on all of X: ***Media Matters***. Not a single authentic user of the X platform saw IBM's, Comcast's, or Oracle's ads next to that content, which Media Matters achieved only through its manipulation of X's algorithms as described above. And in Apple's case, only two out of more than 500 million active users saw its ad appear alongside the fringe content cited in the article—at least one of which was Media Matters.

14. Media Matters could have produced a fair, accurate account of users' interactions with advertisements on X via basic reporting: following *real users*, documenting the *actual, organic* production of content and advertisement pairings. Had it done so, however, it would not have produced the outcome Media Matters so desperately desired, which was to tarnish X's reputation by associating it with racist content. So instead, Media Matters chose to maliciously misrepresent the X experience with the intention of harming X and its business.

[2] Hannah Murphy, *IBM pulls adverts from X after report finding they ran next to Nazi Content*, FINANCIAL TIMES (Nov. 16, 2023), https://www.ft.com/content/647b4c4d-f4d5-46cd-bc26-8c943b6995e7.l.

AMERICAN OVERSIGHT

PARTIES

15. Plaintiff X Corp. is a corporation organized and existing under the laws of the State of Nevada, with its principal place of business in San Francisco, California. Plaintiff conducts significant business in Texas, including maintaining significant offices in Texas. It operates the social media platform "X" (formerly "Twitter"), an internet-based service that enables users to create and share their own content, interact with other users, and curate feeds of content.

16. Defendant Media Matters is a web-based publisher incorporated under the laws of the District of Columbia with its principal place of business at 800 Maine Avenue SW, Suite 400, Washington, D.C. 20024. The organization's purpose is "to systematically monitor" conservative media and publish reports based on this purported reporting.

17. Defendant Eric Hananoki is a writer for Defendant Media Matters and is domiciled in Maryland.

JURISDICTION & VENUE

18. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because there exists complete diversity of citizenship between Plaintiff and Defendants and the amount in controversy exceeds $75,000.00.

19. This Court has personal jurisdiction over Media Matters because Media Matters' campaign against X Corp. was purposefully directed at, among others, relationships with advertisers who are located in, have a significant presence in, or transact substantial business in Texas. Likewise, this Court has personal jurisdiction over Media Matters because its attempts to harm X Corp.'s reputation potentially threatened X Corp.'s relationships with its hundreds of millions of users, including millions of Texas users. This Court has personal jurisdiction over Hananoki for substantially the same reasons.

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000808

20. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims occurred herein, because a substantial part of the property that is subject of the action—that is, X's business and advertising—is situated in the district, and because all Defendants are subject to personal jurisdiction in this District.

GENERAL ALLEGATIONS

I. X is a Safe Platform for Users and Advertisers, Despite Media Matters' Deceptions.

21. X is a social media platform that remains in operation due to its loyal users and advertisers. X Corp. invests heavily in technologies that work in tandem to facilitate safe and effective interactions between users and advertisers—technologies that, under normal, organic conditions operate seamlessly.

22. As a first layer of protection for advertisers, X applies default protections to all posts. These protections are designed to prevent advertisements from being placed next to content that violates community guidelines. When users operate within X's community guidelines, these default mechanisms are effective and have a long history of successfully protecting X's advertisers from undesirable interactions with fringe content.

23. As a second layer of protection, X provides advertisers with opt-in options. These options allow advertisers to further address any specific concerns they may have about their advertisements being seen next to specific content. Here, advertisers can specify which key words and user handles they *do not* want their posts to appear by.

24. These protections and others create a safe environment for advertisers that allow them to reach their target audiences while protecting their brands, as Media Matters well knows.

AMERICAN OVERSIGHT

II. Media Matters Systematically Manipulated the X User Experience to Defame X.

25. On November 16, 2023, Media Matters published a false, defamatory, and misleading article with the headline, "*X has been placing ads* for Apple, Bravo, IBM, Oracle, and Xfinity[3] next to pro-Nazi content," claiming that X was responsible for anti-Semitic content being paired with X's advertisers' paid posts.[4] This statement was not true, and Media Matters knew it. As explained below and displayed in an X internal review, this title is false in that Media Matters itself—not X—was responsible for placement of the content it identified through its willful exploitation of X's user features—a result it *specifically intended* to bring about. X in fact has many default safeguards that *prevent* the platform from displaying content in the manner artificially achieved by Defendant.

26. Further, in the body of the piece, Media Matters falsely claims that it "recently *found* ads for Apple, Bravo, Oracle, Xfinity, and IBM next to posts that tout Hitler and his Nazi Party on X."[5] Media Matters did not *find* pairings that X passively allowed on the platform. Media Matters *created* these pairings in secrecy, to manufacture the harmful perception that X is at best an incompetent content moderator (a harmful accusation for any social media platform), or even worse that X was somehow indifferent or even encouraging to Nazi and racist ideology.

27. On X, users can control the content on their feeds. When users show interest in particular topics, ads will generate that relate to those topics. Media Matters exploited these

---

[3] XFinity is a Comcast service.

[4] *See* Eric Hananoki, *As Musk endorses antisemitic conspiracy theory, X has been placing ads for Apple, Bravo, IBM, Oracle, and Xfinity next to pro-Nazi content*, MEDIA MATTERS FOR AMERICA, (Nov. 16, 2023, 10:05AM), https://www.mediamatters.org/twitter/musk-endorses-antisemitic-conspiracy-theory-x-has-been-placing-ads-apple-bravo-ibm-oracle.

[5] *See id.* (emphasis added).

AMERICAN OVERSIGHT

features by creating a secret X account precision-designed to evade normal safeguards, manipulating every aspect of the system through which posts and advertisements appear, ultimately creating the side-by-side images of objectionable content and advertisements.

28. X's internal user data tells the story of just how far Media Matters went to manufacture an inorganic user experience strictly aimed at creating an interaction between controversial content and big-name advertisers that was seen only by the Media Matters account and then published broadly.

29. First, Media Matters set out on their attempt to evade X's content filters for new users by specifically using an account that had been in existence for more than thirty days.

30. Next, Media Matters set its account to follow only 30 users (far less than the average number of accounts followed by a typical active user, 219), severely limiting the amount and type of content featured on its feed. *All* of these users were either already known for posting controversial content or were accounts for X's advertisers. That is, *100% of the accounts* Media Matters followed were either fringe accounts or were accounts for national large brands. In all, this functioned as an attempt to flood the Media Matters account with content only from national brands and fringe figures, tricking the algorithm into thinking Media Matters *wanted* to view both hateful content and content from large advertisers.

31. Even this did not produce Media Matters' intended result. An internal review by X revealed that Media Matters' account started to alter its scrolling and refreshing activities in an attempt to manipulate inorganic combinations of advertisements and content. Media Matters' excessive scrolling and refreshing generated between 13 and 15 times more advertisements per hour than would be seen by a typical user, essentially seeking to force a situation in which a brand ad post appeared adjacent to fringe content.

AMERICAN OVERSIGHT

32. Eventually, through intentionally evading X's multiple safeguards by curating the content on its feed and then repeatedly attempting to create pairings of advertisements for major brands with controversial content, Media Matters finally achieved its goal. Accordingly, it took screenshots of posts from IBM, Apple, Bravo, Xfinity, and Oracle that Media Matters engineered to appear adjacent to inflammatory, fringe content.

III. To Defame X, Media Matters Hid Its Manipulation from Readers and Advertisers.

33. Media Matters generated a specific, intended result that was not only inorganic, but exceedingly (and demonstrably) rare, all while taking specific steps to obscure this in its November 16, 2023 article. The overall effect on advertisers and users was to create the false, misleading perception that these types of pairings were common, widespread, and alarming. Media Matters hid its manipulations through omissions, deceptive image selections, misrepresentations, and secrecy settings.

34. Media Matters omitted in its entirety its process of manufacturing these ad pairings. It did not include in its article that it created a user that *only* followed 30 accounts that either belonged to fringe figures or major national brands. Neither readers nor advertisers had any way of knowing that the entire feed was orchestrated to generate the remarkably rare combinations. Media Matters also omitted mentioning in its entirety its excessive scrolling and refreshing, allowing users to believe (falsely) that the "report" was produced under circumstances that were organic and unmanipulated.

35. Media Matters also omitted and made no attempt to clarify the rarity of these pairings. The representation put forth by Media Matters constituted 0.0000009090909 percent of impressions served on the day in question. Most or all of these pairings were not seen by literally

AMERICAN OVERSIGHT

anyone besides Media Matters' own manipulated account, and no authentic user of the platform has been confirmed to have seen any of these pairings.

36. Media Matters' image choice in its smear also functioned to hide the true nature of its report. All images selected contained *only* the ad and the controversial content, with all other posts absent from view. That is, had readers been able to see the posts above and below the pairings, they would have easily gleaned the highly-specific nature of the small number of accounts Media Matters chose to follow. Media Matters chose to show *every* pairing in its article using this deceptive technique—hiding its deceit through even more deceit.

37. Tellingly, Media Matters used X's privacy features in order to hide its methodology from its readers. That is, Media Matters set this account to "private," blocking anyone from seeing which accounts Media Matters actually followed, thus disallowing anyone from understanding how its feed was manipulated. Indeed, Media Matters at no point includes images *with any information about the account that was exposed to these images*; the cropped nature of Media Matters' deceptive screenshots leaves its profile picture out of frame.

38. Accordingly, Media Matters created the impression that these pairings were organic, accurate, and representative of the typical X user's experience, which actually and demonstrably misled users and advertisers, causing harm to X Corp.

V. Media Matters Caused Advertisers to Believe the Pairings Were Organic.

39. After the publication of Media Matters' false smear on November 16, 2023, advertisers pulled their ads from the site, which, as Media Matters admits, only happened after it reported that X was placing ads alongside white nationalist and pro-Nazi content. Included in these companies, which all referenced antisemitic content in their withdrawal from X, are:

AMERICAN OVERSIGHT

Comcast. After Media Matters' November article featured a contrived, misleading, and inflammatory image showing an ad for Xfinity next to a pro-Nazi post, its parent company Comcast decided to pull *all* ads for Comcast entities from X.

NBCUniversal. As the parent company of Bravo and a subsidiary of Comcast, NBCUniversal pulled all advertising from X after publication of the article.

Apple. The day after publication of the article, which also featured an Apple ad contrived to be placed next to fringe content, Apple—one of X's largest clients—pulled all of its ads from the platform.

IBM. As previously discussed, IBM pulled all ads immediately after the publication of the article.

40. Media Matters' manipulation was so severe that companies not even featured in the article also pulled ads from X. These companies include Lionsgate, Warner Bros. Discovery, Paramount, and Sony.

VII. Media Matters Intended to Harm X's Revenue Stream.

41. Media Matters represents itself as "a progressive research and information center dedicated to comprehensively monitoring, analyzing, and correcting *conservative misinformation* in the U.S. media."[6] Since its launch in 2004, it has engaged in an all-out campaign of "guerilla warfare and sabotage" on conservative news sources.[7] In this context, X Corp. and Elon Musk are a critical Media Matters target because X is the most prominent online platform that permits users to share all viewpoints, whether liberal or conservative, and Mr. Musk is the most prominent voice

[6] About US, MEDIA MATTERS FOR AMERICA (2023), https://www.mediamatters.org/about-us (emphasis added).

[7] Ben Smith, *Media Matters' war against Fox*, POLITICO (Mar. 26, 2011 7:23AM), https://www.politico.com/story/2011/03/media-matters-war-against-fox-051949.

AMERICAN OVERSIGHT

on the platform and a passionate supporter of free speech. In taking down two forces it already found objectionable, Media Matters had the chance to starve X of ad revenue and thereby silence *all* of the voices on X. Nothing in Media Matters' campaign was coincidental or accidental. And, its guerilla attack on X is working, driving away X's advertisers and revenue precisely as intended.

FIRST CAUSE OF ACTION

Interference With Contract

42. X Corp. re-alleges and incorporates by reference the above allegations.

43. At all relevant times, Defendants were aware that Plaintiff contracted with various third parties, including but not limited to Apple, NBCUniversal, Comcast, Bravo, Apple, and IBM, to sell ads on the X platform, as clearly demonstrated by the many articles written by Defendants on the topic.

44. Defendant Media Matters intentionally interfered with contracts between X Corp. and its advertisers, including but not limited to Apple, NBCUniversal, Comcast, Bravo, Apple, and IBM—all clients with existing advertisement agreements that were casualties of Defendant's misrepresentations and ceased advertising on the X platform as a direct result.

SECOND CAUSE OF ACTION

Business Disparagement

45. X Corp. re-alleges and incorporates by reference the above allegations.

46. Defendant Media Matters made statements that disparaged the quality of X Corp.'s product, X.

47. Defendant Media Matters made these statements as statements of fact, not opinion. Defendant Media Matters represented that X "has been placing" advertisements next to anti-Semitic and racist materials. It represented that it "found" these materials next to advertisements.

AMERICAN OVERSIGHT

48. As extensively explained above, these statements made by Defendant Media Matters were false.

49. Defendant Media Matters intentionally made these statements with clear malice, well aware of their falsity.

50. X Corp. suffered monetary loss as a result of these statements: companies mentioned in Defendant's false and misleading article pulled their advertising from X indefinitely.

THIRD CAUSE OF ACTION

Interference with Prospective Economic Advantage

51. X Corp. re-alleges and incorporates by reference the above allegations.

52. X Corp. was engaged in economic relationships that would have resulted in an economic benefit to X Corp. X Corp. had relationships with advertisers that pulled their spending in light of Defendant Media Matters' article and had every reason to suspect that these relationships would continue.

53. At all relevant times, Defendant Media Matters knew of these relationships, as they were described in its "reporting."

54. Defendant Media Matters engaged in wrongful conduct that disrupted X Corp.'s economic relationships. Through extensive deception and misrepresentation, Defendant Media Matters caused advertisers to lose faith in X Corp.'s abilities to monitor and curate content, thereby leading them to break off these lucrative relationships and any future continued relationships.

55. Defendant Media Matters acted with the intent to disrupt these relationships. Media Matters' actions continued its expressly declared "guerilla war" on media it dislikes and its systematic, harassing attacks on X Corp. and Elon Musk.

AMERICAN OVERSIGHT

56. X Corp. was harmed as a result of Defendant Media Matters' actions: it lost advertisers as a result of Defendant's interference.

57. Defendant Media Matters' actions were undoubtedly a substantial factor in causing this harm, with Defendant's website even noting that X Corp.'s relationships fell apart *after* Media Matters released its maliciously false piece.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff X Corp. prays for judgment in its favor and the following relief:

1. Actual and consequential damages caused by Defendants' misconduct, including but not limited to all general and special damages;

2. A preliminary and permanent injunction ordering Defendants to immediately delete, take down, or otherwise remove the article entitled "As Musk Endorses Antisemitic Conspiracy Theory, X Has Been Placing Ads for Apple, Bravo, IBM, Oracle, and Xfinity Next to Pro-Nazi Content From Its Web" from all websites and social media accounts owned, controlled, or operated, directly or indirectly, by Defendants;

3. X Corp.'s costs and attorneys' fees to litigate this action; and

4. For such other and further relief as the Court may deem just and proper.

AMERICAN OVERSIGHT

November 20, 2023

Respectfully submitted,

/s/ John C. Sullivan
John C. Sullivan
Texas Bar No. 24083920
S|L LAW PLLC
610 Uptown Boulevard, Suite 2000
Cedar Hill, TX 75104
Telephone: (469) 523-1351
Facsimile: (469) 613-0891
john.sullivan@the-sl-lawfirm.com

/s/ Judd E. Stone II
Judd E. Stone II*
Texas Bar No. 24076720
Christopher D. Hilton*
Texas Bar No. 24087727
STONE | HILTON PLLC
1115 W. Slaughter Lane
Austin, TX 78748
Telephone: (737) 465-7248
judd@stonehilton.com
chris@stonehilton.com

* Admission pending

Counsel for Plaintiff

AMERICAN OVERSIGHT

MO-AG-24-0028-A-000818

To: Scott, Todd[Todd.Scott@ago.mo.gov]
Cc: Divine, Josh[Josh.Divine@ago.mo.gov]; Atkins, Jay[Jay.Atkins@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: Monroe, Kathryn[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=064360B52A0A4BCEBBB731D6FB722A65-MONROE, KATHRYN]
Sent: Mon 11/20/2023 7:30:18 PM (UTC-06:00)
Subject: Re: Twitter – X lawsuit
gov.uscourts.txnd.383454.1.0_1.pdf

See also Paxton's press release.
https://www.oag.state.tx.us/news/releases/attorney-general-ken-paxton-opens-investigation-media-matters-potential-fraudulent-activity
Sent from my iPhone

> On Nov 20, 2023, at 6:41 PM, Scott, Todd <Todd.Scott@ago.mo.gov> wrote:
>
> This might have some relevance to our investigation.
>
> Sent from my iPhone

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
Cc: Schwartz2, Brian (NBCUniversal)[Brian.Schwartz@nbcuni.com]
From: Kolodny, Lora (NBCUniversal)[Lora.Kolodny@nbcuni.com]
Sent: Tue 11/21/2023 9:55:19 AM (UTC-06:00)
Subject: Re: CNBC (NBC Universal) press request - AG initiating probe into Media Matters?

Just checking back about this.
Texas Attorney General initiated an investigation into Media Matters. X Corp. is suing Media Matters.
Is your office (Missouri Attorney General Bailey) moving ahead with a formal investigation?
Thank you,
--
Lora Kolodny, tech & climate reporter
Lora.Kolodny@nbcuni.com
1-415-939-5841

From: Kolodny, Lora (NBCUniversal) <Lora.Kolodny@nbcuni.com>
Date: Monday, November 20, 2023 at 9:01 AM
To: Madeline.Sieren@ago.mo.gov <Madeline.Sieren@ago.mo.gov>
Cc: Schwartz2, Brian (NBCUniversal) <Brian.Schwartz@nbcuni.com>
Subject: CNBC (NBC Universal) press request - AG initiating probe into Media Matters?

Attn. Madeline Sieren, Public Affairs team
Missouri Attorney General's Office
I am a reporter with CNBC.com / NBC Universal based in San Francisco (originally from St. Louis, though). My colleague on the politics desk is on Cc as well, Brian Schwartz.
Over the weekend, we noticed that Missouri Attorney General Andrew Bailey posted on X (Twitter) that he intended to look into a conflict between the Elon Musk-owned social network, and the media watchdog group called Media Matters.
https://twitter.com/AGAndrewBailey/status/1726356598405136754
We would like to know…
Has the AG's office formally initiated a probe of Media Matters?
Would appreciate any information or statements you can provide.
Thank you,
--
Lora Kolodny, tech & climate reporter
Lora.Kolodny@nbcuni.com
1-415-939-5841

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; Hankinson, Jared[Jared.Hankinson@ago.mo.gov]; Johnson, Jeff[Jeff.Johnson@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; Noteboom, Grace[Grace.Noteboom@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Wagner, Ray[Ray.Wagner@ago.mo.gov]
From: Lyday, Bennett[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EACD91D740F2406EB8A1385B65BBDDED-LYDAY, BENNETT]
Sent: Tue 11/21/2023 9:28:01 AM (UTC-06:00)
Subject: Daily News/Media Roundup - Tuesday, November 21st, 2023

Good morning all,
Below is the relevant news for today and yesterday relating to the AGO, Missouri, and Nation:

AGO News:

St. Louis Circuit Attorney Gets Missouri AG Help on Post-Conviction Cases
Riverfront Times l Ryan Krull
https://www.riverfronttimes.com/news/st-louis-circuit-attorney-gets-missouri-ag-help-on-post-conviction-cases-41283720

-"St. Louis Circuit Attorney Gabe Gore has farmed out approximately 100 post-conviction relief cases filed with his office to an unusual assistant — Missouri Attorney General Andrew Bailey. These cases, which in Missouri are technically civil litigation, represent a convicted person's challenge to either their conviction or sentence in a criminal case. Unlike appeals, these cases allow for new evidence to be introduced, and they go to the jurisdiction where the case originated, not the appellate court. Bailey's office is handling the cases as part of its effort to stabilize the circuit attorney's office in the wake of the departure of Gore's predecessor, Kim Gardner. But as a Republican who holds a statewide office, it's safe to say Bailey represents a different way of approaching attempts to overturn a conviction than anyone likely to be selected by St. Louis voters. In one very notable recent example, attorneys with the Missouri Attorney General's Office threw up roadblock after roadblock against the legal team for Lamar Johnson… That's according to the Missouri Independent's Rebecca Rivas, who did a deep dive last year into the AG's long history opposing wrongful-conviction-cases. While Johnson's case was a wrongful conviction case, not one of post-conviction relief, attorney Joe Welling points out that both types of cases deal with situations in which "interests in justice are in tension with interests in finality." Historically, the attorney general's office has been interested in finality, meaning that once a verdict has been rendered it almost always defends it. Even so, Bailey's efforts to assist with post-conviction appeals in St. Louis may be more of a continuation of the circuit attorney's handling of such claims under Gardner than a break from it… However, she says virtually all post-conviction relief appeals were dead on arrival at the Circuit Attorney's Office when Gardner was in charge. "At Kim's office, a blanket rule was that we do not negotiate PCRs," McDonnell says. She adds that this held true even when there were obvious examples of people who had ineffective legal representation and shouldn't be in jail.She says she has hope that things will eventually be better with Gore in charge, though she doesn't have high hopes for the cases Bailey is handling… Bailey, in a brief interview with RFT last week, defended his predecessor's handling of the Johnson case, saying Schmitt acted properly. "That was one of the first times that statute had been used," Bailey said, referring to a 2021 state law that gave prosecutors a path to appeal cases that had been decided in their jurisdictions. "I think he appropriately fulfilled his role in that process, and sought to not only litigate the case, but also to provide clarity from the court." Bailey says that as attorney general he is committed to "ensuring the rule of law is respected, there is a finality of judgments and that we're respecting the rights of victims." As for the 100 or so post-conviction cases his office is handling on behalf of Gore, Bailey says he's going to take a "case by case approach" with each one. Circuit Attorney spokeswoman Chrstine Bertelson says that the attorney general's role in post-conviction relief cases is appropriate "given the understaffing and unprecedented volume of backlog of cases that existed when Mr. Gore was appointed." She adds that it was already a matter of practice that the attorney general's office generally handled post-conviction cases in St. Louis that were appealed to the appellate courts."

Elon Musk Should Sue Media Matters Into Oblivion
The Federalist l John Daniel Davidson
https://thefederalist.com/2023/11/21/elon-musk-should-sue-media-matters-into-oblivion/

-"Over the weekend, Elon Musk said he plans to file a "thermonuclear lawsuit" against Media Matters for America, a left-wing propaganda shop whose sole reason for existing is to churn out deceptive, fake studies designed to pressure large firms to pull advertising from media outlets and platforms that don't toe the leftist line. That's precisely what Media Matters did last week when it released a bogus "report" alleging that X, formerly Twitter, runs ads for Apple, Bravo, IBM, Oracle, and Xfinity next to "pro-Nazi content." Sure enough, after this report was published Thursday, Apple, IBM, and a bunch of other companies fell for the scam and announced they were pulling ads from X. Then on Monday, Musk's X filed a lawsuit against

AMERICAN OVERSIGHT

Media Matters, alleging the organization "knowingly and maliciously manufactured side-by-side images depicting advertisers' posts on X Corp.'s social media platform beside Neo-Nazi and white-nationalist fringe content and then portrayed these manufactured images as if they were what typical X users experience on the platform."… Essentially, Media Matters set up some fake X accounts and then curated the feeds to display controversial content. "Once they curated their feed," explained X in a statement Musk posted early Saturday morning, "they repeatedly refreshed their timelines to find a rare instance of ads serving next to the content they chose to follow." To achieve their desired outcome, these accounts had to generate 13 times the number of ads served compared to a normal X user. As the lawsuit filed on Monday stated, "The end result was a feed precision-designed by Media Matters for a single purpose: to produce side-by-side ad/content placements that it could screenshot in an effort to alienate advertisers." The result that Media Matters got through manipulating X's algorithm in this way was anything but organic; in the case of paid posts from IBM, Comcast, and Oracle, those posts appeared alongside "fringe content" for only one X user: Media Matters. "Not a single authentic user of the X platform saw IBM's, Comcast's, or Oracle's ads next to that content," according to the lawsuit… The reason they were applied to X, however, has nothing to do with pro-Nazi content and everything to do with the fact that left-wing ideologues like the people at Media Matters don't control X and can't use it as a tool of censorship against their enemies. That's it. Hiding behind the fig leaf of "research," styling itself as a "watchdog group," Media Matters is in the business of silencing its opponents by going after advertisers. The only thing it's watching out for is dissent to crush. Ginning up a bogus "study" to deplatform dissenting voices is a tactic we're well familiar with here at The Federalist… Sadly, this is a pattern we have seen over and over again. What NBC News and the Center for Countering Digital Hate tried to do to us at The Federalist — impute guilt on the basis of third-party content and then pressure advertisers to pull out — is almost exactly what Media Matters has tried to do to X. It should come as no surprise. Left-wing activists will do and say almost anything to suppress, censor, or shut down outlets and institutions they don't control, that challenge the establishment narrative, and that push back against the media's incessant lying… But now they see that Musk won't comply, which is why they're going after X. That might prove to be a big mistake because Musk has the resources to fight back and go after groups like Media Matters. And Musk's X isn't the only one. Missouri Attorney General Andrew Bailey said Sunday his team was "looking into" the matter, and on Monday, Texas Attorney General Ken Paxton announced his office had opened an investigation into Media Matters for potentially fraudulent activity. We'll see where all this goes, but it's good to see that a group like Media Matters actually might be held accountable for its incessant deception in the service of crushing free speech. Anyone who cares about free speech and self-government should hope Media Matters gets sued and fined into oblivion. It's a cancer on our civic life, masquerading as a nonprofit watchdog when its only purpose is to censor and throttle free speech by any means necessary. The sooner it's gone, the better off the country will be."

Missouri Attorney General Says He is 'Looking Into' Elon Musk, Media Matters Dispute

The Messenger l Zachary Leeman

https://themessenger.com/politics/missouri-attorney-general-andrew-bailey-musk-media-matters

-"Missouri Attorney General Andrew Bailey, R, is "looking into" a brewing legal beef between X owner Elon Musk and liberal advocacy outlet Media Matters. Musk promised a "thermonuclear" lawsuit against Media Matters on Saturday after the organization posted a report claiming pro-Nazi messages were appearing on X next to advertiser content… Musk promised legal action against Media Matters and "their board, their donors, their network of dark money, all of them." According to Musk, Media Matters "created an alternate account and curated the posts and advertising" to fit their report. X said they have no record of ads running next to the content Media Matters cites in its report, while Media Matters President Angelo Carusone called Musk a "bully" in a statement and said the company would win against a lawsuit… Bailey got involved in the scuffle on X after former Donald Trump official Stephen Miller suggested Media Matters could be guilty of fraud and therefore liable for legal action by attorney generals. "Fraud is both a civil and criminal violation. There are 2 dozen+ conservative state Attorneys General," Miller posted… "My team is looking into this matter," Bailey told Musk to which the X owner replied, "great!" In a Monday message, Musk referred to Media Matters as "pure evil.'"

Missouri AG criticized for "looking into" Musk media dispute

KY3 l Joe McLean

https://www.ky3.com/2023/11/20/missouri-ag-criticized-looking-into-musk-media-dispute/

-"Missouri's Republican Attorney General announced on X, the social media platform formerly called Twitter, that his office was "looking into" a dispute between the platform's owner, Elon Musk, and the non-profit media watchdog outlet Media Matters for America. The dispute began as Media Matters was reporting on widespread anti-Semitism on the platform, including a report showing instances where advertisements for major brands were appearing on users' feeds in succession with pro-Nazi content… The billionaire posted Saturday accusing Media Matters of fraudulently misrepresenting the user experience and threatened a "thermonuclear" lawsuit to be filed Monday morning… The president of Media Matters for America brushed off the threat, saying Musk has already conceded the issue with ad placement… In an appearance on the right-wing media outlet Newsmax, AG Bailey invoked the Missouri Merchandising Practices Act as justification for involving the Missouri Attorney General's office. "If we've got an instance where there was a deceptive or fraudulent business practice where Media Matters was using some kind of coercive or fraudulent algorithms or advertising, that's going to be problematic under the Missouri Merchandising Practices Act," Bailey said…"

AMERICAN OVERSIGHT

-**Reposted:** KMOV;

Missouri AG Andrew Bailey wades into Elon Musk antisemitism controversy

STL Post-Dispatch | Jack Suntrup

https://www.stltoday.com/news/local/government-politics/missouri-ag-andrew-bailey-wades-into-elon-musk-antisemitism-controversy/article_3c1429b6-87bc-11ee-a4b0-73897f2258fc.html#tncms-source=login

-"Missouri's Republican attorney general has waded into an ongoing dispute between billionaire Elon Musk and a liberal advocacy group that erupted amid controversy over Musk's endorsement of an antisemitic conspiracy theory last week. Bailey said Sunday his team was "looking into this matter" the day after Musk promised "thermonuclear" legal action against Media Matters for America and others, alleging a "fraudulent attack" on his social media company X, formerly known as Twitter… Major companies such as Apple, IBM, Disney, Comcast and others have since announced they had either pulled advertising or were pulling ads from X, The Washington Post reported… Also Sunday, X user Jack Posobiec had accused Media Matters of "creat(ing) accounts and gam(ing) the X server to create false impressions for their article." In response to Posobiec's post, Stephen Miller, who worked in former President Donald Trump's White House, said fraud was a civil and criminal violation and noted there were "2 dozen+ conservative state Attorneys General" in the United States… Bailey later posted: "My team is looking into this matter," winning an attaboy from Musk. "Great!" Musk said. Bailey's announcement came as his opponent in the Aug. 6 Republican primary, Will Scharf, was set to be in the spotlight Monday as he argued against a limited gag order imposed against Trump in one of the criminal cases against the former president.

Elon Musk's X Sues Media Matters

Daily Caller | Harold Hutchison

https://dailycaller.com/2023/11/20/elon-musks-x-sues-media-matters/

-"The social media site accuses the left-wing media watchdog of manufacturing images showing advertisements from major corporations alongside posts made by white supremacists and neo-Nazis in the 15-page complaint filed in the United States District court for the Northern District of Texas. Musk threatened to sue Media Matters in a Saturday post on X, following the group's Thursday release of a report that prompted an exodus of advertisers, including Disney, Apple, Paramount and IBM. "Looking to portray X's social networking platform as being dominated by 'white nationalist and anti-Semitic conspiracy theories,' Media Matters knowingly and maliciously manufactured side-by-side images depicting advertisers' posts on X Corp.'s social media platform beside Neo-Nazi and white-nationalist fringe content and then portrayed these manufactured images as if they were what typical X users experience on the platform," the lawsuit says… "Media Matters accessed accounts that had been active for at least 30 days, bypassing X's ad filter for new users," the lawsuit says. "Media Matters then exclusively followed a small subset of users consisting entirely of accounts in one of two categories: those known to produce extreme, fringe content, and accounts owned by X's big-name advertisers. The end result was a feed precision-designed by Media Matters for a single purpose: to produce side-by-side ad/content placements that it could screenshot in an effort to alienate advertisers. But this activity still was not enough to create the pairings of advertisements and content that Media Matters aimed to produce." "Media Matters therefore resorted to endlessly scrolling and refreshing its unrepresentative, hand-selected feed, generating between 13 and 15 times more advertisements per hour than viewed by the average X user repeating this inauthentic activity until it finally received pages containing the result it wanted: controversial content next to X's largest advertisers' paid posts," the lawsuit continued. Journalist Michael Shellenberger, who previously reported on the Twitter files, said in a Monday afternoon post that he was unable to replicate what Media Matters claimed it observed on Twitter… Chris Pavlovski, CEO of Rumble, a free-speech competitor to YouTube, spoke out Monday. "X is not alone," Pavlovski posted on X. "I can also confirm that Media Matters has purposely misrepresented Rumble. Their dishonesty warrants an immediate investigation at the highest levels (hint, @SpeakerJohnson & @Jim_Jordan), and I'll bring the receipts.'"

Texas attorney general opens investigation into Media Matters for 'potential fraudulent activity'

Fox News | Lacey Christ

https://www.foxnews.com/politics/texas-attorney-general-opens-investigation-into-media-matters-potential-fraudulent-activity

-"Texas Attorney General Ken Paxton is opening an investigation into Media Matters for "potential fraudulent activity" after X CEO Elon Musk accused the left-wing media watchdog group of manipulating data on the social media platform… Media Matters published a report on Friday accusing X of placing ads next to "white nationalist hashtags." However, Musk believes that the group "completely misrepresented the real user experience" in order to mislead advertisers. Republican Missouri Attorney General Andrew Bailey posted on Sunday that his legal team was "looking into" the matter. Now, Paxton is launching an official investigation with his office after being "extremely troubled" by the allegations. "We are examining the issue closely to ensure that the public has not been deceived by the schemes of radical left-wing organizations who would like nothing more than to limit freedom by reducing participation in the public square," said Paxton… Last week, Musk found himself in hot water after commenting on a post on X that critics believe was anti-Semitic. Since then, the tech billionaire has clarified that anyone posting genocidal content will be suspended from X. "At risk of stating the obvious, anyone advocating the genocide of *any* group will be suspended from this platform," Musk wrote in a post on X… Nonetheless, the White House spokesman Andrew Bates condemned Musk, saying that the people's house condemns "abhorrent promotion of Antisemitic and racist hate in the strongest terms, which runs against our core values as

AMERICAN OVERSIGHT

Americans." This is not the first time advertisers vacated the social media platform. Last year, when Musk first took over Twitter, now known as X, he promised to restore free speech to the platform. In response, hundreds of advertisers pulled their ads. Now, the CEO is hoping to uncover the truth behind the Media Matters report, saying "the discovery and depositions will be glorious to behold.'"

Judge to decide again if Missouri's voter ID is constitutional

Fox 2 l Emily Manley

https://fox2now.com/news/missouri/judge-to-decide-again-if-missouris-voter-id-is-constitutional/

-"Following a new law that passed in 2022, Missourians are required to show a valid government-issued photo ID to vote. While the state says no one has been denied a ballot, those challenging the requirement argue this is unconstitutional and makes it hard for some voters to cast a ballot… Missouri's voter ID law is no stranger to the court system. Photo ID requirements were ruled unconstitutional in 2006 and then again in 2020… The case was dismissed last year by Cole County Judge Jon Beetem after he said neither of the two voters suing the state "alleged a specific, concrete, non-speculative injury or legally protectable interest in challenging the photo ID requirement." Since then, the lawsuit brought forward by the voters, the Missouri League of Women voters, and the NAACP, has added another voter to the case. This time, it's over a four-day trial… The newest plaintiff is John O'Connor. Attorneys said the 90-year-old from Columbia has poor vision and needs help walking. When the law went into effect last year, O'Connor had an expired passport and driver's license, which are not acceptable under the law. Lieberman said O'Connor, born in New York, has had a hard time locating his birth certificate. Before the law went into effect in 2022, a voter could use a student ID, a utility bill with their name and address, or a voter registration card. Those methods would now lead to a provisional ballot, meaning a voter can show back up with an acceptable ID or the polling place must match the signature on the ballot with the one on file… Missouri Republicans have been working for decades to enact a voter ID law. In response to the trial, Secretary of State Jay Ashcroft said in a statement: I will always fight to maintain Missouri's accessible, secure and creditable elections. Regarding this case – every person has been able to vote – no one has been denied a ballot because they didn't have an ID. As specified in statute, my office will help get an ID for anyone who needs one to vote. Furthermore, if someone does not have an ID on Election Day, if they are registered, they can still vote. Roughly 35 states request or require identification to vote and at least 20 other states require a photo ID to vote. While the trial is set to conclude Wednesday, the judge has not indicated when he could issue a ruling."

Missouri voter ID trial digs into purpose, results of strict 2022 law

Missouri Independent l Rudi Keller

https://missouriindependent.com/2023/11/21/missouri-voter-id-trial-digs-into-purpose-results-of-strict-2022-law/

-"Before the November 2022 election, acceptable identification at the polls included a voter registration card, a student identification card, a bank statement or utility bill or even an out-of-state drivers license if it had not expired. Now anyone without the required state- or federally issued identification is given a provisional ballot. For it to be counted, the voter must return to the polling station and show the correct identification or count on the local election authority matching their signature to the one on file… The trial is expected to last through Wednesday. The NAACP and the league argue the law imposes unconstitutional burdens on the right to vote without actually achieving the state goal of reducing fraud in elections… In court, the state is defending the law as a simple solution to make elections secure. It is a "common-sense law designed to uphold that sacred right," Assistant Attorney General Peter Donohue said during opening arguments on Friday. The lawsuit focuses on the burdens faced by three individuals obtaining state-issued identification. The problems include finding transportation to a state license office, misspellings on important documents or lack of those documents entirely due to age. Missouri will issue an identification card for a voter who needs one at no cost and help obtaining the documents, Donohue argued Friday. The burdens are minimal and the benefit is substantial, he said. "Protecting the integrity of elections is absolutely a compelling governmental interest," Donohue said…"

A teen in foster care died after ear infection went untreated. His siblings are suing MO

The KC Star l Samantha Latson

https://news.yahoo.com/teen-foster-care-died-ear-120000524.html

-"The siblings of 15-year-old Missouri boy who died from sepsis allegedly caused by an ear infection while in foster care two years ago have filed a wrongful death lawsuit, alleging the teen's foster family allowed an ear infection to go untreated, leading to his death. The lawsuit contends both the foster parent and state social services were negligent. The lawsuit, filed Nov. 7 in the Western District of Missouri, is seeking at least $75,000 in compensatory and punitive damages in a case an attorney for the plaintiffs called both "awful and heartbreaking." According to the lawsuit, Marcus was diagnosed with an ear infection on Sept. 8, 2021. His foster parent and the care provider "were ordered by Marcus's doctor to return to the ER promptly if his condition worsened." The suit alleges that both failed to bring Marcus to a doctor or other medical care provider between Sept. 9 and Nov. 28, 2021. On Nov. 29, EMS workers responded to a call from Marcus's foster parent. According to the suit, the teenager was found lying on a bedroom floor where he had defecated on himself. Paramedics tried to find a pulse and performed CPR for 30 minutes, court records show. Paramedics transported Marcus to Research Medical Center, where doctors there also tried to resuscitate him without success. He was pronounced dead on Nov. 29, 2021. According to court documents, Haynes died from sepsis caused by an ear infection that had spread throughout his

AMERICA OVERSIGHT

body… Carnie said he hopes the lawsuit will help shed light on a childcare system that he contends is broken and that he believes ultimately failed Haynes. The teen's four surviving siblings, identified in court documents as Darius Jackson, Dylan Sago, Brianna Williams, and Devin Jackson, filed their wrongful death lawsuit this month, two years after their brother's death. Named as defendants in the suit are the Missouri Department of Social Services; … The suit alleges the Missouri Department of Social Services, "knowingly placed Marcus with unfit foster parents," and failed to ensure that Marcus was brought back to his doctor as they had been instructed when his ear infection worsened. All of these factors, according to the suit, contributed to the wrongful death of the teen. An attorney for the plaintiffs said that they will likely seek "way in excess" of the $75,000 currently listed in the suit for damages. Under Missouri Statute, "Survivorship damages incurred by the decedent before death, such as medical expenses and pain and suffering, are recoverable as part of wrongful death claim." The suit contends that the Missouri Department of Social Services were negligent, and had a responsibility, "to safeguard his (Marcus) well-being because he was unable to do so himself." Reached by phone Thursday, a spokeswoman for the Missouri Department of Social Services declined comment on the lawsuit. "The department doesn't comment on pending litigation," said Caitlyn Whaley, communications director."

Missouri abortion rights backers win after Supreme Court declines to consider ballot wording

STL NPR l Jason Rosenbaum

https://www.stlpr.org/government-politics-issues/2023-11-20/missouri-abortion-rights-backers-win-after-supreme-court-declines-to-consider-ballot-wording

-"The Missouri Supreme Court on Monday declined to take up cases regarding the ballot summaries and costs for initiative petitions that would legalize abortion in the state… Earlier this year, a group called Missourians for Constitutional Freedom filed 11 proposals to repeal the state's abortion ban — which prohibits the procedure except for medical emergencies. But the group sued after Secretary of State Jay Ashcroft wrote up summaries that it considered unfair… A Cole County judge rewrote the summaries, and the Western District Court of Appeals largely upheld those descriptions that were generally more favorable to Missourians for Constitutional Freedom… Ashcroft appealed the ruling, but the Supreme Court decided not to consider it. The court also denied transfer of a separate case from abortion rights proponents challenging state Auditor Scott Fitzpatrick's fiscal estimate of the initiatives… Monday's denial of Ashcroft's appeals effectively ends a lengthy legal battle that chewed up time for Missourians for Constitutional Freedom to gather the roughly 171,000 signatures needed to place one of the initiatives on the ballot… Whatever proponents decide, they'll have until May to gather the necessary signatures… The court decisions come as another group, the Missouri Women and Family Research Fund, began gathering signatures for an initiative that would scale back Missouri's abortion ban."

-**See More:** Fox 2; STL PD; KCTV; ABC17;

Letter: State can't fight child trafficking without adequate funding

STL Post-Dispatch l Katelyn Gray

https://www.stltoday.com/opinion/letters/letter-state-cant-fight-child-trafficking-without-adequate-funding/article_717f226e-87e8-11ee-8eed-4f7051206c79.html#tncms-source=login

Opinion: Andrew Bailey's commitment to free speech seems to depend on the speaker's politics

The KC Star l Joel Mathis

https://ca.sports.yahoo.com/news/andrew-bailey-commitment-free-speech-110200437.html

AGO Interview:

Missouri Attorney General Andrew Bailey and team investigating X

NewsMax (and reposted to multiple local sites)

https://www.kfvs12.com/video/2023/11/20/missouri-attorney-general-andrew-bailey-team-investigating-x/

Missouri News:

Did St. Louis judicial system fail these victims? The growing concern with GPS ankle monitors

Fox 2 l Mitch McCoy

https://fox2now.com/news/fox-files/did-st-louis-judicial-system-fail-these-victims-the-growing-concern-with-gps-ankle-monitors/

-"Two defendants in two separate cases, both out of jail and wearing GPS ankle monitors, are accused of horrific crimes, leaving victim advocates questioning if there's an opportunity for change. Joshua Harris was murdered in his driveway last week in Clayton. Janae Edmondson lost both her legs when a car ran her over earlier this year. The two defendants at the center of these cases were both on ankle monitors at the time. "There are folks out there committing these very violent crimes," ALIVE Executive Director Sarah Gramanzini said. "[They're] not being monitored."… Crime Victim Center Director of Youth Services and Outreach Kat Cocivera said it leads to victims doubting the system. "When's there's faulty monitoring or lack of monitoring, that creates an even bigger issue," Cocivera said. Cocivera is just learning about the court records concerning Trenell Johnson. Johnson, 18, is the defendant in last week's killing of Joshua Harris, 41. Johnson posted a $3,000 bond in May after authorities say he took St. Louis County police on a high-speed pursuit and pointed a gun at detectives. St. Louis County Prosecuting Attorney Wesley Bell said Friday his office objected to the bond amount, but bail was set at an appropriate amount given the felonies filed… St. Louis County Judge Jeffrey Medler ordered Johnson to wear a GPS ankle monitor. The case had a new judge assigned at the time a pre-trial assessment entry was made on the court's

AMERICAN OVERSIGHT

docket, which is dated Sept. 7. The FOX Files has learned that the letter notified Circuit Court Judge Bruce Hilton, that the battery in the ankle monitor had died. “From a victim’s perspective, it doesn’t send a comforting message,” Cocivera said. Bell said his office was not copied on the letter and was not given the information. There’s a big question as to who was notified. The FOX Files was told everyone involved in the case would have likely been notified via email that the pre-trial assessment was filed in the case; however, it would’ve been filed like any other court entry with no significant level of importance or an alert. No one revoked Johnson’s bond and the letter to Hilton is not available for the public to see… Walker said the company responsible for monitoring the GPS ankle monitor would have sent a letter to the clerk of the court. Walker said the judge could have revoked the bond. Gramanzini, an advocate for victims’ rights, has expressed concerns over the information about dead batteries not being shared with the public. “Having those things being public record and looked at really harder would be helpful to the people we support,” Gramanzini said. The Clayton homicide is not the first major case involving a suspect on a GPS ankle monitor. Earlier this year, Janae Edmundson, a Tennessee volleyball player, got hit by a car allegedly driven by Daniel Riley, who was out on bond but had multiple GPS ankle monitor violations leading up to the crash. Edmundson lost both her legs. “We’re going to have to go back to the days where repeat offenders, violent offenders, are taken off the streets,” Governor Mike Parson said in February. Walker said state lawmakers may decide to discuss the issue in the upcoming legislative session. “The legislature might step in and say, ‘We’re going to regulate this,’ so if there is a dead battery, you better report it, and you better put that person back in jail,” Walker said. Cocivera said it’s something lawmakers should take up. “Whenever issues come up and something isn’t working as it’s designed to work, then I think there’s always room to go back and make it more perfected—to make it safer,” Cocivera said.”

St. Charles leaders sought removal of sexually explicit library book, and want others restricted

STL Post-Dispatch l Mark SChlinkmann

https://www.stltoday.com/news/local/government-politics/st-charles-leaders-sought-removal-of-sexually-explicit-library-book-and-want-others-restricted/article_a6df734e-87d1-11ee-a553-ab50db285e75.html#tracking-source=home-top-story

-“St. Charles County Executive Steve Ehlmann and St. Charles Mayor Dan Borgmeyer were among those who filed a formal challenge to the county library system’s inclusion of a sexually explicit book called “Bang Like a Porn Star: Sex Tips From the Pros” on its shelves. And the two elected officials, who appoint the board overseeing the City-County Library District, are pressing the system to isolate any other books with explicit sexual illustrations or instructions to special areas in library branches. Ehlmann said Monday that the two had no plans to seek removal of other books but that “Bang Like a Porn Star” is particularly worrisome. The book features interviews with several gay adult film stars and includes photographs detailing various sex acts. They said on their review request that it is pornographic and “does not belong in a tax-supported public library.” “By God, this is low-hanging fruit. Let’s pick it,” Ehlmann said. “At least in my opinion, it is.”… Borgmeyer said he wants to keep children visiting district libraries away from such books but doesn’t want to bar access to adults. Children now can use any section of district libraries, although the system requires anyone 10 and younger to be accompanied by an adult at all times. It makes sense, he said, to put those books in a special section from which kids younger than a yet-to-be-determined age would be barred, even if accompanied by a parent… Borgmeyer said he had asked that the proposed special section be off-limits to anyone younger than 18 years old but that the cutoff could end up being 16. Ehlmann also said “there will still be disputes over how extensive this policy will be. What’s explicit, what isn’t? I just want to see them (the library board) take a position and explain it. If I don’t agree with it, so be it.”… Although Ehlmann and Borgmeyer didn’t know about it, a similar challenge had been submitted by someone else on Sept. 27 — already triggering a review of the book’s content by a committee of library staff members. A third challenge was turned in after the Ehlmann-Borgmeyer submission, said Lori Beth Crawford, a library district spokeswoman. Ehlmann, who on Monday released a copy of the form he and the mayor filed, said they submitted it because a library board member had told them that no one had done so yet… Crawford, the district spokeswoman, said the review committee is likely to reach a decision this week… The book battle is the latest example of the library district being at the center of culture war controversies this year. Some residents also have complained about the attire of a library employee they say was wearing nail polish, makeup and a goatee. While Ehlmann disclosed on Monday that he and Borgmeyer had submitted one challenge to “Bang Like a Porn Star,” the district has refused to release the names of the residents who filed the two others.”

Suburbs in south Kansas City want the Missouri legislature to help kill a landfill project

KCUR l Steve Kraske, Zach Wilson

https://www.kcur.org/podcast/up-to-date/2023-11-21/suburbs-in-south-kansas-city-want-the-missouri-legislature-to-help-kill-a-landfill-project

-“Raymore Mayor Kris Turnbow hopes that proposed legislation in Jefferson City could prevent a landfill from being built near Raymore's borders in south Kansas City. If passed, the legislation would create a one-mile buffer zone that would prevent landfills from being built on the doorstep of cities. Members of the community were pushing for this legislation to pass in the 2023 legislative session, but it hit a wall when it was filibustered in the Senate. This year, though, Turnbow says they'll have another shot at making this happen. "We've been told that if it gets in early in the Senate, that it will hopefully get to the floor by mid-February," he told KCUR's Up To Date. "And if that happens, it won't get caught up in the clamor that usually happens at the end of session like it did last year.’”

AMERICAN OVERSIGHT

Missouri expungements restore gun possession rights
Delta Dunklin Democrat | Jeff Dorris
https://www.dddnews.com/story/3018043.html

-"For the first time, a Missouri federal court has ruled that Missouri's criminal expungement statute does restore a person's right to possess a firearm. The case is Daniels v. U.S. Department of Justice."

Funding lag creates barrier for Missouri private school tax credit program
Missouri Independent | Annelise Hanshaw
https://missouriindependent.com/2023/11/21/funding-lag-creates-barrier-for-missouri-private-school-tax-credit-program/

-"When students returned to classrooms around Missouri in August, only 601 had secured a scholarship through the MOScholars program as a returning recipient — half as many as were in the program in May. There were also 247 first-time participants. Three months into the school year, MOScholars has ballooned to 829 returning students and 675 new students. Lawmakers and the Missouri Treasurer's Office participation in the program, which is designed to use tax credits to provide scholarships for families to pay costs to attend private schools, will continue to climb until the end of January when the funding cycle is complete. Even though demand for the scholarships is understandably highest just before the school year begins, the way the program was built by lawmakers means funding often doesn't show up until the end of the calendar year — leaving families scrambling and private organizations trying to offset costs in the fall. The program's biggest proponents acknowledge a fix is needed. But even incremental changes to education policy are met with skepticism in the Missouri legislature, which barely passed MOScholars in the first place in 2021. Compounding that challenge is the goal of school-choice advocates to expand student eligibility, even as current participants and the organizations administering scholarships struggle to navigate structural issues… "A lot of taxpayers would be very interested in contributing, they just don't necessarily know how," state Rep. Phil Christofanelli, a Republican from St. Peters running for Missouri Senate, told The Independent. Christofanelli sponsored the bill that created the MOScholars program. "It costs you nothing to contribute your state income tax liability to a child in need that wants to attend a school of their choice, and a lot of parents and donors are interested in that," he said. "We just need to get the message out about how to do it and make it as seamless for them as possible." Beyond advertising the program, educational assistance organizations have been using their own funds to help students obtain a MOScholars scholarship in the fall. This year, educational assistance organizations have begun using their private funds to cover student scholarships at the beginning of the school year and pay themselves back. It allowed some EAOs to welcome more students back at the start of the school year with their full scholarship amount…"

Editorial: St. Louis comptroller's office isn't doing its job. The city must find out why.
STL Post-Dispatch | Editorial Board
https://www.stltoday.com/opinion/editorial/editorial-st-louis-comptrollers-office-isnt-doing-its-job-the-city-must-find-out-why/article_e8c88c0e-87be-11ee-8b49-93c6725da663.html

-"It's one thing when a city government doesn't have enough money to pay its bills. It's quite another when there are adequate funds in the coffers but the office that's supposed to cut the checks just can't get its act together enough to do its job. The latter scenario is what St. Louis appears to be facing today under longtime city Comptroller Darlene Green. In a lengthy and devastating report Sunday, the Post-Dispatch's Jacob Barker detailed how the apparently botched implementation of a new accounting system — coupled with a management style by Green that gives new meaning to the phrase "hands off" — has turned the office into a bureaucratic hellscape of missing or inaccurate checks and lack of public transparency. Green's response to Barker's reporting was a written statement that blames her office's well-documented dysfunction on employees of other city departments, a former mayor, the new accounting system and pretty much everyone but the officeholder herself. That's not good enough. Mayor Tishaura O. Jones and the Board of Aldermen should demand an independent investigation of the Comptroller's entire operation to get to the bottom of why that office can't consistently perform its chief function — and then fix it. The inability of the city to consistently and accurately cut checks for what it owes is more than an inconvenience. Contractors to whom the city is a primary customer can see their very livelihoods threatened if they can't count on timely and accurate payment… The problem also affects city employees' paychecks and city services. As Barker noted in his reporting, city police officers who had to travel out of the city last year on police business discovered the city credit card they had with them didn't work because the bill hadn't been paid. The group that represents the city's Black police officers is calling for a resumption of state control over the department in part because officers can't get timely reimbursement for their uniforms and other expenses. Green's written statement in response to Barker's reporting lays blame primarily on what she has called a "horrific" new accounting system that was set up 18 months ago. And she lays blame for that system on former Mayor Lyda Krewson's administration… Finally, there is Green's AWOL leadership style. She shows up at the office only once or twice a week. She claims she's working remotely, but that doesn't jibe with reports that at times she has to be tracked down by staff to sign papers… Excuses don't solve problems, and Green clearly isn't solving them either. The mayor and aldermen need to demand some accountability from the Comptroller's office, starting with an independent probe."

Missouri DNR confirms investigation into asbestos at Dallas County Courthouse; court moves
KY3 | Marina Silva

AMERICAN OVERSIGHT

https://www.ky3.com/2023/11/20/missouri-dnr-confirms-investigation-into-asbestos-dallas-county-courthouse-court-moves/

-"Court proceedings are underway again in Dallas County. They're just not being held in the courthouse. "We're getting our cases processed," said John Kaiser, an attorney in Springfield. He was in the temporary courtroom to represent a client. "It's closer quarters, but Judge Henderson and her staff are having a wonderful time, kind of improvising and accommodating," said Kaiser. Court is being held in the commissioner's room. Everyone waits in the hall until they are called. There is no court reporter, so if any matters need to be considered on the record, then they go to another county, or arrangements will need to be made. The judge says they are trying to make the best out of the situation. Missouri's Department of Natural Resources has confirmed an investigation into asbestos at the Dallas County Courthouse. Jackson Winslow is the investigator on the case. "That project notification implies that there is asbestos, and that's why Gerken Environmental is working. That's why they're currently hired to do this abatement project. So presumably, they're going to be removing asbestos-containing materials on the building," said Winslow. He says typically, the reason that DNR would get involved is because someone brought up a complaint, which is what happened here. "I can tell you that I was notified by concerned parties and the public, but I'll also say it's an ongoing investigation," said Winslow. Kaiser says work is being done, even if it isn't at the courthouse. "A lot of cases are just set for disposition or reappearances. You can do one of those here just as good as you can do in the courthouse across the street," said Kaiser. His piece of advice. "Get there early," said Kaiser."

National News:

Supreme Court Weighs Taking Up Another Major 2nd Amendment Case

Epoch Times l Michael Clements

https://www.theepochtimes.com/us/supreme-court-weighs-taking-up-another-major-2nd-amendment-case-5533231

-"The U.S. Department of Justice wants the U.S. Supreme Court to deny a Pennsylvania man his Second Amendment rights for making false statements to obtain food stamps in 1995 in Garland v. Range. Though the 3rd Circuit Court of Appeals found in his favor, lawyers for Bryan David Range are joining the DOJ in seeking to probe the limits of the June 2022 decision in New York State Rifle & Pistol Association v. Bruen. The high court has not decided whether to hear the case. According to court documents, in 1995, Mr. Range's wife understated their household income on an application for public assistance. Mr. Range took responsibility for the act and pleaded guilty to making a false statement when applying for food stamps in the Court of Common Pleas of Lancaster County, Pennsylvania. He was sentenced to three years of probation. Court records show he completed his sentence without incident. He also paid $2,458 in restitution, $288.29 in costs, and a $100 fine. Mr. Range's criminal history is limited to minor traffic infractions and fishing without a license. Though the conviction is a misdemeanor in Pennsylvania, federal law recognizes any sentence of two years or more as equivalent to a felony. In 1998, he attempted to purchase a deer rifle and was rejected. His wife thought the rejection was an error and bought the gun for him as a gift, according to the court documents. Years later, Mr. Range tried to buy a firearm and was rejected again. It was then he learned that the 1995 conviction was the reason. Mr. Range sold his rifle to a firearms dealer. Mr. Range sued in the United States District Court for the Eastern District of Pennsylvania for an injunction that would allow him to possess a firearm. The court ruled that Mr. Range could not own a gun as a convicted felon. He appealed that decision in 2021, and as that appeal was working its way through the courts, the Bruen decision was released. Under Bruen, the government must show that gun control laws align with the text of the Second Amendment and the history and tradition of American gun laws. The Court of Appeals for the 3rd Circuit ruled that, under Bruen, there was no historical analog for depriving offenders like Mr. Range of their Second Amendment rights… In its petition, the DOJ responded that American history shows a consistent pattern of revoking felons' Second Amendment rights. DOJ lawyers wrote that dangerousness is not a requirement under Bruen… Mr. Rahimi is an Arlington, Texas, drug dealer who abused his girlfriend and had a penchant for shooting at people who made him angry, according to court documents. In 2019, his girlfriend petitioned the court and won a domestic violence restraining order against him under 18 USC 922 (g) (8). That federal law bars anyone subject to such an order from possessing or purchasing firearms. After the order, which Mr. Rahimi reportedly agreed to, was issued, he assaulted another woman and was subsequently involved in at least five more shootings. He claims 18 USC 922 (g) (8) is unconstitutional. In their response to the DOJ petition, Mr. Range's lawyers asked the court to hear Mr. Range's case during the same term as the Rahimi case… The DOJ lawyers disagree. They say the cases should be decided in the order in which they were received."

Supreme Court to Decide Reach of 3-Strikes Law

Epoch Times l Matthew Vandum

https://www.theepochtimes.com/us/supreme-court-to-decide-reach-of-3-strikes-law-5532843

-"The Supreme Court will consider whether a judge or a jury gets to decide if criminal defendants' prior convictions justify enhanced sentencing under a federal three-strikes law. The case, Erlinger v. United States (court file 23-370), is the second Armed Career Criminal Act (ACCA) case the court has agreed to hear in its current term, which began in October. The court is expected to decide if the Constitution requires juries to go through fact-based inquiries to figure out if a defendant has committed multiple prior offenses on separate occasions and therefore qualifies for an enhanced sentence under the ACCA. The ACCA states that a mandatory minimum sentence and, in some cases, a life sentence, should be imposed when

AMERICAN OVERSIGHT

a defendant has three prior qualifying convictions that were "committed on occasions different from one another." The Supreme Court did not explain why it granted the petition for certiorari, or review, on Nov. 20. No justices dissented. At least four of the nine justices must vote to grant a petition for it to move forward to the oral argument stage. The often-litigated ACCA of 1984 was enacted in response to concerns that a small number of repeat offenders commit a disproportionate number of offenses. The statute requires that a 15-year minimum sentence be imposed on individuals found guilty of illegally possessing a firearm who have three or more prior convictions for a violent felony such as burglary "committed on occasions different from one another." A violent felony is defined by the statute as one that necessarily involves "the use, attempted use, or threatened use of physical force against the person of another." Petitioner Paul Erlinger's story goes back to 1991 when as an 18-year-old he entered guilty pleas to four counts of burglary arising out of events that took place in the same week in Dubois County, Indiana… He pleaded guilty and under the mandatory minimum provisions of the ACCA was sentenced to 15 years in prison to be followed by one year of supervised release. But in July 2021, a district court granted his motion to vacate the sentence because three of the four offenses that he was previously convicted of no longer qualified under the ACCA."

Federal Court Torpedoes Key Provisions Of Voting Rights Act

Daily Caller l Arjun Singh

https://dailycaller.com/2023/11/20/federal-court-voting-rights-act/

-"A federal appeals court ruled Monday that individuals cannot sue their state governments for violations of Section 2 of the Voting Rights Act. Section 2 of the Voting Rights Act (VRA) of 1965 prohibits states from gerrymandering electoral districts on the basis of race, with many voters — supported by left-wing non-profit organizations — having brought suits in federal court to overturn delimitations by Republican-led states. On Monday, the United States Court of Appeals for the Eighth Circuit ruled that section 2 of the law creates no "private right of action" that would enable electors to sue states. "The Voting Rights Act lists only one plaintiff who can enforce § 2: the Attorney General," Judge David Stras, a Trump appointee, wrote for the majority, joined by Raymond Gruender, an appointee of George W. Bush. The case, Arkansas State Conference of NAACP v. Arkansas Board of Apportionment, sought to challenge the state's legislative map for alleged racial gerrymandering of voters in several regions in the state. The ruling affirms a district order to dismiss the plaintiffs' complaint, but modifies it to dismissal with prejudice. VRA-focused litigation using Section 2 has, in 2023 alone, been used to obtain judgments requiring the replacement of GOP-drafted constituency maps in Louisiana and Alabama, with other efforts ongoing in Georgia and South Carolina. The states are Republican-led states where newly-drawn constituency maps, according to the Supreme Court's precedent in Allen v. Milligan, may lead to the creation of new black-majority congressional districts, which experts have told the Daily Caller News Foundation are tantamount to Democratic-leaning districts. The Eighth Circuit's decision only applies to VRA cases within its jurisdiction, which covers North Dakota, South Dakota, Nebraska, Minnesota, Iowa, Missouri and Arkansas. The decision does not prevent left-wing plaintiffs from bringing lawsuits against state governments, however, with the opinion affirming that voters may have a private right of action under 42 U.S.C. § 1983 allowing them to sue the federal and state governments for violations of their constitutional rights, according to the opinion's text. The Biden administration had also filed a brief in April 2022 urging the court to permit the suit."

White House Program Enabling Mass Phone Surveillance Of Americans Could Be Illegal, Lawmaker Says

Daily Caller l Jason Cohen

https://dailycaller.com/2023/11/20/white-house-program-enabling-mass-phone-surveillance-of-americans-could-be-illegal-lawmaker-says/

-"Democratic Oregon Sen. Ron Wyden is questioning the legality of a White House program that enables law enforcement to access trillions of phone records, according to a letter to the Department of Justice (DOJ) published on Monday. Wyden is pushing the DOJ to publish information on a program called Data Analytical Services (DAS), previously known as Hemisphere, for public transparency, according to the letter. The White House Office of National Drug Control Policy (ONDCP) has paid AT&T over $5 million for Americans' records, frequently without a warrant, since 2009, in what Wyden says may be an illegal program. "I have serious concerns about the legality of this surveillance program, and the materials provided by the DOJ contain troubling information that would justifiably outrage many Americans and other members of Congress," Wyden wrote in the letter. The program allows law enforcement to access the details of Americans' calls and analyze the phone records of citizens, even if they are not suspected of committing a crime. Wyden characterized the program as giving law enforcement"the ability to request often-warrantless searches of trillions of domestic phone records. " Despite DAS receiving funding from the White House's ONDCP, a leaked file from the Northern California Regional Intelligence Center reveals local police bureaus asked for DAS information for cases that appeared not to be related to drugs, WIRED reported. "We obtained six months of call data for [suspect]'s phone, as well as several close associations (his girlfriend, father, sister, mother)," an officer wrote in a request for information, according to WIRED. The DOJ gave Wyden's office numerous pages of information about the program in 2019, which he wants the DOJ to release, according to his letter. "This surveillance program is not classified," Wyden wrote. "The public interest in an informed debate about government surveillance far outweighs the need to keep this information secret.'"

Senate Judiciary Republicans pressure Democrats to tamp down Supreme Court investigation

AMERICAN OVERSIGHT

Washington Examiner l Kaelan Deese
https://www.washingtonexaminer.com/policy/courts/senate-judiciary-pressure-democrats-supreme-court-investigation

-"Senate Judiciary Committee Chairman Dick Durbin (D-IL) has sought to authorize subpoenas for influential conservative judicial activist Leonard Leo and GOP megadonor Harlan Crow, defending the subpoenas as necessary after the pair's "defensive, dismissive refusals" to cooperate with a congressional investigation. Now, Republicans have proposed more than 150 additional subpoenas to broaden an investigation they say is one-sided against conservative justices on the high court. The Washington Examiner obtained copies of amendments that Republicans want added to the proposal to subpoena Leo and Crow. Sen. Marsha Blackburn (R-TN) previously brought up one major amendment was by demanding subpoenas for Democratic-appointed Justice Sonia Sotomayor's staff and book publisher… Sotomayor partook in two separate copyright infringement cases concerning publishing conglomerate Penguin Random House, failing to recuse from a case that involved her book publisher. Her court staff also reportedly pressured colleges and libraries to purchase more of her books, from which she has earned nearly $4 million since she joined the court in 2009, according to the Associated Press. Durbin postponed the Nov. 9 planned vote to authorize the subpoenas after Republicans on the panel filed dozens of amendments to put other wealthy liberal advocates in the lineup, including Blackburn's proposal. The committee once again did not vote on the subpoenas after Durbin canceled last Thursday's meeting ahead of the Thanksgiving holiday, with no clear indication of when the next vote would be called. After the first failed attempt, Sen. Sheldon Whitehouse (D-RI), a staunch critic of the conservative high court, vowed Democrats would push ahead for a vote "now that we have seen this strategy" from committee Republicans, according to a statement. Durbin similarly said, "We will continue our efforts to authorize subpoenas in the near future."… One amendment proposed by Sen. Lindsey Graham (R-SC) called to subpoena David Rubenstein, a private equity tycoon who, according to Breyer's 2013 disclosure, paid for his airfare to the island of Nantucket. Graham also proposed a subpoena for Arabella Advisors, a consulting firm overseeing an anonymously funded network that spent over $1 billion last year propping up liberal causes, including efforts to raise ethics concerns about the 6-3 Republican-appointed majority on the high court… While Republicans are in the minority in the Senate and can be thwarted by a simple 12-11 Democratic-majority committee vote, the GOP panelists say a double standard exists for the investigation, suggesting that Durbin's interests are too narrowly focused on investigating conservative justices on the bench… It's unclear whether the Supreme Court's recent adoption of a code of ethics for the first time in the high court's history has stalled Democrats' progress on their investigative efforts. The Supreme Court announced the ethics code on Nov. 13 after months of pressure from Democrats in the wake of the ProPublica publications, on top of reports that the justices had been in the process of devising a code of ethics for the past several years."

Michigan Gov Signs Gun Ban For Misdemeanor Domestic Violence Offenders

Daily Caller l Brandon Poulter
https://dailycaller.com/2023/11/20/michigan-gov-gun-ban-misdemeanor-domestic-violence/

-"The Michigan legislature implemented bills to institute red flag laws, more background checks and stricter storage requirements in the last two years as mass shootings around the U.S. have been on the rise, according to The Associated Press. House bill 4945 prohibits "a person convicted of specified misdemeanors involving domestic violence from possessing, using, or transferring a firearm or ammunition for eight years."… The Supreme Court is currently weighing whether it is a violation of the Second Amendment to bar domestic abusers from possessing firearms. Zackey Rahimi, the individual at the center of United States v. Rahimi, was involved in five shootings."

Internal Senate memo highlights Biden admin efforts to tie highway funding to woke priorities

Fox News l Thomas Catenacci
https://www.foxnews.com/politics/internal-senate-memo-highlights-biden-admin-efforts-tie-highway-funding-woke-priorities

-"The memo, first obtained by Fox News Digital, was sent late Monday evening and spearheaded by Commerce Committee Ranking Member Ted Cruz, R-Texas, who is planning to author legislation that would prohibit the Department of Transportation (DOT) from tying federal funds to left-wing priorities. It particularly targets DOT's management of three grant programs that serve as key vehicles to fund various types of surface transportation projects nationwide. "Billions upon billions of taxpayer dollars meant for infrastructure projects are tied to woke initiatives that are more focused on dismantling America's infrastructure in the name of 'equity' and 'climate change' than building roads, bridges, and highways to connect the country," the memo states. "Congress must not allow the Department of Transportation to push the absurd concept of 'racist roads' to prevent Americans from getting much-needed improvements to their highways," it continued. "The funding notices issued by DOT should focus on the law as written, not woke priorities.'"

I hope everyone has an amazing day!

Best,

Bennett Lyday | Policy & Operations Specialist
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
O: (573) 751-4390

AMERICAN OVERSIGHT

C: (573) 645-9671
Bennett.Lyday@ago.mo.gov

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; Hankinson, Jared[Jared.Hankinson@ago.mo.gov]; Johnson, Jeff[Jeff.Johnson@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; Noteboom, Grace[Grace.Noteboom@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Wagner, Ray[Ray.Wagner@ago.mo.gov]
From: Lyday, Bennett[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EACD91D740F2406EB8A1385B65BBDDED-LYDAY, BENNETT]
Sent: Wed 11/22/2023 10:28:50 AM (UTC-06:00)
Subject: Daily News/Media Roundup - Wednesday, November 22nd, 2023

Good morning all,
Below is the relevant news for today and yesterday relating to the AGO, Missouri, and Nation:

AGO News:

AG to handle some post-conviction relief motions for St. Louis Circuit Attorney's Office
KMOV | No Author Listed
https://www.kmov.com/2023/11/21/ag-handle-some-post-conviction-relief-motions-st-louis-circuit-attorneys-office/

-"The Missouri Attorney General's Office is handling 100 post-conviction relief motions for the St. Louis Circuit Attorney's Office as the case backlog in the city continues to be a burden. The cases represent a convicted person's challenge to their conviction or sentence. A spokesperson for the St. Louis Circuit Attorney's Office said the attorney general's office offered to handle post-conviction relief motions in addition to direct appeals. The attorney general's office handles all direct appeals from local prosecuting attorney's offices in the state. After Kim Gardner resigned as circuit attorney earlier this year, Missouri Gov. Mike Parson appointed Gabe Gore to lead the office. There were more than 4,000 cases with pending application of warrants when he took office."

GUTFELD: It's about time somebody exposes Media Matters
Fox News | Greg Gutfeld
https://www.foxnews.com/opinion/gutfeld-its-about-time-somebody-exposes-media-matters

-"There's been a lot of talk among Dems about misinformation and disinformation. Basically, any sort of information that doesn't help a Democrat get elected, also known as the truth in the eyes of the Dems. The story of Hunter's abandoned laptop had to be misinformation because it threatened Joe Biden's candidacy. So they manipulated social media to quash the story. They suspended it, banned anybody who talked about it. They called it Russian disinformation. And it worked. And they got the result they wanted. A reject from a Balance of Nature ad in the White House. But that wasn't enough, especially now that Elon Musk has bought their favorite toy, Twitter, and turned it into something called X. So now Musk must be stopped. Enter Media Matters. On Friday, they put out a report saying Nazi content ran on the app alongside corporate ads from major companies like IBM, Apple and Oracle. And so a bunch of companies suspended their ads on X. But now Musk is suing Media Matters, saying they manufactured the report… So what did Media Matters do this time? Well, according to the lawsuit, first Media Matters went on X and followed a small subset of users from one of two categories those who post fringe content and big name advertisers. Then they kept refreshing the hand-selected feed until it got the result that it wanted. Controversial content next to paid posts from X's largest advertisers. Then they took screenshots of it, claimed it was organic, and published an article about it. And this quickly panicked the cowardly advertisers, including IBM, Apple, Disney, Warner Brothers and Paramount. And so they fled like women when Keith Olbermann asked for their number… So now Musk is hitting Media Matters with, quote, a thermonuclear lawsuit for the fraudulent attack. But that's not all. Texas Attorney General Ken Paxton is opening an investigation, saying it's extremely troubled by these allegations and Missouri Attorney General Andrew Bailey is also joining the fight promising Musk he's investigating Media Matters as well. So why is this important? Because Media Matters is a hard left smear machine, yet it's one coddled by the press who use that content to build their own crap. You may not have heard of Media Matters until today, but you can bet your liberal pals read their stuff regularly. Since CNN hacks like Stelter and Oliver Darcy rely on their fodder, they simply called the outfit a watchdog group… So I am so here for this. And you should be too, because it's about time somebody exposes Media Matters until they don't matter anymore. And although I'm no legal scholar, my money is on the guy who builds rockets, not lies."

With X under fire, Elon Musk digs in and finds support from conservatives
NBC | Ben Goggin and David Ingram
https://www.nbcnews.com/tech/tech-news/x-fire-elon-musk-digs-finds-support-conservatives-rcna126137

-"In the past six days, Musk has launched a lawsuit against a progressive watchdog organization… Meanwhile, conservative politicians and influencers have rallied to his side with kind posts to his social media platform, money and even an attorney

AMERICAN OVERSIGHT

general's investigation. The advertiser backlash appears to be the biggest threat yet to Musk's X. The typically unapologetic billionaire has shown no signs of backing down. On Monday, two more advertisers — Fox Sports and Ubisoft — said they were pausing ad campaigns and spending on the platform… They joined Disney, Apple and IBM in pausing ads on the platform in the wake of a series of articles from Media Matters for America, a progressive watchdog organization that reported that major ad campaigns were running on antisemitic content on X… Musk and Yaccarino have both said they stand against antisemitism and for free speech while going on the offensive against Media Matters. On Monday, X sued Media Matters, which reports on politicians, journalists and media outlets, with both Musk and Yaccarino criticizing the framing of the articles and their methodology, while Texas Attorney General Ken Paxton announced an investigation into the organization for potential fraud. Media Matters has stood by its reporting… Musk's most vocal supporters in recent days have come not from the tech industry but from right-wing politics — in particular, the attorneys general of Texas and Missouri, former Trump White House official Stephen Miller and a loose group of conservative pundits who have pledged to spend more money on X advertising. Seth Dillon, the CEO of the conservative satire website The Babylon Bee, posted over the weekend that he was pledging $250,000 toward a new ad campaign on X… Musk has also courted some Republican politicians, most notably hosting Florida Gov. Ron DeSantis to announce his Republican presidential bid. On Sunday, DeSantis refused to condemn Musk's post from last week, saying he did not see it. Miller, a longtime aide to former President Donald Trump, seemed to influence Musk's thinking on how to counterattack Media Matters from a legal standpoint… Musk replied positively to Miller, writing: "Interesting. Both civil and criminal …" A couple of hours later, Missouri Attorney General Andrew Bailey replied to Musk on the same thread: "My team is looking into this matter." A day later, Musk echoed Miller's sentence in a post about Texas' investigating Media Matters. Musk posted a screenshot of Paxton's news release and wrote: "Fraud has both civil & criminal penalties." Bailey's office did not immediately respond to a request for comment. Miller, who is now the president of America First Legal, a far-right legal group, also did not immediately respond to a request for comment."

'Compelling': Legal Experts Say Elon Musk's X Has A Good Case Against Media Matters

Daily Caller l Jason Cohen

https://dailycaller.com/2023/11/21/compelling-legal-experts-say-elon-musks-x-has-a-good-case-against-media-matters/

-"Billionaire Elon Musk's social media platform X's — formerly Twitter — lawsuit against Media Matters could lead to damages for the left-wing group, legal experts told the Daily Caller News Foundation. Media Matters alleged that advertisements from major advertisers show up on antisemitic content on X on Thursday, according to a report. While the case is not a slam dunk, there is merit to it and it could lead to financial damages and an injunction, experts told the DCNF... Media Matters' methodology has come under scrutiny, with X suing the organization and alleging the study was defamatory. "Media Matters accessed accounts that had been active for at least 30 days, bypassing X's ad filter for new users," X's lawsuit says. "Media Matters then exclusively followed a small subset of users consisting entirely of accounts in one of two categories: those known to produce extreme, fringe content, and accounts owned by X's big-name advertisers. The end result was a feed precision-designed by Media Matters for a single purpose: to produce side-by-side ad/content placements that it could screenshot in an effort to alienate advertisers. But this activity still was not enough to create the pairings of advertisements and content that Media Matters aimed to produce." "Media Matters therefore resorted to endlessly scrolling and refreshing its unrepresentative, hand-selected feed, generating between 13 and 15 times more advertisements per hour than viewed by the average X user…" If X's allegations are accurate, it could have a good argument that Media Matters directly caused advertisers to leave the platform based on misleading information, leading to a large revenue loss, experts told the DCNF. Counsel for law firm Lewis Baach Kaufmann Middlemiss Marc Frazier Scholl agreed. "If it can be proved that happened and that the misleading results damaged the victim, damages should be available," Scholl told the DCNF. University of California, Los Angeles Professor Eugene Volokh told the DCNF about "defamation by implication," which could be an argument X could try to prove in court… "It's an uphill battle," Volokh explained. "Courts are quite skeptical of libel by implication or libel by omission claims, because there's always some possible claim about how something might be misinterpreted." Meyer also stated the venue of the court where X filed the lawsuit may benefit the social media platform. "The case was filed in district court in the Northern District of Texas which presumably is a conservative venue that would be sympathetic to Elon Musk…"

Opinion: Republicans rally to Elon Musk after self-inflicted antisemitism mess

The Washington Post l Greg Sargant

https://12ft.io/www.washingtonpost.com/opinions/2023/11/22/elon-musk-lawsuit-media-matters-republicans/

-;Elon Musk's new lawsuit against Media Matters, which X Corp. filed late Monday, has been dismissed by legal experts as a frivolous effort to bully a prominent critic into silence. But some Republicans apparently see this as a feature, not a bug: They are allying themselves with Musk's effort for precisely this purpose. Musk's suit charges that Media Matters deliberately and deceptively harmed X (formerly Twitter) with a widely-publicized investigation showing that posts containing pro-Nazi content appeared on X alongside advertisements from leading companies… Republicans are eagerly rushing to Musk's rescue — and not just rhetorically. Two GOP state attorneys general — Ken Paxton in Texas and Andrew Bailey in Missouri — have responded by announcing vaguely defined investigations into Media Matters. Meanwhile, Trump adviser Stephen Miller is urging Republican law enforcement officials to probe Media Matters for "criminal" activity. And

AMERICA OVERSIGHT

Mike Davis, who is touting himself as Donald Trump's next attorney general, has declared that Media Matters staff members should be jailed. The lawsuit, filed in federal court in Texas, doesn't deny that the juxtapositions between ads and pro-Nazi postings are real. Rather, it accuses Media Matters of creating an account following only fringe content and endlessly refreshing it until it finally generated the juxtapositions. Those are "extraordinarily rare," the suit says, but were deliberately engineered to disparage X, harm its revenue stream and interfere with its contracts with advertisers…"

While one abortion legal saga ends, other advocates launch signature collection campaign

Springfield News-Leader | Kelly Dereuck

https://www.news-leader.com/story/news/politics/2023/11/21/missouri-supreme-court-declines-appeal-abortion-rights-case/71665450007/

-"In a long-fought legal victory for some abortion-rights advocates, the Missouri Supreme Court declined to hear two cases challenging the ballot summary language and fiscal note summary for initiative petitions seeking to enshrine reproductive rights in the state constitution. Missouri Secretary of State Jay Ashcroft's ballot language was challenged by the filer of the petitions and the ACLU of Missouri for being biased and misleading. Both the Cole County Circuit Court and Missouri Western District Court of Appeals agreed and provided new ballot summary language… The Western District Court of Appeals mostly agreed with Beetem's summary language, but found that the circuit court erred when it failed to include language that indicated that these initiative petitions would remove the ban on abortion "at any stage of gestation."… Another case heard alongside the challenge to Ashcroft's ballot summary language sought to strike down Auditor Scott Fitzpatrick's fiscal note summary that estimates any projected monetary gains or losses to the state if the ballot initiative passes… These lawmakers raised concerns that the state could lose its federal Medicaid funding, a claim contradicted by the Department of Social Services, which manages the state's Medicaid program, which said it foresees no fiscal losses. Additionally, the fiscal note summary includes an estimated loss of $51,000 in potential future tax revenue from Greene County — based on the idea that legal abortions would reduce the number of future taxpayers — which the plaintiffs thought Fitzpatrick should have extrapolated statewide… After months of legal battles, Dr. Anna Fitz-James, who filed 11 of 17 initiative petitions to restore access to abortion in Missouri, along with Missourians for Constitutional Freedom, a political action committee, will have the final ballot summary language to circulate as supporters collect signatures. They will need to collect more than 171,000 signatures by early May to be included on the 2024 ballot… Another group seeking to restore limited access to abortions in Missouri is facing its own legal challenges, but that isn't stopping their efforts to collect signatures. Jamie Corley, in conjunction with the Missouri Women and Family Research Fund, is also challenging ballot summary language prepared by Ashcroft, and a fiscal note summary prepared by Fitzpatrick, including a large cost estimate from Missouri Attorney General Andrew Bailey… Bailey said it would cost $21 million to litigate abortion-related legal challenges, as his office will refuse to hear these cases, forcing state clients to seek outside counsel paid for by taxpayer funding. "I'm concerned that a court may look at my advocacy and the wins I've delivered in defense of the Missouri Heartbeat Bill, which I believe to be the proper policy position to protect the health and safety of women and children in the state of Missouri, and might block me from defending that measure in court, and that would cost the state of Missouri," Bailey said. The primary challenge to Bailey's cost estimate is the fact that his office is up for election this year, meaning that, if he fails to win, his successor may not be so opposed to litigating abortion cases. "At the end of the day, the people's elected representatives enacted a bill that reflects the values of the people of the state of Missouri that protects women and children's health and safety, and I think that every attorney general should be defending that state statute," Bailey said. "

Rep. Ian Mackey is not optimistic for a fruitful 2024 Missouri legislative session

STL NPR | Jason Rosenbaum

https://www.stlpr.org/podcast/politically-speaking/2023-11-21/rep-ian-mackey-is-not-optimistic-for-a-fruitful-2024-missouri-legislative-session

-"State Rep. Ian Mackey is the latest guest on Politically Speaking, where he talked about his concerns around the upcoming legislative session and the 2024 elections. Mackey represents Missouri's 99th House District, which takes in St. Louis County cities like Clayton, Ladue and Olivette. He was first elected to the Missouri House in 2018 and won reelection in 2020 and 2022. Here's what Mackey discussed on the show: His expectations for the 2024 session, particularly whether his GOP colleagues would try to push restrictions on adult transgender people having hormone therapy or gender transition surgery. Missouri Attorney General Andrew Bailey issued emergency rules on that subject earlier this year but withdrew them before they went into effect…"

AG to handle some post-conviction relief motions for St. Louis Circuit Attorney's Office

KMOV | No Author Listed

https://www.kmov.com/2023/11/21/ag-handle-some-post-conviction-relief-motions-st-louis-circuit-attorneys-office/

-"The Missouri Attorney General's Office is handling 100 post-conviction relief motions for the St. Louis Circuit Attorney's Office as the case backlog in the city continues to be a burden. The cases represent a convicted person's challenge to their conviction or sentence. A spokesperson for the St. Louis Circuit Attorney's Office said the attorney general's office offered to handle post-conviction relief motions in addition to direct appeals. The attorney general's office handles all direct appeals from local prosecuting attorney's offices in the state. After Kim Gardner resigned as circuit attorney earlier this

AMERICAN OVERSIGHT

year, Missouri Gov. Mike Parson appointed Gabe Gore to lead the office. There were more than 4,000 cases with pending application of warrants when he took office."

AGO Tweets:



Missouri News:

Controversial 'porn star' book to be removed from St. Charles City-County Library

STL Post-Dispatch l Ethan Colbert

https://www.stltoday.com/news/local/stcharles/controversial-porn-star-book-to-be-removed-from-st-charles-city-county-library/article_f49ac39e-88b8-11ee-8b16-cf4136d6a754.html#tracking-source=home-top-story

-"An internal review committee has determined that the controversial book "Bang Like a Porn Star: Sex Tips From the Pros," should be removed from the St. Charles City-County Library system — just not right away. Twenty people are waiting to check the book out, said St. Charles City-County Library CEO Jason Kuhl, so it will be removed once that waiting list is clear. The 175-page book, published in 2018, became a lightning rod of controversy at recent library board meetings when parents began pushing for the book's removal. It features interviews with several gay adult film stars and photographs detailing various sex acts. It was the photographs that some critics said were too sexually explicit for inclusion in a public library. Ultimately, the committee of library employees agreed. Kuhl said in a statement Tuesday that the review committee found the book "did, indeed, have explicit photographs that seemed unrelated to the text they should have been illustrating.'"

Red State Supreme Court Deals Blow To Republicans In Crucial Abortion Ballot Case

Daily Caller l Kate Anderson

https://dailycaller.com/2023/11/21/red-state-supreme-court-declines-politically-partisan-appeal-abortion-ballot-language/

-"The Missouri Supreme Court ruled against Secretary of State Jay Ashcroft's request to change the language of a proposed abortion amendment's language Monday, according to the St. Louis Post-Dispatch. An appeals court had ruled earlier this month that Ashcroft's summaries of the amendment were "argumentative" and "politically partisan" because of his use of terms like "unborn child," which the court considered "problematic." Ashcroft appealed the decision to the state Supreme Court but the justices declined to hear his appeal, according to the St. Louis Post-Dispatch. The proposed amendment language could range from creating a constitutional right to abortion up to 24 weeks or to not specifying a gestational limit on having the procedure… Once the wording is set in stone, the amendment's advocates have until May to gather 170,000 signatures in at least six of Missouri's eight congressional districts in order to get the proposal on the ballot for next fall, according to St. Louis Public Radio."

Greene County lawmakers had much to be thankful for from 2023 legislative session

Springfield News-Leader l Kelly Dereuck

https://www.news-leader.com/story/news/politics/2023/11/22/greene-county-lawmakers-give-thanks-share-hopes-2024-missouri-legislature/71567592007/

-"As legislators prepare to return to the Missouri Capitol in January, those representing Greene County reflect upon what they

AMERICAN OVERSIGHT

were thankful for during the previous legislative session, while also looking ahead to their hopes for the 2024 legislative session. Rep. Bishop Davidson, who represents the 130th District in the Missouri House of Representatives, is thankful for the friendships he has formed during his time in office. Davidson was elected in 2020… Davidson speculates that, while most people value the friendships formed in their lifetime, few of them are truly tested in the way that friendships formed in the political sphere can be… Sen. Lincoln Hough, chair of the appropriation committee, is thankful for the educational wins benefiting all levels of the learning process. Although some proposals meant to address the state's teacher shortage were unsuccessful, lawmakers did guarantee public school teachers make at least $38,000 annually. Also, legislation loosened rules for retired teachers wanting to work as substitute teachers so that their requirement benefits are not at risk. Funding for the Career Ladder Program was doubled, allowing school districts to provide compensation to teachers who take on extra roles and responsibilities… Riley hopes to see additional legislative focus on advancing education in the state during the upcoming legislative session… Hough is also thankful for the success of legislation aimed at supporting first responders and their mental health. The fund will help first responders, including firefighters, ambulance, workers, 911 operators and others working in the field… Rep. Melanie Stinnett, District 133, was pleased to see legislation, a version of which she sponsored, that will advance access to health care for Missouri residents living with a disability… Rep. Bill Owen, District 131, was pleased to see that legislation expanding retirement benefits offered by Missouri businesses made its way to the governor's desk… Most Greene County legislators who were asked what they were hopeful for in the upcoming legislative session gave a similar reply — a productive session bolstered by bipartisan communication and compromises… With the 2024 elections on the horizon, at every level from local school boards to the U.S. president, Hough knows that there are bound to be disagreements among candidates and lawmakers. "My hope would be for everyone to just keep a respectful demeanor when we're engaging in debates and philosophical differences and different proposals," Hough said…"

Missouri to boost opioid treatments with money from painkiller settlements

STL Post-Dispatch l Kurt Erickson

https://www.stltoday.com/news/local/government-politics/missouri-to-boost-opioid-treatments-with-money-from-painkiller-settlements/article_54c3e3ca-888e-11ee-a13c-57fb11e830ab.html

-"With millions of dollars flowing into the state budget from a series of landmark settlements with drugmakers, Missouri has begun looking to expand treatment options for people addicted to painkillers. In bidding documents issued earlier this month, the Missouri Department of Mental Health is seeking 10 organizations to supply recovery and prevention services "that are innovative, impactful and designed to address the current opioid crisis facing Missouri." The contracts, each worth $100,000, are being targeted at cities and counties in the state that have been disproportionately affected by the opioid crisis, said DMH spokeswoman Debra Walker… According to a state tally, more than 23,100 Missourians have died due to an overdose during the past 20 years, with more than 70% of those deaths involving opioids… The $1 million outlay is part of more than $50 billion in settlement funds delivered to thousands of state and local governments from pharmaceutical companies that flooded the nation with addictive painkillers. Missouri and its subdivisions will receive more than $900 million over the next 18 years if the state continues to achieve full settlement participation, the agency said. Under most of the settlements, states must spend at least 85% of the money they receive over the next 15 years on addiction treatment and prevention. For the current fiscal year, five state departments have received appropriations from the settlements totaling $18.9 million… The state also plans to spend $100,000 to distribute fentanyl test strips, which could reduce the chances of an accidental drug overdose. Money also is being spent on addressing painkiller use in pregnant women. Local governments, including 93 counties and 50 cities, have received more than $28 million in funds. While DMH already provides prevention and recovery support services through a network of contractors, the 10 additional contracts will target substance use in individuals between age 12 and 21… The website is expected to be available in March 2024. Bids for the 10 contracts are due Nov. 30."

Op-Ed: Congress can rid the government of poisonous DEI policies

Washington Examiner l Sen. Eric Schmitt

https://www.washingtonexaminer.com/restoring-america/equality-not-elitism/congress-can-rid-government-of-poisonous-dei-policies

Opinion: Expungement snafu costs Missouri corrections worker a job opportunity

STL Post-Dispatch l Tony Messenger

https://www.stltoday.com/news/local/column/tony-messenger/messenger-expungement-snafu-costs-missouri-corrections-worker-a-job-opportunity/article_c23c46ae-87e4-11ee-b2f5-43cb648d9d9e.html

National News:

Israeli Cabinet Approves Deal To Release Hostages, Pause Fighting In Gaza

Daily Caller l Jake Smith

https://dailycaller.com/2023/11/21/hamas-israel-hostage-deal/

-"Israel's cabinet approved a deal late Tuesday for Hamas to release a number of hostages in exchange for a temporary pause in the conflict, according to multiple reports. In the first phase of the deal, Israel will pause its counteroffensive efforts in

AMERICAN OVERSIGHT

the Gaza Strip for approximately four days in exchange for the release of 50 hostages from Hamas, according to Axios. Israel will also release 150 Palestinian prisoners as part of the agreement. Hamas will release more Israeli hostages in exchange for more days in which fighting is paused, according to Axios…"

Justice Department, Partners Announce Significant Cryptocurrency Enforcement Actions

Epoch Times l No Author Listed

https://www.theepochtimes.com/epochtv/justice-department-partners-announce-significant-cryptocurrency-enforcement-actions-5533749

-"The Department of Justice and partners announce at 3 p.m. ET on Nov. 21 some significant cryptocurrency enforcement actions related to Binance Holdings chief Changpeng Zhao admitting to violating U.S. laws as part of a deal to resolve a U.S. probe into illicit finance breaches."

Biden Safety Agency Pushes Tech That Could Remotely Control The Speed Of Your Car

Daily Caller l Jason Cohen

https://dailycaller.com/2023/11/22/biden-safety-agency-pushes-tech-that-could-remotely-control-the-speed-of-your-car/

-"The technology, known as "intelligent speed assistance" (ISA), tracks vehicle locations and matches them with the corresponding speed limits, according to the press release. At the very least, the NTSB is advocating for ISA systems that issue warnings to speeding drivers, but the technology can also make it increasingly challenging or impossible to go over the speed limit… NTSB cannot craft regulations but it recommends them for the National Highway Traffic Safety Administration (NHTSA), according to TechCrunch. The NTSB made eight recommendations, including, for the NHTSA to "Require ISA systems that, at a minimum, warn a driver a vehicle is speeding" and for 17 automobile manufacturers to implement the analogous technological function into every new car… The NHTSA requested public comments on the topic of adding ISA to new car assessments and how robust the technology should be, the spokesperson told the DCNF. The agency is still evaluating the comments and working on its ultimate decision."

House Judiciary Subpoenas Prosecutor in Hunter Biden Probe

Epoch Times l Caden Pearson

https://www.theepochtimes.com/us/house-judiciary-subpoenas-prosecutor-in-hunter-biden-probe-5533953?ea_src=frontpage&ea_med=top-news-us-politics-0-large-0

-"House Republicans subpoenaed Lesley Wolf, a deputy to the special counsel investigating Hunter Biden, on Tuesday. The House Judiciary Committee subpoena follows a series of refusals by the Department of Justice (DOJ) to secure voluntary testimony from Ms. Wolf, who played a pivotal role in the inquiry, which whistleblowers alleged was slow-walked by prosecutors. According to a letter accompanying the subpoena from House Judiciary Chairman Jim Jordan (R-Ohio) sent to Ms. Wolf on Tuesday, she possessed "first-hand knowledge" of Hunter Biden's case and was extensively involved in meetings held at U.S. Attorney for Delaware David Weiss's office throughout the probe…"

EXCLUSIVE: Air Force Begs Troops Booted Over COVID-19 Vax To Come Back

Daily Caller l Micaela Burrow

https://dailycaller.com/2023/11/21/exclusive-air-force-begs-troops-booted-covid-19-vax-come-back/

-"The U.S. Air Force sent a letter telling an airman booted from the service for refusing the COVID-19 vaccine the airman could seek a correction to his service records and re-enter the force, according to a photo of the letter obtained by the DCNF. The letter mirrors similar ones recently mailed to 1,900 Army soldiers discharged for the same reason. Gilbert Cisneros, the former DOD official in charge of personnel, told Congress in February troops had been kicked out for "refusing a lawful order.'"

Justice Thomas Dissents in Lawsuit Against Chemical Giant DuPont

Epoch Times l Matthew Vandum

https://www.theepochtimes.com/us/justice-thomas-dissents-in-lawsuit-against-chemical-giant-dupont-5533657?ea_src=frontpage&ea_med=lead-special-judiciary-medium-0

-"Justice Clarence Thomas dissented from the Supreme Court's decision this week not to review a $40 million verdict an Ohio man, Travis Abbott, won against DuPont. Mr Abbott said toxic "forever chemicals" the company released into the water supply gave him cancer. Justice Thomas wrote in a dissenting opinion on Nov. 20 that not taking the case could have repercussions "in potentially thousands of cases" and could interfere with the defendants' Sixth Amendment right to a jury trial. The Court denied the petition for certiorari, or review, in E.I. du Pont de Nemours and Co. v. Abbott (court file 23-13), in an unsigned order. It didn't explain the decision. At least four of the nine justices must vote for a petition for it to move forward to the oral argument stage. Justice Brett Kavanaugh did not join Justice Thomas's dissent but indicated he would have granted the petition. Justice Samuel Alito, who has disclosed that he owns DuPont stock, did not participate in the decision but did not explain why he recused himself…"

I hope everyone has an amazing day and Thanksgiving!

Best,

Bennett Lyday | Policy & Operations Specialist
Missouri Attorney General's Office
207 West High Street

AMERICAN OVERSIGHT

Jefferson City, MO 65101
O: (573) 751-4390
C: (573) 645-9671
Bennett.Lyday@ago.mo.gov

AMERICAN OVERSIGHT

To: 'Faune Riggin'[fauner@riverradio.net]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Wed 11/29/2023 4:01:56 PM (UTC-06:00)
Subject: RE: recall email

Hi Faune,
Please call him next Wednesday at 573-644-2424.
Some topics to talk about:
-His free speech case, Missouri v. Biden, for censorship on social media platforms will be heard at the United States Supreme Court
-He is investigating Media Matters (think Elon Musk)
-He filed a brief to remove the unconstitutional gag order on President Trump
-He released the Kim Gardner Report
Let me know if you need anything else!

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

From: Faune Riggin <fauner@riverradio.net>
Sent: Tuesday, November 28, 2023 6:05 AM
To: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Subject: Re: recall email

coming fast just a reminder I will need his number as topics

On Tue, Oct 24, 2023 at 11:27 AM Sieren, Madeline <Madeline.Sieren@ago.mo.gov> wrote:

That's alright- are we still on for first Wednesday in Dec?
Thanks!

Sent from my iPhone

On Oct 24, 2023, at 11:01 AM, Faune Riggin <fauner@riverradio.net> wrote:

Actually sales took the 8th without my permission. damn it.
I have nothing in November I am sorry

--

Faune Riggin
KZIM KSIM
News and Program Director
Host and producer of Real Talk with Riggin

fauner@riverradio.net

324 Broadway
Cape Girardeau, MO 63701
office: 573-335-8291
1-800-TALK-960
fax: 573-335-4806

AMERICAN OVERSIGHT

Disclaimer:

The information in this email is confidential and may be legally privileged. It is intended solely for the addressee and access to this email by anyone else is unauthorized. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful.

River Radio LLC does not discriminate on the basis of race or ethnicity in the placement, scheduling and completion of purchase of advertising. Any order for advertising that includes any such restriction will not be accepted.

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; Hankinson, Jared[Jared.Hankinson@ago.mo.gov]; Johnson, Jeff[Jeff.Johnson@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; Noteboom, Grace[Grace.Noteboom@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Wagner, Ray[Ray.Wagner@ago.mo.gov]
From: Lyday, Bennett[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EACD91D740F2406EB8A1385B65BBDDED-LYDAY, BENNETT]
Sent: Mon 11/27/2023 9:30:33 AM (UTC-06:00)
Subject: Daily News/Media Roundup - Monday, November 27th, 2023

Good morning all,
I hope everyone had an amazing Thanksgiving break! Below is the relevant news for today and yesterday relating to the AGO, Missouri, and Nation:

AGO News:

Meta collected children's data from Instagram accounts, unsealed court document alleges
CNN l Eva Rothenberg
https://www.cnn.com/2023/11/26/business/meta-collecting-data-children-facebook/index.html

-"Since at least 2019, Meta has knowingly refused to shut down the majority of accounts belonging to children under the age of 13 while collecting their personal information without their parents' consent, a newly unsealed court document from an ongoing federal lawsuit against the social media giant alleges. Attorneys general from 33 states have accused Meta of receiving more than a million reports of under-13 users on Instagram from parents, friends and online community members between early 2019 and mid-2023. However, "Meta disabled only a fraction of those accounts," the complaint states. The federal complaint calls for court orders prohibiting Meta from the practices the attorneys general allege violate the law… According to the 54-count lawsuit, Meta violated a range of state-based consumer protection statutes as well as the Children's Online Privacy Protection Rule (COPPA), which prohibits companies from collecting the personal information of children under 13 without a parent's consent… One Meta product designer wrote in an internal email that the "young ones are the best ones," adding that "you want to bring people to your service young and early," according to the lawsuit… The unsealed complaint also alleges that Meta knew that its algorithm could steer children toward harmful content, thereby harming their well-being. For example, Meta researchers conducted one study in July 2021 that concluded Instagram's algorithm may be amplifying negative social comparison and "content with a tendency to cause users to feel worse about their body or appearance," according to the complaint… In a March 2021 internal investigation looking at eating disorder content, Meta's team followed users whose account names referenced starvation, skinniness and disordered eating. Instagram's algorithm then began generating a list of recommended accounts "that included accounts related to anorexia," the lawsuit states… Senior leadership at Instagram also knew that problematic content was a critical issue for the platform, the lawsuit states… However, despite the company's internal research confirming concerns with social comparison on its platforms, the lawsuit alleges Meta refused to change its algorithm. One employee noted in internal communications cited in the lawsuit that content inciting negative appearance comparisons "is some of the most engaging content (on the Explore page), so this idea actively goes against many other teams' top-line measures." Meta was also aware that its recommendations algorithms "trigger intermittent dopamine releases in young users" which can lead to addictive cycles of consumption on its platforms, according to internal documents cited in the lawsuit… Eight additional attorneys general sued Meta last month in various state courts, making similar claims to the massive multistate federal lawsuit. Florida sued Meta in its own separate federal lawsuit, alleging the company misled users about potential health risks of its products."

Elon Musk Sues Media Matters Over Report Stating Ads Appeared Next to Antisemitic Content
Jewish Journal l Aaron Bandler
https://jewishjournal.com/news/united-states/365569/elon-musk-sues-media-matters-over-report-stating-ads-appeared-next-to-antisemitic-content/

-"Elon Musk announced on Monday that X, formerly known as Twitter, will be suing the left-wing Media Matters watchdog over a report claiming that ads were appearing next to antisemitic content. The defamation lawsuit reportedly alleges that Media Matters used test accounts to follow only extremist and well-known brand accounts and kept "refreshing" their feed until ads appeared next to pro-Nazi content… X CEO Linda Yaccarino posted on Monday, "If you know me, you know I'm committed to truth and fairness. Here's the truth. Not a single authentic user on X saw IBM's, Comcast's, or Oracle's ads next to the content in Media Matters' article. Only 2 users saw Apple's ad next to the content, at least one of which was Media Matters. Data wins over manipulation or allegations. Don't be manipulated. Stand with X." Texas Attorney General

AMERICAN OVERSIGHT

Ken Paxton (R) also announced on Monday that he will be investigating Media Matters for possible fraudulent activity regarding the results of the report. Missouri Attorney General Andrew Bailey (R) posted on X that his "team is looking into this matter."… Another controversy that X is facing is a report from the leftist organization Media Matters stating that ads from companies like Apple, Amazon and Oracle are appearing next to far-right antisemitic posts, which appear to have also played a role in these companies pausing their ads on X. An X executive told Axios that the platform has demonetized the accounts behind the antisemitic posts and the posts will have a "Sensitive Media" label on them."

Missouri AG investigating Media Matters after Elon Musk claimed it gamed servers for X hit piece

News Target l Cassie B.

https://newstarget.com/2023-11-22-ag-investigating-media-matters-musk-x.html

-"Missouri Attorney General Andrew Bailey announced that his office is launching an investigation of the media watchdog group Media Matters for America in connection with its actions in creating a hit piece on X owner and tech billionaire Elon Musk. Elon Musk has also threatened to file a "thermonuclear lawsuit" against Media Matters after they published their report, which cast X (formerly Twitter) in a negative light amid the exodus of several major brands who had been advertising on the social media platform… Attorney General Bailey's office will be investigating the allegations that Media Matters created social media accounts to game the platform's servers and create false impressions. After Musk asked conservative attorneys general in the U.S. to investigate Media Matters on X, Bailey responded: "My team is looking into this matter." Bailey is known for defending the First Amendment, suing the Biden administration over violations of free speech and filing a joint-amicus brief with a group of other attorneys general against the gag order on former President Donald Trump related to his January 6 case…"

Texas AG Investigates Media Matters For Potential Fraud

State of the Union l Joseph Ellis

https://www.msn.com/en-us/news/us/texas-ag-investigates-media-matters-for-potential-fraud/ar-AA1kz0m0?ocid=Peregrine

-"Texas Attorney General Ken Paxton has launched an investigation into Media Matters for alleged "potential fraudulent activity" following reports attacking Elon Musk's X/Twitter… The investigation aims to prevent public deception by leftist organizations and will be conducted under Texas laws against deceptive trade practices. This situation has also drawn interest from the Missouri Attorney General, indicating a broader legal scrutiny of Media Matters. The case has significant implications for social media regulation and the perception of watchdog groups, and it intersects with other challenges faced by Musk and X."

Dismissed Lawsuit Against Missouri's Voter ID Law May Be Revived By Judge Following Addition Of New Plaintiff

USSA News l Constitutional Nobody

https://ussanews.com/2023/11/25/dismissed-lawsuit-against-missouris-voter-id-law-may-be-revived-by-judge-following-addition-of-new-plaintiff/

-"The latest example comes out of Missouri, where a judge will soon decide whether to revive a lawsuit that was previously dismissed following the addition of a new plaintiff, according to Fox News. The suit challenges the constitutionality of a 2022 law passed by Missouri's Republican-led legislature that would require voters to show a photo ID to cast a ballot… According to the Associated Press, the original lawsuit was filed on behalf of two Missouri voters by the state's League of Women Voters organization and the state's chapter of the NAACP… That claim was dismissed by Cole County Presiding Judge Jon Beetem in October last year, as he determined that the two voters had failed to allege "a specific, concrete, non-speculative injury or legally protectable interest in challenging the photo ID requirement." Now, however, a new plaintiff has been added to the case — a 90-year-old man with an expired driver's license and passport who was able to obtain a valid non-photo ID with assistance — and the judge will soon decide whether or not to revive the dismissed case. One of the Missouri officials defending the new voter ID law is Republican Secretary of State Jay Ashcroft… Also defending the law in court, per that AP report, is Republican Missouri Attorney General Andrew Bailey, who asserted in a legal filing, "There is not a severe burden on the right to vote as the State has gone to great lengths to help voters obtain IDs." Contrary to media reporting and the cries of Democratic activists, there is exceptionally broad and bipartisan support for photo ID requirements of the sort that Missouri is currently defending in court. In fact, according to an October 2022 Gallup survey, around 79% of all Americans say that all voters should be required to provide a photo ID to election officials before being permitted to cast their ballot. Per the AP, there are already 36 states that require voters to show some sort of proof of their identification in order to vote, with the requirement in at least 20 of those states including an ID that features a photo of the individual…"

Boyd and Stephanie Householder: Circle of Hope Owners Are Facing Legal Action

The Cinemaholic l Kumari Shreya

https://thecinemaholic.com/boyd-and-stephanie-householder-where-now/

-"Boyd and Stephanie Householder certainly did seem to fit the bill, given the actions that they were accused of having committed as the founders of Circle of Hope. So, it is only natural that their current whereabouts are something that we cannot help but wonder about. Based in Cedar County, Missouri, Boyd and Stephanie Householder are a married couple who established the Circle of Hope Girls Ranch. Affiliated with IFB, they were responsible for overseeing many young girls, though the happening with the Householder's home and establishment did not sit right with many… As for the young girls

AMERICAN OVERSIGHT

who were seemingly under the case of the Householders, many of them have come forward to share exactly what had been going on at the establishment… According to the further stories shared by Drew, the girls were often asked to discipline each other, including meeting out punishment whenever a rule was allegedly broken. Some of the punishments enforced by the Hsoueholders included girls throwing each other around, sitting on others, and forcefully restraining someone who was apparently to be punished. The Householders themselves would apparently restrain some of the girls with handcuffs and zip ties. However, Drew's story did not end there as she went on to detail how Boyd Householder would often touch her inappropriately and kiss her… Boyd and Stephanie Householder were arrested in March 2021 following the numerous charges that were levied against them. The couple were charged with more than 100 felonies connected to their actions against all those who have spoken against the two. The majority of charges, more specifically 80, were levied against Boyd for acts of sexual misconduct and neglect of minors under his care. By August 2022, nearly thirty lawsuits had been filed against the Householders in about two years. Circle of Hope Girls Ranc was also closed following the legal accusations against the establishment and its owners… Their trial, which was scheduled to begin in November 2023, is much anticipated. It has been revealed that the Missouri Attorney General has offered Stephanie a plea deal should she agree to testify against her husband, though her response to the same has yet to be made public."

Letter: Hard sell on Medicare supplement plans could hurt seniors

STL Post-Dispatch I Gail Wilkerson

https://www.stltoday.com/opinion/letters/letter-hard-sell-on-medicare-supplement-plans-could-hurt-seniors/article_79331e5a-8826-11ee-a9a5-5b65a1c51c20.html

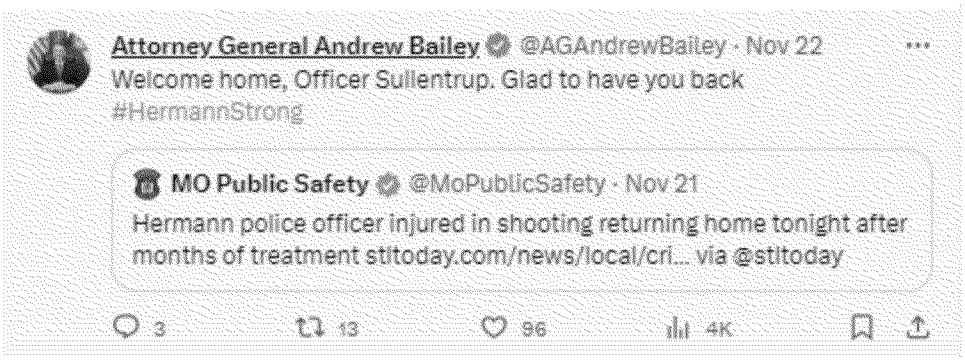
-"When will these open enrollment Medicare calls stop? I am an astute Medicare recipient and I know that it is open enrollment, and I am pleased with my plan. Yet I am receiving at least 10 calls a day from someone stating I can increase my benefits. I am concerned about vulnerable elders receiving these calls and making terrible decisions regarding their health plan options. I wish the Missouri Attorney General's office would make these calls eligible for the No Call list…"

Editorial: Bailey again shows he sees his job as culture warrior, not Missouri's lawyer

STL Post-Dispatch I Editorial Board

https://www.stltoday.com/opinion/editorial/editorial-bailey-again-shows-he-sees-his-job-as-culture-warrior-not-missouris-lawyer/article_d04fc3ce-8960-11ee-b8f4-cf8c746f66e6.html

AGO Tweets:

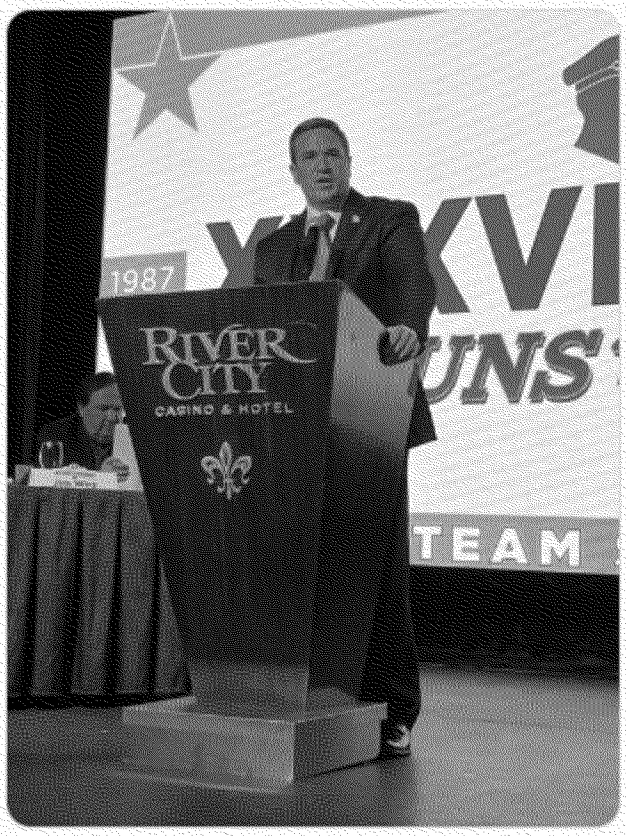


AMERICAN OVERSIGHT

Attorney General Andrew Bailey @AGAndrewBailey · Nov 22

Excited to honor Missouri's law enforcement and first responders at The BackStoppers Guns and Hoses event this evening.

It's going to be a great night.



17 9 103 4.2K

Attorney General Andrew Bailey reposted

Benny Johnson @bennyjohnson · Nov 22

@ALX details Elon Musk's lawsuit into Media Matters and State AG's @KenPaxtonTX & @AGAndrewBailey launching investigations into the organization

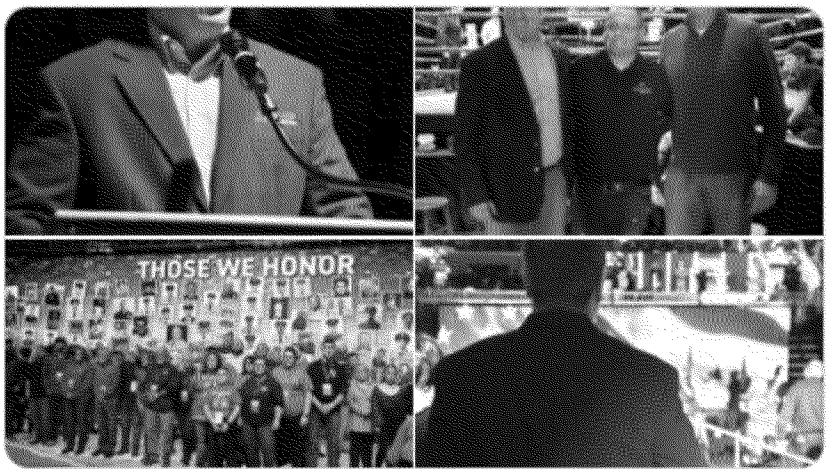


30 86 326 32K

AMERICAN OVERSIGHT

Attorney General Andrew Bailey @AGAndrewBailey · Nov 22

Could not be more proud to stand with our first responders and their families at one of the best St. Louis traditions, Guns and Hoses.

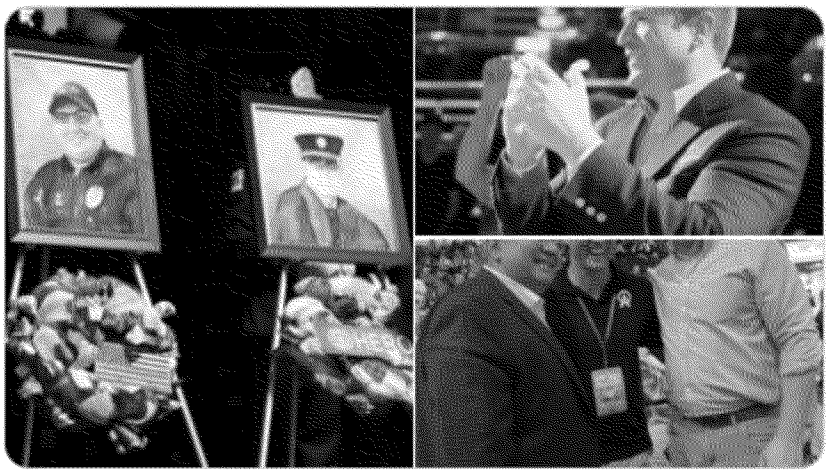


14 8 121 4.2K

Attorney General Andrew Bailey @AGAndrewBailey · Nov 22

Missouri's first responders are our heroes.

As long as I'm Attorney General, we will always have their backs.



8 3 36 1.8K

AMERICAN OVERSIGHT



Missouri News:

Op-Ed: Missouri Chief Justice: Giving thanks to those at the heart of our court system
Springfield News-Leader l Chief Justice Mary R. Russell
https://www.news-leader.com/story/opinion/columnists/2023/11/26/mary-russell-give-thanks-heroes-missouri-court-system/71670394007/

Hawley Threatens to Oppose Defense Bill if it Doesn't Include Nuclear Waste Compensation
MissouriNet l Marshall Grffin
https://www.missourinet.com/2023/11/24/hawley-threatens-to-oppose-defense-bill-if-it-doesnt-include-compensation-for-st-louis-area-radiation-victims/

-"The National Defense Authorization Act (NDAA) is the spending bill that includes the budgets for all of the U.S. armed forces. Hawley said in a social media post Wednesday that he will vote against the bill unless Senate leaders "include compensation for the victims of nuclear contamination in Missouri." The Missouri Republican also said he would use "every available means" to slow the bill's passage. Atomic bombs were manufactured in St. Louis during World War II and radioactive waste was stored afterwards near Lambert International Airport. Some of that waste made its way into nearby Coldwater Creek in St. Louis County, and just over a year ago a nearby elementary school closed after readings showed elevated radiation levels on campus. Also, numerous drums of radioactive waste were illegally dumped at a landfill in Bridgeton in the early 1970's, according to the Missouri Independent."

New lawsuit filed seeking answers about sludge application on land in Newton County
The Joplin Globe l John Hacker
https://finance.yahoo.com/news/lawsuit-filed-seeking-answers-sludge-233500961.html?guccounter=1

-"Residents around Fairview are angry about the odor and have fears about the risks stemming from a waste sludge product applied to land around their homes. About 200 of them gathered recently to discuss their concerns and what they can do about them. They hope a lawsuit filed on their behalf might produce some answers. In the meantime, lawmakers representing Newton and McDonald counties say they are looking for legislative solutions. Vallerie Steele, of Fairview, is a member of a local residents group called SLUDGE, or Stop Land Use Damaging our Ground and Environment. She said an Arkansas company, Denali Water Solutions, has built two wastewater basins and is applying the product of those basins as fertilizer, causing terrible odors, affecting land values and lifestyles, and perhaps damaging the environment… "It's a nuisance if nothing else because of the stench. It is thick because of fats and oils in it. It's more than a smell. It's

AMERICAN OVERSIGHT

horrendous. Even the people land applying are affected whether they want to admit it or not." Denali officials deny they are causing any harm. They say they are helping farmers because the waste they apply to fields is used as free fertilizer. Denali, based in Russellville, Arkansas, identifies itself as "a specialty waste and environmental services company" and said that it repurposes and recycles multiple organic waste streams… The company also previously told the Globe it strives to protect the environment, meet or exceed compliance in every state and provide the best value to its customers… Approximately 200 residents gathered at the John Q. Hammons Community Center in Fairview on Nov. 10 in a meeting, hosted by SLUDGE, an attorney who has filed lawsuits on behalf of the group and lawmakers, about what can be done. It was the second such meeting this year. Nearly 300 residents from Southwest Missouri gathered in February in Neosho to learn more about what is being sprayed on area fields and to voice similar concerns… attorney Stephen Jeffery, representing SLUDGE, who told them the company spread sludge as fertilizer for a number of years under a special exemption issued by the Missouri Fertilizer Control Board. That exemption allowed it to spread the waste as fertilizer without applying for solid waste management permits from the Missouri DNR. That changed in July of this year when the Fertilizer Control Board, under pressure from area lawmakers, decided it would not issue new permits for using waste as fertilizer. That prompted Denali and other waste disposal companies to sue the board, claiming it acted illegally by denying their permit requests. In the meantime, the DNR officials told the Globe earlier this month that Denali has continued to operate under an enforcement document issued by the state that addresses regulatory requirements. They also said the company is in the process of applying for permits under the Missouri Clean Water Law to operate lagoons and spread the waste products on land in Southwest Missouri. The issue was aggravated further on Oct. 20 after another spill… Denali workers vacuumed up the spill with a pumper truck. Denali team members and contractors removed the affected soil from the road, and lime was applied. The company and its contractors arranged for gravel to be delivered and spread on Quince Road after the spill… Then Jeffery talked about the first lawsuit that SLUDGE filed against the DNR and how the group was dismissing that in favor of a new lawsuit that he said more directly addresses the situation in Newton and McDonald counties. Jeffery said on Monday, Nov. 21, that a new lawsuit was filed in Cole County on Nov. 14 and was accepted by the Cole County Circuit Court on Nov. 20, with summons to be delivered to the Missouri DNR soon after that. Jeffery told the crowd on Nov. 10 that the first local lawsuit was based on one he filed for a group of residents in Randolph County regarding a Denali water treatment basin in that county, but the situation is different in Newton and McDonald counties, prompting the decision to dismiss the first SLUDGE lawsuit and file a new one… "The new lawsuit asks a judge to find that the DNR has been allowing Denali Water Solutions LLC to operate wastewater basins and apply the sludge it gets from those basins to farm land as fertilizer without proper solid waste permits from the state."… State Sen. Jill Carter, representing Jasper and Newton counties, said she and other lawmakers in areas affected by the odors of waste disposal on farm land are working on model legislation that could close some of the legal loopholes that allow this to happen. "It needs to be handled legislatively, either through the Legislature or through the courts, and often times the court will give deference to the Legislature to fix some things," Carter said. "DNR does promulgate some of its own rules, so this is just a system to keep them in check…"

Allegations against Lake Saint Louis lawmaker met with 'silence' in St. Charles County

STL Post-Dispatch l Jack Suntrup

https://www.stltoday.com/news/local/government-politics/allegations-against-lake-saint-louis-lawmaker-met-with-silence-in-st-charles-county/article_881fbb18-5328-11ee-ad16-c7cf7f9636e7.html#tracking-source=home-the-latest

-"The headache for state Rep. Justin Hicks has been brought on by a challenger in the Aug. 6 Republican primary, Max Calfo, who earlier this year unveiled a page on his website called "The Real Hicks" with records he says he obtained from an individual no longer active in politics. Calfo says Hicks, 30, an Army veteran, falsely claimed to have fought in battle. And, he said a woman in 2010 accused the lawmaker, when he was 17, of attempting to choke her… "I can't speak to his character now. I mean, I believe people can change," the woman said, asking that her name be withheld from publication. "I feel it is in the past for me, but I just hope this isn't happening to anyone else."… So far, Calfo, 34, a former Wentzville School District teacher who was raised in Connecticut, says his allegations have been met with "general silence."… Calfo's broadsides include an open letter in September drawing two additional members of the House Republican caucus into the fray, state Reps. Tricia Byrnes of Wentzville and Holly Jones of Eureka. He said both lawmakers had hired him as their legislative assistant, and that Byrnes forced him out of his job in January after a monthslong pressure campaign against him releasing the information on Hicks… Byrnes called Calfo "just a hack" who was "slandering people… Calfo published a purported protective order issued Nov. 4, 2010, against Hicks along with a petition for order of protection in St. Louis Circuit Court. Also pictured is a final protective order, dated Nov. 19 that year. John O'Sullivan, spokesman for the St. Louis County Circuit Court, said the forms pictured appeared to be documents used by St. Louis County courts at that time. He said he couldn't confirm the existence of the records that Calfo posted. But the woman who sought the court-ordered protection on Friday vouched for the authenticity of the documents… In the Nov. 19 order of protection, Hicks was told to stay away from the petitioner's house. Hicks was also directed to attend counseling with a licensed professional for 12 consecutive weeks unless he "is shipped out."… Calfo also claimed Hicks lied about his military record with statements such as "I've spent my life fighting for this country on battlefields" in campaign literature as well as his statement that he "fought in wars" in a 2022 radio interview… Bryce Dubee, a U.S. Army spokesman, told the Post-Dispatch that Hicks served

AMERICAN OVERSIGHT

as a human resources specialist in the Army between April 2011 and September 2017. "He deployed to the United Arab Emirates from July 2012 to May 2013 and held the rank of Sergeant at the end of service," Dubee said, adding that his awards included the Global War on Terrorism Service Medal, the Global War on Terrorism Expeditionary Medal and Overseas Service Ribbon… Interviews with local Republican officials revealed a distaste for Calfo's political attacks. "I don't know how much validity there is to it.... I don't believe in mudslinging personally," said Tom Gallaher, Republican committeeman for the Lake Saint Louis Township…"

Republican LG hopeful files lawsuit seeking to toss out 71 Missouri initiative petitions

Missouri Independent l Rudi Keller

https://missouriindependent.com/2023/11/24/republican-lg-hopeful-files-lawsuit-seeking-to-toss-out-71-missouri-initiative-petitions/

-"The court case filed in Jefferson City by Paul Berry III argues that campaign finance filings are wrong or missing for petitions to reinstate abortion rights, outlaw ranked-choice voting, hike the minimum wage and give local governments the power to restrict open carrying of firearms. As a result, Berry argues, Ashcroft should have rejected the petitions instead of certifying them for backers to begin gathering signatures… Though he isn't an attorney, Berry represented himself in those cases and is doing so in his latest lawsuit. The lawsuit alleges Ashcroft improperly certified ballot measures that failed to meet legal requirements in their initial filings… For six of the initiatives, filed Aug. 30 by Jamie Corley of St. Louis and stating that the Missouri Women and Family Resea The Missouri Women and Family Research Fund did not formally organize a PAC until Nov. 15. Its filing states it is a continuing committee, meaning it is not necessarily focused on a single ballot measure campaign or candidate.

-rch Fund is helping pay the costs, the ethics form was not submitted, Berry'slawsuit contends.For the remainder, Berry's lawsuit argues they have the wrong type of committee. In response to questions from The Independent, Ashcroft's office stated that it has never rejected a petition over the documentation of ethics filings. However, the group has decided on a particular ballot measure, Corley announced last week. The ethics commission filing has not been updated. Berry contends it should have been organized as a campaign committee, which state law says has the "sole purpose is to support or oppose the qualification and passage of one or more particular ballot measures…" The other initiative filings Berry is challenging are: Three versions of an initiative filed by former Judge Jimmie Edwards and a group called SensibleMO to allow local enact ordinances governing possession and carrying of firearms. 38 initiatives filed by Richard von Glahn, backed by the Jobs with Justice Ballot Fund, to increase the minimum wage and require employers to offer paid sick leave. [And,] 24 initiatives filed by Frederic Steinbach with support from a committee called Missouri Agrees, that would establish ballot access and voting rules to prevent enactment of ranked-choice voting. For those initiatives, Berry's lawsuit argues their committees are improperly organized as continuing committees when they should be registered as campaign committees…"

Gov. Parson pardons more than any Missouri governor since the 1940's

Fox 2 l Joe Millitzer

https://fox2now.com/news/missouri/gov-parson-pardons-more-than-any-missouri-governor-since-the-1940s/

-"Governor Mike Parson has pardoned more than 600 people in the past three years. That's more than any Missouri governor since the 1940's. Parson is a former sheriff; he says he still believes in law and order and that criminals must be held accountable. But he adds, "It doesn't mean they've been criminal all their lives." "I think it's important to me that we set a standard so people know what happens when you commit a crime. There are going to be consequences. You've learned to accept that, and once you realize that, yeah, I made a mistake," said Gov. Mike Parson. So far, Gov. Parson has granted 613 pardons and commuted 20 sentences. He has also denied about 2,400 clemency requests."

-**See More:** The Missouri governor is granting pardons at a pace not seen since the World War II era **(APl David A. Lieb)**

Local lawmakers speak out on school funding

News-Press Now l Marcus Clem

https://www.newspressnow.com/news/local_news/education/local-lawmakers-speak-out-on-school-funding/article_0469190c-8575-11ee-9c61-439ab53ec18c.html

-"A new plan by the Missouri schools agency would add $235 million to a formula that governs how much each school district gets from the state, and area legislators will have a major say on this. Sen. Rusty Black, R-Chillicothe, who represents the area north and east of St. Joseph, said the General Assembly has a basic duty to fully fund the formula as presented. Black is a retired high school agriculture teacher. His understanding was that the amount of the proposed formula increase may be lower than $235 million, but either way, in his opinion, it ought to be fully funded. That could occur sometime after the Legislature reconvenes in January for the 2024 session… At present, the state budgets for a payment of $6,375 per year for every student who attends a given school district. The ask from the Department of Elementary and Secondary Education is to raise this target to $7,145, over two years. The payment has remained at $6,375 for the last five years, which is usually enough to pay about one-third of any given school district's budget. That means Missouri, out of 50 states, ranks near the bottom in state budgetary support for districts. Sen. Tony Luetkemeyer, R-Parkville, who represents St. Joseph, Platte County and much of the Kansas City Northland, said he has yet to review the DESE proposal, but considers the Legislature to have fully funded school needs up to this point… Black and Luetkemeyer's Republican Party dominates the Legislature,

AMERICAN OVERSIGHT

particularly the Senate, where GOP members outnumber Democrats 24-10. That leaves Sen. Cindy O'Laughlin, R-Shelbina, in the driver's seat in this overall conversation. She is the majority leader. In a Nov. 9 interview with KSSZ 93.9 FM of Columbia, Missouri, O'Laughlin rejected DESE's plan… Because schools have to spend money on other things, often for reasons beyond their control, like federal bureaucracy, Black said, the Legislature still needs to do its part to help them pay those costs. Black indicated he doesn't embrace the rhetoric that too much state money goes to costs other than teacher salaries."

Missouri Farmland values opinion survey results

KZRG l Steve Smith

https://newstalkkzrg.com/2023/11/25/missouri-farmland-values-opinion-survey-results/

-"More than 300 responses were collected from Missouri lenders, farmers, rural appraisers and others familiar with Missouri land values in October 2023. Survey respondents gave estimates of land values for three classes of cropland and pastureland (good, average, poor), irrigated cropland, timberland and hunting/recreational land. Values for cropland, pasture, timber and hunting/recreational land all increased from 2022 to 2023, according to survey results. Hunting/recreation land had the largest statewide increase of value at 14%, followed by "average" and "poor" pastureland, both with 11% increases from 2022. This year's respondents reported the statewide average of "good" nonirrigated cropland at $8,631 per acre, a $313 (4%) increase from 2022. The statewide average of irrigated cropland was estimated at $9,678 per acre, a $534 (6%) increase from 2022… Respondents indicated rising interest rates applied downward pressure to farmland values; limited land available for sale and strong investor demand were indicated as factors pushing up the price of land in Missouri. "Looking ahead, our survey respondents forecast land prices to increase in 2024," said Tsay. "Interestingly, urban land prices are expected to increase the least, while land values in the west region of Missouri are estimated to increase anywhere from 11% to 14% next year…'"

Grant provides $25 million for Missouri farmers to adopt climate-smart practices

Columbia Missourian l Casey Kilburg

https://www.columbiamissourian.com/news/grant-provides-25-million-for-missouri-farmers-to-adopt-climate-smart-practices/article_10441cba-556d-11ed-947c-9bbe1008d09f.html

-"An MU professor has been awarded $25 million — an amount that university officials say is the largest federal grant of its kind ever received by one of its faculty members — to help Missouri farmers adopt climate-smart practices. The U.S. Department of Agriculture awarded the $25 million grant to Rob Myers, an adjunct professor in the MU College of Agriculture, Food and Natural Resources and director at the MU Center for Regenerative Agriculture. Myers said he is hoping up to 3,000 farmers will be directly involved with the project and that these climate smart practices will be on up to 500,000 acres of farmland. The five-year project is aimed at helping Missouri farmers adopt climate-smart practices that will ultimately help farmers improve the resiliency of their crops and livestock in the midst of growing threats from climate change, according to an MU news release…"

Salmonella Infections In Missouri Part Of Cantaloupe Recall

KTTS l AP Repost

https://www.ktts.com/2023/11/27/salmonella-infections-in-missouri-part-of-cantaloupe-recall/

-"U.S. health officials recalled three more brands of whole and pre-cut cantaloupes Friday as the number of people sickened by salmonella more than doubled this week. Nearly 100 people in 32 states have gotten sick from the contaminated fruits. Arizona, Missouri, Minnesota, Wisconsin and Ohio have the highest number of cases. Two people have died of the infections in Minnesota, and 45 people are hospitalized nationwide. The U.S. Food and Drug Administration's original recall included Malichita brand whole cantaloupe, Vinyard brand pre-cut cantaloupe and ALDI whole cantaloupe and pre-cut fruit products. Rudy brand whole cantaloupes and Freshness Guaranteed brand and RaceTrac brand pre-cut cantaloupes joined the list Friday. Health officials say anyone who bought the recalled fruits should throw them away and wash surfaces that touched them with hot, soapy water or in a dishwasher…"

National News:

Supreme Court to Hear Arguments Surrounding Sentencing Rules for Armed Criminals

Epoch Times l Sam Dorman

https://www.theepochtimes.com/us/supreme-court-to-hear-arguments-surrounding-sentencing-rules-for-armed-criminals-5535297?ea_src=frontpage&ea_med=lead-special-judiciary-medium-0

-"The Supreme Court is set to hear oral argument on Nov. 27 over how courts should sentence criminal defendants under the federal Armed Career Criminal Act (ACCA). Passed in 1984, the ACCA imposes a 15-year minimum sentence for individuals who are found to illegally possess a firearm while having three violent felony or serious drug offense convictions. A problem has arisen with changing prohibitions on drugs under federal and state law. Two cases are challenging the idea that criminals should receive the 15-year sentence depending on how various laws scheduled certain drugs at particular times in the judicial process. Jackson v. United States is asking whether the ACCA incorporates federal drug schedules that were active at the time of the initial drug offense or when the defendant violates the ACCA's prohibition on possession of a firearm. Brown v. United States, meanwhile, is asking whether courts should look at federal drug schedules that were in

AMERICAN OVERSIGHT

place when the defendant was being sentenced. The ACCA's provisions have created what's known as a "circuit split,"… U.S. Solicitor General Elizabeth Prelogar argued that judges should consider a crime a "serious drug offense" if it qualified as such when the defendant committed the crime. The U.S. Court of Appeals for the Eleventh Circuit ruled, however, in 2022 that those convictions didn't constitute "serious drug offenses" under ACCA because both Florida and the federal government had removed a particular type of cocaine, ioflupane, from their controlled substances schedules before Mr. Jackson possessed the firearm in 2017. In its opinion, the court explained that it analyzed Mr. Jackson's convictions with the "categorical approach," which the United States Sentencing Commission described as "the method for determining whether an offense (generally a prior conviction) fits within a given definition ... To do so, the court must compare the elements of the prior offense to the relevant definition."… The other case involves a man named Justin Brown, who argued that ACCA shouldn't apply to his state conviction for possession of marijuana because the federal government, by contrast, effectively decriminalized hemp through the Agriculture Improvement Act. Because hemp was removed from the federal ban on marijuana, it presented a narrower definition of the drug when compared to the state law."

Supreme Court May Consider If States Can Ban Honking at Political Rallies

Epoch Times l Matthew Vandum

https://www.theepochtimes.com/us/supreme-court-may-consider-if-states-can-ban-honking-at-political-rallies-5535865

-"The Supreme Court may soon consider whether honking a car horn is a constitutionally protected form of free speech. Although Americans have long sounded the horns of their vehicles to express themselves politically, many states, including California, forbid honking the horn on one's automobile except to warn of a safety hazard. Officials say hitting the horn excessively dilutes the effectiveness of honking as a means of signaling danger or facilitating the flow of traffic. The justices are scheduled to consider the case, Porter v. Martinez (court file 23-423), at their private conference on Dec. 1. The case will move forward to the oral argument stage if at least four of the nine justices vote to grant the petition for certiorari, or review. The justices could make this decision on Dec. 1, or they could leave it for a subsequent private conference. Drivers honked their horns during the 2020 election cycle, an act that both President Joe Biden and former President Donald Trump "have recognized ... as a form of political expression," the petition filed with the court states… In May 2020, a convoy of truckers honked their horns to protest the government's trade policies, and in the process interrupted a speech President Trump was delivering in the Rose Garden of the White House. President Trump called out to the truckers, saying they were with him "all the way" and that the honking was "a sign of love."… The case goes back to Oct. 17, 2017, when petitioner Susan Porter of Oceanside, California, honked her horn 14 times to show support for people who were protesting Rep. Darrell Issa (R-Calif.) for his support of President Donald Trump… Section 27001 of the California Vehicle Code reads: "The driver of a motor vehicle when reasonably necessary to ensure safe operation shall give audible warning with his horn. ... The horn shall not otherwise be used, except as a theft alarm system." She showed up for traffic court on Dec. 12, 2017, but the citation was dismissed because the issuing sheriff's deputy failed to appear. Despite that, she sued in federal court in mid-2018, arguing that the California law violated the First Amendment to the U.S. Constitution. Judge Gonzalo Curiel of the U.S. District Court for the Southern District of California ruled against Ms. Porter on Feb. 5, 2021. Judge Curiel was appointed by President Barack Obama in 2012… The judge found that the state law passed constitutional muster and was "an appropriate regulation on the time, place, or manner of the protected speech and expression ... [and was] narrowly tailored to serve a significant government interest, namely traffic safety and noise pollution…'"

Preferred Pronouns: US Border Agents Told to Use 'Woke' Language

Epoch Times l Caden Pearson

https://www.theepochtimes.com/us/preferred-pronouns-us-border-agents-told-to-use-woke-language-5535659?ea_src=frontpage&ea_med=top-news-editors-picks-1

-"The Biden administration has instructed U.S. Customs and Border Protection (CBP) agents to not use gendered pronouns such as "he," "him," "she," and "her" when dealing with the public, according to an internal memo obtained by The Heritage Foundation… The guidance from the Department of Homeland Security (DHS) asks CBP staff to use "gender-neutral language" and the "self-identified pronouns and name" of any members of the public they interact with. "DO NOT use 'he, him, she, her' pronouns until you have more information about, or provided by, the individual," the memo states. It also cautions against using salutations such as "Mr., Mrs. Ms., Sir, Ma'am." The memo notes that it is generally talking about "individuals who identify as lesbian, gay, bisexual, transgender, queer or questioning, intersex, non-binary, and gender nonconforming."… The memo goes on to make the point that some LGBT-identifying people may "define these terms differently." "Keep in mind that gender identity (sense of self) and sexual orientation (attraction) are separate and distinct; hence, transgender people, for example, may identify as heterosexual, gay, lesbian, or bisexual," the memo also reads. Amid a historic illegal immigration crisis at the southern U.S. border, the memo has been called an "unnecessary distraction" by a union leader."

Jason Smith warns that higher taxes are coming if Biden 'has his way'

Washington Examiner l Asher NOtheis

https://www.washingtonexaminer.com/news/jason-smith-warns-tax-proposals-expire-biden-way

-"Rep. Jason Smith (R-MO) warned that Democrats' spending means taxes will increase as several tax proposals are set to expire within the next two years should President Joe Biden "have his way." Smith made his prediction while discussing the

AMERICAN OVERSIGHT

financial situation many people face and how inflation has made it harder to keep up with expenses. When asked what taxpayers can expect in the future, Smith said the situation would "absolutely" worsen in 2024. "In less than 24 months, you'll see expirations of numerous tax proposals," Smith said on Fox News's Sunday Morning Futures with Maria Bartiromo. "In fact, every individual rate will increase. The child tax credit will be cut in half. The standard deduction will be cut in half, and the small business deduction will be eliminated if President Biden has his way. In his budget proposals, he's outlined that he wants more than $3.5 trillion in tax increases on all Americans." Smith also touched on the House's investigation into the Biden family's connection with China and how the president's son, Hunter Biden, had allegedly benefited from his business dealings overseas. The Republican lawmaker said it was "quite alarming" that Joe Biden has given China "a pass" for various matters, such as stealing the United States's intellectual property. "You could go line by line of numerous things that this administration is not holding China accountable, and it gives you a reason why is he not holding them accountable," Smith said…"

Schumer to send Biden's $106 billion supplemental package request to Senate floor as early as next week

Fox News l Jamie Joseph

https://www.foxnews.com/politics/schumer-send-bidens-106-billion-supplemental-package-request-senate-floor-early-next-week

-"Senate Majority Leader Chuck Schumer, D-N.Y., will bring the Biden administration's $106 billion national security funding request to the floor for a vote as early as next week, Schumer said in a Dear Colleague letter Sunday night… The White House's supplemental request, which was sent to Congress in October, includes $61.4 billion for Ukraine, $14.3 billion for Israel (with $10.6 billion allocated for military aid), $13.6 billion for some border security provisions, and significant investments in Indo-Pacific security assistance, totaling around $7.4 billion. Additionally, there's $9 billion earmarked for humanitarian aid in Ukraine, Israel and Gaza. But GOP lawmakers have thrown a wrench in plans to unanimously pass a supplemental that ties Ukraine and Israel aid together. Instead, they've argued for weeks that they should be split up and voted on separately. Republicans in the upper chamber also reject the border provisions, as outlined, and argue its current form does not address much-needed policy changes like stricter asylum standards at the southern border. The supplemental request only proposes more money to speed up processing of migrants, but no policy reforms… Senate Minority Leader Mitch McConnell, R-Ky., and House Speaker Mike Johnson, R-La., have both signaled the GOP will pass more Ukraine funding if a deal is struck for tighter immigration laws… This week, Schumer also announced a classified all-senators briefing on the Ukraine-Russia war."

Honda Issues Recall That Could Impact Over 300,000 Vehicles Due To Seatbelt Defect

Daily Caller l Matthew Xiao

https://dailycaller.com/2023/11/26/honda-issues-recall-impact-300000-vehicles-seatbelt-defect/

-"Honda is recalling more than 300,000 of its vehicles due to a missing piece in seatbelts which could reportedly increase the risk of injury in a crash, according to Fox Business. The 2023 and 2024 models of Honda's HR-Vs and Accords are not equipped with rivets designed to help seatbelts hold passengers in place during an accident, the outlet reported. The National Highway Traffic Safety Administration reportedly found the current seatbelts not compliant with various federal safety standards, including "Occupant Crash Protection," "Seat Belt Assemblies," and "Seat Belt Assembly Anchorages," per the outlet. While there have been no reported injuries, the Japanese carmaker will start sending recall letters Jan. 8, 2024 to affected owners and install rivets free of charge, the outlet noted."

The Biden Administration Is Scheming To Take Your Kids Away

The Federalist l Nathaniel Blake

https://thefederalist.com/2023/11/27/the-biden-administration-is-scheming-to-take-your-kids-away/

-"The Biden administration hasproposedrules for foster care, which would treat any parent rejecting LGBT ideology as a child abuser. The public comment deadline is today, the Monday after Thanksgiving, a bureaucratic middle finger to the public it is supposed to serve. The proposed regulations state that "to be considered a safe and appropriate placement, a provider is expected to utilize the child's identified pronouns, chosen name, and allow the child to dress in an age-appropriate manner that the child believes reflects their self-identified gender identity and expression." In short, those who don't believe the superstition that a child can somehow be born into the wrong body are, per the Biden administration, unfit to be foster parents. This won't stop with foster parents. Cutting Christians and other dissenters from the sexual revolution out of the foster care system is only the start. Given the government control of the foster care system, this is a convenient place for the left to establish the precedent that rejecting gender ideology and the rest of the LGBT movement's dogmas is abusive and harmful to children and that those who do so are unfit parents. Once they have set this point, they'll expand it to everyone else — after all, if it's abuse for foster parents, it's abuse for biological parents as well… The justification for these new rules is based on the usual junk science, created and pushed by activist organizations and those whose reputations and livelihoods depend upon validating transitioning children. For example, the Biden administration repeatedly cites a survey by the activists at The Trevor Project. This survey consisted of a self-selected online sample. The Biden administration wants to keep kids away from loving homes because the science told them to — the science of a self-selected online survey created by an activist group… Trying to take children away from "non-affirming" parents is the predictable result of the lies that children are born LGBT, and that sexual and gender identities are the essential core of our being. The belief that nothing is more authentic or important than sexual desire and "gender identity" is what lies behind the LGBT movement's

AMERICAN OVERSIGHT

fanatical drive to groom other people's children. It is why educators are eager to push sexually explicit material onto even very young children. It is why schools fill kids' minds with gender ideology, and then encourage them to transition without telling their parents. And it is why the left has wholeheartedly embraced medically "transitioning" children, sometimes starting before they are even teenagers. This wrongly termed "gender-affirming care" is incredibly abnormal medicine. It attempts to treat psychological distress by radically remaking the patient's body in a way that is completely medically unnecessary, indeed, medically harmful. As the proposed Biden administration rules make clear, there is no objective physical or psychological diagnosis for being transgender; rather, it is a purely subjective, self-diagnosed identity — a "self-identified gender identity and expression." And there is never any medical need to transition… This suicide narrative is used to rush children into transition, with almost all the power centers of our nation pushing them on. But studies show that children overwhelmingly desist from transgender identification if given time and counseling. The Biden administration nonetheless relies on threats of self-harm in making its case for the proposed rules for foster care. It is pure hostage-taking, done to enable the sterilization and sexual mutilation of children on the superstition that they are being born into the wrong bodies. In short, the Biden administration plans to treat parents who object to this grotesque medical malpractice as child abuse. They are coming for your children, and they aren't bothering to hide it anymore."

Have a great day!

Best,

Bennett Lyday | Operations Specialist
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
O: (573) 751-4390
C: (573) 645-9671
Bennett.Lyday@ago.mo.gov

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

-000853

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: Faune Riggin[fauner@riverradio.net]
Sent: Wed 11/29/2023 5:23:44 PM (UTC-06:00)
Subject: Re: recall email

Perfect, thank you.

On Wed, Nov 29, 2023, 4:01 PM Sieren, Madeline <Madeline.Sieren@ago.mo.gov> wrote:

Hi Faune,

Please call him next Wednesday at 573-644-2424.

Some topics to talk about:

-His free speech case, Missouri v. Biden, for censorship on social media platforms will be heard at the United States Supreme Court

-He is investigating Media Matters (think Elon Musk)

-He filed a brief to remove the unconstitutional gag order on President Trump

-He released the Kim Gardner Report

Let me know if you need anything else!

Madeline Sieren | Communications Director

Missouri Attorney General's Office

Jefferson City, MO

573-690-1205

Madeline.Sieren@ago.mo.gov

From: Faune Riggin <fauner@riverradio.net>
Sent: Tuesday, November 28, 2023 6:05 AM
To: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Subject: Re: recall email

coming fast just a reminder I will need his number as topics

On Tue, Oct 24, 2023 at 11:27 AM Sieren, Madeline <Madeline.Sieren@ago.mo.gov> wrote:

That's alright- are we still on for first Wednesday in Dec?

Thanks!

Sent from my iPhone

On Oct 24, 2023, at 11:01 AM, Faune Riggin <fauner@riverradio.net> wrote:

Actually sales took the 8th without my permission. damn it.

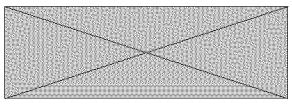
I have nothing in November I am sorry

AMERICAN OVERSIGHT

--

Faune Riggin
KZIM KSIM
News and Program Director
Host and producer of Real Talk with Riggin

fauner@riverradio.net



324 Broadway
Cape Girardeau, MO 63701
office: 573-335-8291
1-800-TALK-960
fax: 573-335-4806

Disclaimer:

The information in this email is confidential and may be legally privileged. It is intended solely for the addressee and access to this email by anyone else is unauthorized. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful.

River Radio LLC does not discriminate on the basis of race or ethnicity in the placement, scheduling and completion of purchase of advertising. Any order for advertising that includes any such restriction will not be accepted.

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: Faune Riggin[fauner@riverradio.net]
Sent: Fri 12/1/2023 7:12:46 AM (UTC-06:00)
Subject: Re: recall email

yes ma'am

On Thu, Nov 30, 2023 at 12:30 PM Sieren, Madeline <Madeline.Sieren@ago.mo.gov> wrote:

We are confirmed for 8:15 AM next Wednesday the 6th?

Madeline Sieren | Communications Director

Missouri Attorney General's Office

Jefferson City, MO

573-690-1205

Madeline.Sieren@ago.mo.gov

From: Faune Riggin <fauner@riverradio.net>
Sent: Wednesday, November 29, 2023 5:24 PM
To: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Subject: Re: recall email

Perfect, thank you.

On Wed, Nov 29, 2023, 4:01 PM Sieren, Madeline <Madeline.Sieren@ago.mo.gov> wrote:

Hi Faune,

Please call him next Wednesday at 573-644-2424.

Some topics to talk about:

-His free speech case, Missouri v. Biden, for censorship on social media platforms will be heard at the United States Supreme Court

-He is investigating Media Matters (think Elon Musk)

-He filed a brief to remove the unconstitutional gag order on President Trump

-He released the Kim Gardner Report

Let me know if you need anything else!

Madeline Sieren | Communications Director

Missouri Attorney General's Office

Jefferson City, MO

573-690-1205

Madeline.Sieren@ago.mo.gov

AMERICAN OVERSIGHT

From: Faune Riggin <fauner@riverradio.net>
Sent: Tuesday, November 28, 2023 6:05 AM

To: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Subject: Re: recall email

coming fast just a reminder I will need his number as topics

On Tue, Oct 24, 2023 at 11:27 AM Sieren, Madeline <Madeline.Sieren@ago.mo.gov> wrote:

That's alright- are we still on for first Wednesday in Dec?

Thanks!

Sent from my iPhone

> On Oct 24, 2023, at 11:01 AM, Faune Riggin <fauner@riverradio.net> wrote:
>
> Actually sales took the 8th without my permission. damn it.
>
> I have nothing in November I am sorry
>
> --
>
> **Faune Riggin**
> KZIM KSIM
> News and Program Director
> Host and producer of Real Talk with Riggin
>
> fauner@riverradio.net
>
> 324 Broadway
> Cape Girardeau, MO 63701
> office: 573-335-8291
> 1-800-TALK-960
> fax: 573-335-4806

AMERICAN OVERSIGHT

Disclaimer:

The information in this email is confidential and may be legally privileged. It is intended solely for the addressee and access to this email by anyone else is unauthorized. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful.

River Radio LLC does not discriminate on the basis of race or ethnicity in the placement, scheduling and completion of purchase of advertising. Any order for advertising that includes any such restriction will not be accepted.

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: 'Faune Riggin'[fauner@riverradio.net]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Thur 11/30/2023 12:30:33 PM (UTC-06:00)
Subject: RE: recall email

We are confirmed for 8:15 AM next Wednesday the 6th?

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

From: Faune Riggin <fauner@riverradio.net>
Sent: Wednesday, November 29, 2023 5:24 PM
To: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Subject: Re: recall email

Perfect, thank you.

On Wed, Nov 29, 2023, 4:01 PM Sieren, Madeline <Madeline.Sieren@ago.mo.gov> wrote:

Hi Faune,
Please call him next Wednesday at 573-644-2424.
Some topics to talk about:

-His free speech case, Missouri v. Biden, for censorship on social media platforms will be heard at the United States Supreme Court

-He is investigating Media Matters (think Elon Musk)

-He filed a brief to remove the unconstitutional gag order on President Trump

-He released the Kim Gardner Report

Let me know if you need anything else!

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

From: Faune Riggin <fauner@riverradio.net>
Sent: Tuesday, November 28, 2023 6:05 AM
To: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Subject: Re: recall email

coming fast just a reminder I will need his number as topics

On Tue, Oct 24, 2023 at 11:27 AM Sieren, Madeline <Madeline.Sieren@ago.mo.gov> wrote:

That's alright- are we still on for first Wednesday in Dec?
Thanks!

Sent from my iPhone

On Oct 24, 2023, at 11:01 AM, Faune Riggin <fauner@riverradio.net> wrote:

Actually sales took the 8th without my permission. damn it.
I have nothing in November I am sorry

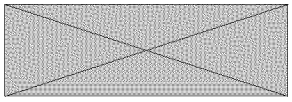
--

Faune Riggin
KZIM KSIM
News and Program Director

AMERICAN OVERSIGHT

Host and producer of Real Talk with Riggin

fauner@riverradio.net



324 Broadway
Cape Girardeau, MO 63701
office: 573-335-8291
1-800-TALK-960
fax: 573-335-4806

Disclaimer:

The information in this email is confidential and may be legally privileged. It is intended solely for the addressee and access to this email by anyone else is unauthorized. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful.

River Radio LLC does not discriminate on the basis of race or ethnicity in the placement, scheduling and completion of purchase of advertising. Any order for advertising that includes any such restriction will not be accepted.

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

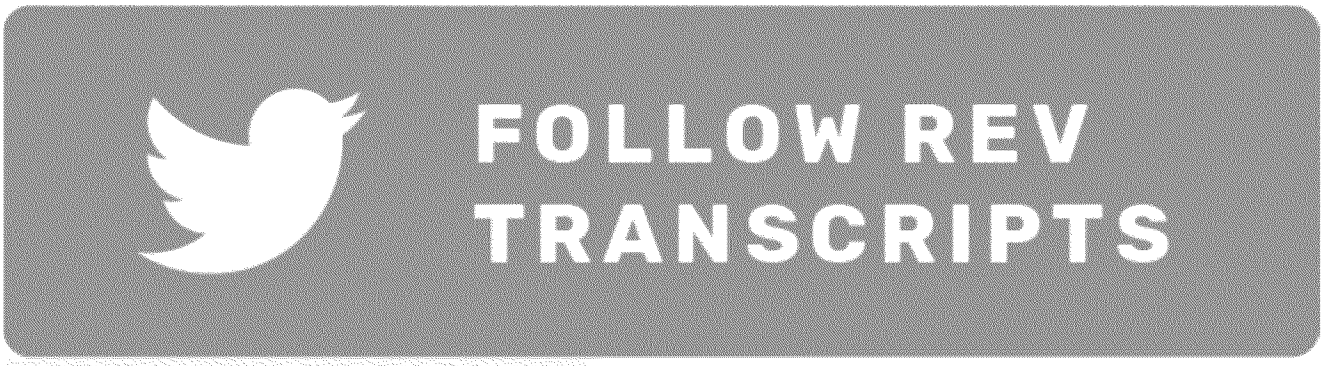
Nov 30, 2023

DealBook Summit 2023 Elon Musk Interview Transcript



Musk discusses his emotional state and why he has “no problem being hated.” Read the transcript here.

AMERICAN OVERSIGHT





FOLLOW REV
TRANSCRIPTS

Transcribe Your Own Content

Try Rev and save time transcribing, captioning, and subtitling.

Speaker 1 (00:28):

Please welcome Andrew Ross Sorkin and his guest, CEO of Tesla, CEO of SpaceX, chief engineer and CTO of X, Elon Musk.

Andrew Ross Sorkin (00:45):

Good evening, everybody. Thank you so much for being with us throughout the day. And I couldn't be more pleased to sit with Elon Musk as our final interview of this remarkable time we've all had together. He doesn't need much of an introduction, but I want to say a couple things. He's the richest person in the world.

Elon Musk (01:05):

What?

Andrew Ross Sorkin (01:05):

AMERICAN OVERSIGHT

He may very well be the most-

Elon Musk (01:09):

For now.

Andrew Ross Sorkin (01:09):

… consequential individual in the world right now. He runs the most innovative companies in the world, Tesla, SpaceX, Starlink, which is part of that Neuralink, The Boring Company, X, and X.AI. And he's disrupted each of these lanes. He's moved at breakneck speeds, but he's facing a storm of controversy in the process.

(01:32)
He joins us today following a visit, as you all know so well, and we discussed earlier, on Monday to Israel where he met with the prime minister there and the president of Israel. And we're going to talk about everything. And my hope is that we can talk about how he thinks about his influence, about his power, about all of it, and we're going to talk about innovation and everything else. I want to say just two other things real quick.

Elon Musk (01:55):

Sure.

Andrew Ross Sorkin (01:55):

We met each other for the first time 16 years ago.

AMERICAN OVERSIGHT

Elon Musk (01:59):

Yeah, it's a long time.

Andrew Ross Sorkin (02:00):

It's been a long time. And-

Elon Musk (02:01):

Oldest kids were three.

Andrew Ross Sorkin (02:05):

When we first met, I think you were just about to deliver your first Roadster. I don't think you had yet. Larry Page was still waiting to get one.

Elon Musk (02:14):

Yeah, that's a bit like 2007.

Andrew Ross Sorkin (02:15):

2007, 2008. And I remember-

Elon Musk (02:18):

Roadster was a little bit 2008.

Andrew Ross Sorkin (02:19):

I remember going back to the newsroom and saying, "I think I just met the next Steve Jobs." And I'm going to hold to that, I'm going to hold to that.

AMERICAN OVERSIGHT

But a lot has happened between when I first met you and now. You came to DealBook.

Elon Musk (02:36):

It's been boring, that's for sure. Wait, actually, technically I do have a boring company.

Andrew Ross Sorkin (02:42):

2012, you came to DealBook and sat on this stage and we're thrilled to have you back, but there's been so much that's happened between now and then and there's been so much that's happened in the past week, week and a half. And a lot of folks, and I want to tell you this, a lot of folks called me up and said, you really going to host Elon Musk here? Can you believe what he just said on X?

Elon Musk (03:08):

No idea what this Twitter thing is you keep talking about.

Andrew Ross Sorkin (03:10):

Should you platform him? That's what they said. Should you platform him? Then I said that I think that it's our role and I know you have issues with journalists.

Elon Musk (03:21):

I have a platform.

AMERICAN OVERSIGHT

Andrew Ross Sorkin (03:22):

I know you have an issue with journalists oftentimes, but I said it's our role to have conversations and to inquire and sometimes even interrogate ideas and I'm hoping we can do that. So I want to start just so we can begin this conversation and just level set, take us through everything that happened if you could.

Elon Musk (03:44):

Everything?

Andrew Ross Sorkin (03:45):

No, over the past week and a half.

Elon Musk (03:46):

How long have you got?

Andrew Ross Sorkin (03:48):

We've got the time.

Elon Musk (03:50):

Okay.

Andrew Ross Sorkin (03:53):

You send out a post or an X or a tweet. I don't know what you want to describe it as.

AMERICAN OVERSIGHT

Elon Musk (04:00):

I'm trying to change… When things were just 140 characters, it made sense to call them a tweet because a bunch of little bit chirping, but point in which you can put three-hour videos on, it's a very long tweet.

Andrew Ross Sorkin (04:12):

So here we are.

Elon Musk (04:13):

This is more descriptive I think.

Andrew Ross Sorkin (04:15):

And at some point, I don't know where you were, but you write in responding to another tweet, "This is the actual truth," and it's set off a firestorm of criticism all the way to the White House, and then you make this trip to Israel. You have advertisers who've left the platform, people calling you-

Elon Musk (04:38):

Well, the trip to Israel is independent of… It wasn't some apology tour. I want to be clear. That was-

Andrew Ross Sorkin (04:45):

Let's talk about that. But just take us back to the moment at which you write that.

AMERICAN OVERSIGHT

Elon Musk (04:50):

Trip to Israel is independent of… It wasn't in response to that at all.

Andrew Ross Sorkin (04:54):

We'll do Israel in just a moment.

Elon Musk (04:55):

And I have no problem being hated by the way.

Andrew Ross Sorkin (04:59):

I hear you-

Elon Musk (04:59):

Hate away.

Andrew Ross Sorkin (05:01):

Well, but you know what, let's go straight to that then for a second. Because there is an idea and you could say that-

Elon Musk (05:10):

I think it's a real weakness to want to be liked, a real weakness. I do not have that.

Andrew Ross Sorkin (05:16):

AMERICAN OVERSIGHT

Let me ask you this then. There's a difference between saying, I don't care if anyone likes me or they hate me. But given your power and given what you have amassed and the importance you have, I would think you want to be trusted. I would think maybe you don't need to be liked or hated, but trusted matters. If X is going to become a financial platform where people are going to put their money, where the government's going to give you money for rockets, people are going to get into the cars. They need to ultimately decide that you are… They don't have to say that they love you, but that you are ultimately a decent and good human being.

Elon Musk (05:56):

Yes. I mean, I think I am, but I'm certainly not going to do some sort of tap dance to prove to people that I am. So as for trust, I mean I think we break that down in a few ways. If you want satellites sent to orbit reliably, SpaceX will do 80% of all mass to orbit this year. China will do 12%. The rest of the world will do eight. That includes Boeing, Lockheed, and everyone else. So the track record of the rocket is the best by far of anything. You could hate my guts. You could not trust me. It is irrelevant. The rocket track record speaks for itself. With respect to Tesla, we make the best cars. Whether you hate me, like me or indifferent, do you want the best car or do you not want the best car? So I will certainly not pander. And Jonathan, the only reason I'm here is because you are a friend. What was my speaking fee?

Andrew Ross Sorkin (07:00):

You're not making any… First of all, I'm Andrew, but-

Elon Musk (07:04):

AMERICAN OVERSIGHT

Yeah, sorry.

Andrew Ross Sorkin (07:05):

It's okay. Second of all, we've known each other for a very long time.

Elon Musk (07:08):

I've spoken. Yes.

(07:14)
Listen, what I'm trying to illustrate is that sometimes I say the wrong thing.

Andrew Ross Sorkin (07:25):

I think there are a lot of people who are tired, but let me go back.

Elon Musk (07:30):

No. No. You should hear the sketches that SNL wouldn't post, by the way. Those are really good.

Andrew Ross Sorkin (07:37):

And I would say unfortunately, or fortunately or unfortunately, whatever friendship we have, not great. We don't talk that much, but let me ask you this. It's true. That's true.

Elon Musk (07:47):

Where am I?

AMERICAN OVERSIGHT

Andrew Ross Sorkin (07:48):

Doesn't return the phone calls.

Elon Musk (07:50):

I'm here because you're a friend, not because I'm being payable because I need any validation or anything, is that we've been friends for 16 years and I promise you I'd be here and that's why I'm here.

Andrew Ross Sorkin (08:02):

Well, I appreciate you being here.

Elon Musk (08:03):

Not for any other reason.

Andrew Ross Sorkin (08:04):

But let me ask you this then. Go at it. Just tell me what happened. You write this tweet that says that this is the actual truth. People read that tweet and they say Elon Musk is an antisemite, that he is riling up this base. You're hearing it from, as I said, the White House. You're hearing it from Jewish groups all over. I think Jonathan Greenblatt from the ADL is here. There's lots of people who say this. And by the way, it's not just that-

Elon Musk (08:34):

Did you read the whole thing?

Andrew Ross Sorkin (08:35):

AMERICAN OVERSIGHT

I did. And that's why I want to ask you that-

Elon Musk (08:37):

The responses.

Andrew Ross Sorkin (08:38):

Excuse me?

Elon Musk (08:39):

I said more?

Andrew Ross Sorkin (08:40):

More responses?

Elon Musk (08:41):

Yeah, I said more than what you just read.

Andrew Ross Sorkin (08:43):

No, there was absolutely more, but I'll tell you the thing that struck me. And I'm an American Jew, it wasn't just the people who had that view. It was actually people who really are antisemites who said, oh my goodness, go Elon. This is fabulous. And that actually was the thing that really set me back. I said to myself, what's going on here? And I want to know how you felt about that in that moment when you saw all of this happening.

Elon Musk (09:18):

AMERICAN OVERSIGHT

Yeah. Well, first of all, I did clarify almost immediately what I meant. I would say that that was… If I could go back and say I should in retrospect not have replied to that particular person, and I should have written in greater length as to what I meant. I did subsequently clarify it in replies, but those clarifications were ignored by the media. And essentially I handed a loaded gun to those who hate me. And arguably to those who are antisemitic. For that, I'm quite sorry. That was not my intention. So I did post on my primary timeline to be absolutely clear that I'm not an antisemitic and that I, in fact, if anything am [inaudible 00:10:12], and the trip to Israel was planned before any of that happened. It was neither here nor there. Do you see this thing? Do you know what it is?

Andrew Ross Sorkin (10:20):

I do. Because I actually followed your entire trip to Israel. Why don't you tell everybody

Elon Musk (10:28):

It says bring them home. The hostages. It was given to me by the parents of one of the hostages. And I said I would wear it as long as there was a hostage story remaining. And I have.

Andrew Ross Sorkin (10:50):

What was that trip like? And obviously you know that there's a public perception and you're clarifying this now, but there's a public perception that that was part of a apology tour, if you will. This had been said online.

AMERICAN OVERSIGHT

There was all of the criticism, there was advertisers leaving. We talked to Bob Iger today-

Elon Musk (11:09):

I hope they stop. Don't advertise.

Andrew Ross Sorkin (11:13):

You don't want them to advertise?

Elon Musk (11:14):

No.

Andrew Ross Sorkin (11:15):

What do you mean?

Elon Musk (11:18):

If somebody's going to try to blackmail me with advertising, blackmail me with money, go fuck yourself.

Andrew Ross Sorkin (11:27):

But-

Elon Musk (11:29):

Go fuck yourself. Is that clear? I hope it is. Hey, Bob, if you're in the audience.

AMERICAN OVERSIGHT

Andrew Ross Sorkin (11:38):

Well, let me ask you then.

Elon Musk (11:41):

That's how I feel. Don't advertise.

Andrew Ross Sorkin (11:45):

How do you think then about the economics of X. If part of the underlying model, at least today, and maybe it needs to shift. Maybe the answer is it needs to shift away from advertising. If you believe that this is the one part of your business where you will be beholden to those who have this view-

Elon Musk (12:08):

GFY.

Andrew Ross Sorkin (12:11):

I understand that. But there's a reality too, right?

Elon Musk (12:17):

Yes. No, no.

Andrew Ross Sorkin (12:19):

I mean, Linda [inaudible 00:12:20] right here, and she's got to sell advertising.

AMERICAN OVERSIGHT

Elon Musk (12:21):

Absolutely. So no, totally. So actually what this advertising boycott is going to do, it is going to kill the company.

Andrew Ross Sorkin (12:33):

And do you think that the-

Elon Musk (12:35):

And the whole world will know that those advertisers killed the company and we'll document it in great detail.

Andrew Ross Sorkin (12:42):

But those advertisers I imagine are going to say, they're going to say, we didn't kill the company.

Elon Musk (12:46):

Oh, yeah. They're going to say-

(12:48)
Tell to earth.

Andrew Ross Sorkin (12:50):

But they're going to say, Elon, that you killed the company because you said these things and that they were inappropriate things and that they didn't feel comfortable on the platform. Right?

AMERICAN OVERSIGHT

Elon Musk (13:00):

That's what they're going to say. And let's see how earth responds to that.

Andrew Ross Sorkin (13:05):

Okay. Then this goes back to-

Elon Musk (13:06):

We'll both make our cases and we'll see what the outcome is.

Andrew Ross Sorkin (13:12):

What are the economics of that for you? I mean, you have enormous resources, so you can actually keep this company going for a very long time. Would you keep it going for a long time if there was no advertising?

Elon Musk (13:21):

I mean, if the company fails because of an advertised boycott, it will fail because of an advertised boycott, and that will be what bankrupted the company, and that's what everybody on earth will know.

Andrew Ross Sorkin (13:33):

What do you think… Then of this goes back to the idea of trust, though.

Elon Musk (13:36):

They'll be gone and it'll be gone because of an advertised boycott.

AMERICAN OVERSIGHT

Andrew Ross Sorkin (13:40):

But you recognize that some of those people are going to say that they didn't feel comfortable on the platform. And I just wonder and ask you, and think about that for a second-

Elon Musk (13:50):

Tell it to the judge.

Andrew Ross Sorkin (13:52):

But the judge is going to be-

Elon Musk (13:53):

The judge is the public.

Andrew Ross Sorkin (13:55):

And you think that the public is going to say that Disney is making a mistake. And they're going to boycott Disney.

Elon Musk (14:04):

They already are.

Andrew Ross Sorkin (14:05):

Well, there are some that are for lots of different reasons. But this goes to actually the interesting of power and leverage.

AMERICAN OVERSIGHT

Elon Musk (14:15):

Let the chips fall where they may. Let the chips fall where they may.

Andrew Ross Sorkin (14:21):

Can I ask why that is the approach, and I ask it because you've been-

Elon Musk (14:25):

What approach?

Andrew Ross Sorkin (14:26):

Well, you've been very particular about, I mean the approach to Tesla. When you think about the engineering involved in that, the approach to SpaceX, the approach to some of the stuff you're doing with AI has been very specific. There's not a let the chips fall where they may approach to those businesses, I don't think.

Elon Musk (14:44):

No. We focus on making the best products and Tesla has gotten to where it's gotten with no advertising at all.

Andrew Ross Sorkin (14:51):

I understand that.

Elon Musk (14:53):

AMERICAN OVERSIGHT

Tesla currently sells twice as much in terms of electric vehicles, as rest of electric car makers in the United States combined. Tesla has done more to help the environment than all other companies combined. Would be fair to say that therefore as a leader of the company, I've done more for the environment than any single human on earth.

Andrew Ross Sorkin (15:17):

How do you feel about that?

Elon Musk (15:21):

How do I feel about that?

Andrew Ross Sorkin (15:21):

Yeah, no, I'm asking you personally how you feel about that because we're talking about power and influence and-

Elon Musk (15:26):

I'm saying what I care about is the reality of goodness, not the perception of it. And what I see all over the place is people who care about looking good while doing evil, fuck them. Okay?

Andrew Ross Sorkin (15:42):

Let me ask you this because I think part of this, by the way, there's some people who said, look, owning X to begin with has just created problems, that you've created so many amazing things that are changing our world. And I know you want to make X this fabulous town square free speech

AMERICAN OVERSIGHT

platform, but that unto itself, that has created such a distraction of all of these things. This is the conversation we're having. We're not talking, at least yet, and we will on Tesla. You have your cyber truck deliveries tomorrow and everything else that you're doing, but is there any-

Elon Musk (16:14):

Yes, it will be the biggest product launch of anything by far on earth this year.

Andrew Ross Sorkin (16:19):

Is there any part of you though that just says, you know what, I just shouldn't have done this. Or maybe I should sell it or give it away or do something else with the X piece of it, given the propensity for some of the things that you do and say on that platform to create these issues.

Elon Musk (16:46):

Of all the posts I've done on the platform, I think there might be 30,000 or something like that, right? Once in a while I'll say something foolish and I have. And I would certainly put that comment that you've said the actual truth among perhaps one of the most foolish, if not the most foolish thing I've ever done on the platform. And I did do my best to clarify afterwards that I certainly do don't mean anything antisemitic in that. The nature of the criticism was simply that the Jewish people have been persecuted for thousands of years. There is a natural affinity therefore for persecuted groups. This has led to the funding of organizations that essentially promote any persecuted group or any group with the perception of

AMERICAN OVERSIGHT

persecution. This includes radical Islamic groups. Everyone here has seen the massive demonstrations for Hamas in every major city in the west. That should be jarring. Well, a number of those organizations received funding from prominent people in the Jewish community. They didn't expect that to happen. But if you generically without condition sort of fund… If you fund persecuted groups in general, some of those persecuted groups unfortunately want your annihilation. And what I meant by that, when I subsequently clarified is that it's unwise to fund organizations that support groups that want your annihilation. Is this coming across clearly it at this point?

Andrew Ross Sorkin (18:52):

Yes, it is. My question to you though is-

Elon Musk (18:54):

I think logically this makes a lot of sense.

Andrew Ross Sorkin (18:56):

Is there any part of you… Just tell me what happens though once all of this happens.

Elon Musk (19:00):

Let's say you fund a group and that group supports Hamas who wants you to die. Perhaps you should not fund them, right?

Andrew Ross Sorkin (19:10):

AMERICAN OVERSIGHT

But you do.

Elon Musk (19:10):

Thank you.

Andrew Ross Sorkin (19:10):

You do appreciate that when you wade into these very delicate waters, at these very delicate times, that it can create a real, as it created headlines for the past two weeks and economic impact. I'm just so curious in your brain when you see all this happening, are you sitting there going, oh my God, I stepped in it. I wish I didn't do that. Are you saying screw them? I hate these people. Why are they after me?

Elon Musk (19:44):

All of that. Yeah, all of that. I mean, look, I'm sorry for that tweet or post. It was foolish of me. Of the 30,000, it might be literally the worst and dumbest post that I've ever done. And I try to do my best to clarify six ways to Sunday. But at least I think over time it'll be obvious that in fact, far from being antisemitic, I'm in fact [inaudible 00:20:14] and all the evidence in my track record would support that.

Andrew Ross Sorkin (20:19):

Let me ask you this though. There are people who say crazy things on X as you know, maybe you think they're crazy, maybe they're not.

Elon Musk (20:28):

AMERICAN OVERSIGHT

The aspiration for X is to be the global town square. Now, if you were to walk down to let's say Times Square, do you occasionally hear people saying crazy things?

Andrew Ross Sorkin (20:40):

Yes, but they don't have the megaphone, right? And that's the conundrum. They can only say it to the 50 or a hundred people that are standing there in Times Square.

Elon Musk (20:51):

I mean, look, the joke I used to make about old Twitter was it was like giving everyone in the psych ward a megaphone. So I'm aware that things can get promoted that are negative beyond the sort of circle of somebody simply screaming crazy things in Times Square, which happens all the time. Actually, it's pretty rare for something frankly that is hateful to be promoted. It's not that it never happens, but it's fairly rare. I mean, I would encourage people to look for those that use the system. When you look at the feed that you receive, how often is it hateful? And over time, has it gotten more or less hateful? I would say that if you look at the X platform today versus a year ago, I think it is actually much better. I mean, what is your personal experience?

Andrew Ross Sorkin (21:55):

Are you surprised?

Elon Musk (21:56):

AMERICAN OVERSIGHT

I'm just curious. You use this-

Andrew Ross Sorkin (21:58):

I use the platform religiously. I would admit to being an addict. And I use the for you, and I will say… Now, the problem is because I'm a journalist, I go looking for stuff. I'm just saying. And I also think the algorithm for me personally, because I'm looking for stuff also is feeding me others things.

Elon Musk (22:20):

This is actually a challenge in that sometimes people will say, why is it showing me posts from this person that I hate? And we're like, well, did you interact a lot with this person that you hate? Well, yes. Well therefore thinks that you want to interact more with this person that you hate. That's like a reasonable-

Andrew Ross Sorkin (22:41):

Let me ask this.

Elon Musk (22:42):

If you kind of want to have an argument-

Andrew Ross Sorkin (22:44):

When you tweet-

Elon Musk (22:44):

Post.

AMERICAN OVERSIGHT

Andrew Ross Sorkin (22:46):

Post, let's say post, when you post-

Elon Musk (22:48):

Listen, anyone can come up with a better word, that would be great.

Andrew Ross Sorkin (22:51):

When you post though-

Elon Musk (22:51):

But the least bad word I can think of is post.

Andrew Ross Sorkin (22:52):

When you post though, are you trying to rile up either a base or an audience? Do you recognize the power you have in that? And also by the way, not just rile up one side of it, but also rile down, which is to say, as I said, there are people who are demonstrably anti-semitic on the site who I get Jew boy things and all sorts of things that come my way.

Elon Musk (23:23):

For a while they thought I was Jewish, so I get it too.

Andrew Ross Sorkin (23:26):

But no, but the question-

AMERICAN OVERSIGHT

Elon Musk (23:26):

My name is Super George.

Andrew Ross Sorkin (23:28):

Do you ever think to yourself, you know what, I'm going to go online and I'm going to say these people, I condemn these people that are on my site saying these things. Because-

Elon Musk (23:36):

I have said-

Andrew Ross Sorkin (23:38):

You say, I've condemned anti-antisemitism, but do you ever go-

Elon Musk (23:41):

Yeah, I said condemn… I literally posted, "I condemn antisemitism in all its forms." That is a, I believe, literal post that I made. I mean, I'm like, listen, if I can get out the thesaurus, if you, and we could-

Andrew Ross Sorkin (23:57):

Let me ask you a different question.

Elon Musk (00:00):

AMERICAN OVERSIGHT

Elon Musk (24:00):

You compose it, I'll post it.

Andrew Ross Sorkin (24:02):

Okay. Let me ask you this. You were on a podcast about a month ago, and you said something that struck me and it struck me as accurate. It came out of your mouth, so hopefully it is. But I'm hoping we go deep on this.

Elon Musk (24:17):

Just because it came out of my mouth does not mean it's true. [inaudible 00:24:19].

Andrew Ross Sorkin (24:19):

No. But you said, "My mind is a storm. I don't think most people would want to be me. They may think they want to be me, but they don't know. They don't understand." What did you mean by that? Your mind being a storm. I have known you for quite some time, I think it is a bit of a storm.

Elon Musk (24:43):

Yes. Yeah. It as much as a weather metaphor makes sense. My mind often feels like a very wild storm. I have a fountain of ideas. I have more ideas than I could possibly execute, so I have no shortage of ideas. Innovation is not the problem. Execution is the problem. I've got a million ideas. I've got an entire design for an electric supersonic vertical takeoff jet, but if I just can't do that as well. I've had that for 10 years. There's a million things.

AMERICAN OVERSIGHT

Andrew Ross Sorkin (25:24):

Is your storm a happy storm?

Elon Musk (25:30):

No.

Andrew Ross Sorkin (25:31):

It's not a happy storm?

Elon Musk (25:32):

No.

Andrew Ross Sorkin (25:34):

Tell us about that. Because I think that actually, when people try to really understand you, I think that a lot of this comes from some other place and I want to talk about that. Where do you think that is?

Elon Musk (25:57):

We need a psychiatrist couch here or something. I think to some degree, I was born this way and then I was amplified by a difficult childhood, frankly. But I can remember even in happy moments when I was a kid, that it just feels like there's just a rage of forces in my mind constantly. Now, this productively manifests itself in technology and building things for the most part. And I think on balance, the output has been very productive. I think the results, as we discussed earlier with SpaceX, Tesla, PayPal which is

AMERICAN OVERSIGHT

still going today, the first internet company that I started. In fact, the first internet company I started, Zipto, was funded by a New York Times Company, Hearst, Knight Ritter.

Andrew Ross Sorkin (27:09):

Yep. I remember.

Elon Musk (27:10):

And we wrote some of the software for the New York Times website and we helped bring online several hundred newspapers that previously were only in print. Now, this is in the '90s, which at this point is like, I'm like a grandpa basically. The '90s and internet feels like a pre-Cambrian era when there were only sponges. Anyway, I feel like a lot of productive things have been done. And you can also look at Tesla as being many companies in one. Like if the Tesla supercharging network were its own company, it would be a Fortune 500 company by itself, just the supercharging system. We also make the cells, we build the power electronics and the powertrain from scratch. We have the most innovative structural design, the largest castings ever used. We have the best manufacturing technology at Tesla, better manufacturing technology than companies that have been doing it for 100 years. So these demons of the mind are, for the most part, harnessed to productive ends.

Andrew Ross Sorkin (28:35):

Okay. So let me ask a question about that.

AMERICAN OVERSIGHT

Elon Musk (28:36):

That doesn't mean… Once in a while they go wrong.

Andrew Ross Sorkin (28:47):

And this is a question I think a lot of people are always trying to figure out about, not just you, but sometimes themselves. Meaning what is driving all of this? You're doing all of these things. Do you think that you would be as successful, whatever success is, if it wasn't being driven by some… I think that there's something you're trying to prove either to yourself or to somebody. I don't know. We're all trying to prove something.

Elon Musk (29:11):

Prove to who.

Andrew Ross Sorkin (29:11):

Maybe I'm trying to prove it to my mother. I don't know.

Elon Musk (29:14):

No. If I were to describe my philosophy, it is a philosophy of curiosity. I did have this existential crisis when I was around 12, about what's the meaning of life? Isn't it all pointless? Why not just commit suicide? Why exist? I read the religious texts. I read the philosophy books. That, especially the German philosophy books, made me quite depressed frankly. Want you not read Schopenhauer Nietzsche as a teenager. But then I read Douglas Adams' Hitchhiker's Guide to the Galaxy, which is a

AMERICAN OVERSIGHT

book on philosophy in the form of humor. And the point that Adamus was making there was that we don't actually know what questions to ask. That's why I said that, the answer is 42. Basically earth's a giant computer and it came up with the answer 42. But then to actually figure out what the question is, that's the actual hard part. And I think this is generally true also in physics. At the point at which you can properly frame the question, the answer is actually the easy part.

(30:37)
So my motivation then was that, well, my life is finite, really a flash in the pan on a galactic timescale. But if we can expand the scope and scale of consciousness, then we are better able to figure out what questions to ask about the answer that is the universe. And maybe we can find out the meaning of life or even what the right question to ask is. Where do we come from? Where are we going? Where are the aliens? Are there aliens? These questions, is there new physics to discover? Because there seems to be some real questions around dark matter and dark energy. So the purpose of SpaceX is to extend life beyond earth on a sustained basis, so that we can at least pass one of the Fermi Great Filters, which is that of being a single-planet civilization.

(31:53)
If we are single-planet civilization, then we are simply waiting around for some extinction event, whether that is manmade or natural. But if you're a single-planet civilization, eventually something will happen to that planet and you will die. If you're a multi-planet civilization, you'll live much longer. Also, multi-planet civilization, that's the natural stepping stone to being a

AMERICAN OVERSIGHT

multi-stellar civilization and being out there among the stars. So now, this I think has two… This is not simply a defensive motivation, but it is also one where that gives meaning, man's search for meaning.

Andrew Ross Sorkin (32:37):

Can I ask you a different-

Elon Musk (32:40):

All right. Let me finish this philosophy point, even though it may seem rather esoteric, it may resonate with a few people. We must get past this Fermi Great Filter of being a single-planet civilization. And if we do that, we are more likely to understand the nature of the universe and what questions to ask. If you believe in the philosophy of curiosity, then I think you should support this ambition. Being a multi-planet species is more than simply life insurance for life collectively. That's a defensive reason. But I think also that life has to be more than simply solving one sad problem after another. There have to be reasons for you wake up in the morning and you're happy to be alive. There have to be reasons that you have to say, why are you excited about the future? What gives you hope? And if you aren't sure, ask your kids. And I think the idea of us being a space-faring civilization and being out there among the stars is incredibly inspiring and exciting and something to look forward to. And there need to be such things in the world.

Andrew Ross Sorkin (34:13):

AMERICAN OVERSIGHT

Let me ask you a different question about confidence. We were having a conversation here earlier about people and where people get their confidence from. Some people have great insecurity, other people have great confidence. And I was thinking about you, because you have a very interesting history where people have told you over and over again that you're wrong.

Elon Musk (34:37):

Well, sometimes they're right.

Andrew Ross Sorkin (34:39):

Well, sometimes they are. But I would say that when it comes to Tesla, when it came to SpaceX, people told you that you were crazy, you were out of your mind, this was never going to happen.

Elon Musk (34:49):

Yes.

Andrew Ross Sorkin (34:50):

This was never going to work.

Elon Musk (34:53):

Yes. Yes.

Andrew Ross Sorkin (34:53):

AMERICAN OVERSIGHT

And so the reason I ask you this though is now, when people say, you're wrong, this isn't right, do you look at that and say, you know what, that's a red flag for me because I've been told so often that I'm wrong and I know I'm right because I've had that experience? Or are there people in your life when they say, you know what, this is not right. Do you know what I'm saying?

Elon Musk (35:23):

I think what you trying to say is that, do I at this point think because I've been right so many times for others who said I'm wrong, that now I best believe I'm right when, in fact, I'm wrong?

Andrew Ross Sorkin (35:32):

You did very well. What do you think?

Elon Musk (35:37):

No, I'm right. So yeah, no, look, here's the thing. Physics is unforgiving. Physics is unforgiving. I have these various little sayings that I've come up with, that physics is the law and everything else is a recommendation.

Andrew Ross Sorkin (36:01):

Right.

Elon Musk (36:02):

In the sense that you can break any law made by humans, but try breaking a law made by physics. That's much more difficult. So if you are wrong and

AMERICAN OVERSIGHT

persist in being wrong, the rockets will blow up and the cars will fail. So we're not trying to figure out what flavor of ice cream is the best flavor of ice cream. There's 1,000 things that can happen on a rocket flight, and only one of them gets the rocket to orbit. And so being wrong results in failure when dealing with physical objects.

Andrew Ross Sorkin (36:46):

But that's the interesting part. So now you've built these great companies that physically, the physics of them are enormously successful. So successful arguably, that you have leverage over everybody else. Nobody else can do Starlink. Nobody else can get the rockets in space, yet Amazon and Jeff Bezos are trying, but they haven't yet.

Elon Musk (37:09):

I hope he does.

Andrew Ross Sorkin (37:10):

You hope he does?

Elon Musk (37:11):

Yeah. Yeah. I actually agree with a lot of Jeff's motivations. Let me put it this way, if there was a button I could press that would delete Blue Origin, I wouldn't press it. So I think it's good that he's spending money on making rockets too. I'd suggest perhaps he spend more time on it, but it's up to him. I should make a point here. So nothing any of my companies have done has been to stifle competition. In fact, we've done the opposite. So at

AMERICAN OVERSIGHT

Tesla, we have open sourced our patents. Anyone can use our patents for free. How many companies do you know who've done that? Can you name one? I can't. At SpaceX, we don't use patents. Once in a while we'll file a patent just so some patent troll doesn't cause trouble. But we've done nothing anti-competitive. We've done nothing to stop our competitors.

Andrew Ross Sorkin (38:29):

I'm not suggesting you are.

Elon Musk (38:29):

I just want to clarify for the audience, because some companies have done anti-competitive things. I think the strange thing, the unusual thing about SpaceX and Tesla is that we've done things that have helped our competition. So at Tesla, we have made our supercharger system open access. We've made our charger technology available for free to the other manufacturers. No walled garden. We could have put a wall up, but instead we invited them in.

Andrew Ross Sorkin (39:03):

The reason I mentioned this though, is because you've had the success in the physical physics world, you now have these very difficult decisions that have huge impacts on the world that are not physical decisions at all. They're decisions of the mind. They're decisions that you and others have to make. And there's a question whether you should be making these decisions at all. And I think about it in the context of Starlink. Obviously there was the report about how it's being used in Ukraine and the Russia

AMERICAN OVERSIGHT

war. There's questions about Taiwan, whether Taiwan should use it or will use it. I believe they're not right now, because they're worried that at some point maybe the Chinese will tell you that they have leverage over you and you're going to have to turn that off. These are very difficult decisions and I'm so curious how you think about that. And not just the decisions, the fact that you have that power.

Elon Musk (39:55):

I think it's important for the audience to understand that the reason I have these powers is not because of some anti-competitive actions. It's simply because we've executed very well.

Andrew Ross Sorkin (40:02):

Oh, I'm not dismissing that. I think there's so many people, by the way, who are huge supporters of what you've created.

Elon Musk (40:06):

There are other satellites out there, you know?

Andrew Ross Sorkin (40:10):

But they're not as good as yours.

Elon Musk (40:11):

Right.

Andrew Ross Sorkin (40:11):

AMERICAN OVERSIGHT

And we can maybe make the same argument of cars and everything else. But as a result, that gives you enormous leverage.

Elon Musk (40:19):

Okay.

Andrew Ross Sorkin (40:19):

With the exception of, by the way, these advertisers who aren't on X in every other instance, everybody needs you.

Elon Musk (40:25):

They use our product if it's better, then use somebody else's product if their other product's better.

Andrew Ross Sorkin (40:34):

And I accept that, and maybe one day somebody else will create a better product.

Elon Musk (40:39):

How is it a bad thing to make better products than other companies?

Andrew Ross Sorkin (40:42):

Well, and I want to just go back to the Starlink piece it though, because that has sort of a geopolitical ramification in terms of your power and how you think about that specific power, and then the power that the U.S government might have, either over you or not over you, the power that

AMERICAN OVERSIGHT

Chinese government might have over you or not over you, and how those things get used.

Elon Musk (41:08):

What are you suggesting?

Andrew Ross Sorkin (41:10):

I'm asking the question around this very idea of how these satellites are going to be used, whether you think that you should have control of them, whether the government should have control of them.

Elon Musk (41:22):

Do you trust the government?

Andrew Ross Sorkin (41:25):

Well, there's a lot of people who don't trust the government.

Elon Musk (41:27):

Exactly.

Andrew Ross Sorkin (41:28):

But then this goes back to the trust of you, right?

Elon Musk (41:31):

AMERICAN OVERSIGHT

Like I said, we're not the only company who has communication satellites. Our satellites are just much better than theirs. So it's not like we have a monopoly, we just have the best product?

Andrew Ross Sorkin (41:45):

Do you feel anybody has leverage over you?

Elon Musk (41:51):

I think at the end of the day, if we make bad products that people don't want to use, then the users will vote with their resources and use something else.

Andrew Ross Sorkin (42:06):

Let me pivot the conversation for a second.

Elon Musk (42:08):

Certainly, my company's overseen by regulators. Since SpaceX, Starlink, Tesla are overseen by cumulatively over 100 regulators, and actually more than that, a few hundred regulators because you've got, we're in fifty-five countries. If you sum up all the times that I had an argument with regulators, of hundreds of regulators over decades, it can sound really terrible, except but they forgot to mention that there were 10 million regulations we complied with and only five that I disagreed with. But they list all the five and it sounds like, wow, this guy's a real maverick. I'm like, yeah, but what about the 10 million we complied with?

AMERICAN OVERSIGHT

Andrew Ross Sorkin (43:03):

One related thing on this and the leverage of countries and things over you and regulators. X is this free-speech platform. You do business in China, lots of business in China. That's an important part of your business, I imagine.

Elon Musk (43:16):

Well, it's not SpaceX.

Andrew Ross Sorkin (43:19):

How do you think about the leverage that the Chinese have over you, and do they have leverage over you? And how do you feel about, some people would say, is it hypocritical for you to be doing business in China, or frankly in other countries as it relates to X and other things that don't follow this free speech path that you have espoused?

Elon Musk (43:42):

The best that the X platform can do is adhere to the laws of any given country. Do you think there's something more we could do than that?

Andrew Ross Sorkin (43:50):

I think it would be very hard, but I just wonder, given the sort of strong, philosophical approach that you've been vocal about, whether you say to yourself, maybe I shouldn't be doing business in that country?

Elon Musk (44:05):

AMERICAN OVERSIGHT

Well, first of all, Starlink and SpaceX do no business in China whatsoever. Tesla has one of four factories, four vehicle factories in China. And China is, I don't know, a quarter of our market or something like that. So it's a quarter of the market of one company. The same is true, by the way, of all the other car companies. They also have something on that order of a quarter of their sales in China. So if that's a problem for Tesla, it's a problem for every car company. I think one has to be careful about not conflating the various companies. Because I can only do things that are within the bounds of the law, I cannot do beyond that. My aspiration is to do as much good as possible and to be as productive as possible within the bounds of what is legal. More than that, I cannot do.

Andrew Ross Sorkin (45:00):

I want to pivot and talk about AI for a moment. We had Jensen Huang here, who's a big fan of yours, as you know.

Elon Musk (45:05):

Yeah. Jensen's awesome.

Andrew Ross Sorkin (45:06):

Talked about bringing you the first box, by the way, with Ilya, interestingly enough, back in 2016, I think.

Elon Musk (45:14):

Yes. There's a video of Jensen and me unpacking the first AI computer at OpenAI.

AMERICAN OVERSIGHT

Andrew Ross Sorkin (45:22):

So I'm so curious what you think of what's just happened over the past two weeks. While you were dealing with this other headline, series of headlines, there was a whole other series of headlines at OpenAI. What did you think? You founded it, co-founded it.

Elon Musk (45:46):

Co-founded it, yeah. Well, the whole arc of OpenAI, frankly is a little troubling, because the reason for starting OpenAI was to create a counterweight to Google and DeepMind, which at the time had two-thirds of all AI talent and basically infinite money and compute. And there was no counterweight. It was a unipolar world. And Larry and Paige and I used to be very close friends, and I would stay at his house, and I would talk to Larry into the late hours of the night about AI safety. And it became apparent to me that Larry did not care about AI safety. I think perhaps the thing that gave it away was when he called me a speciest for being pro-humanity, as in a racist, but for species. So I'm like, "Wait a second, what side are you on, Larry?" And then I'm like, okay, listen, this guy's calling me a speciest. He doesn't care about AI safety. We've got to have some counterpoint here because this seems like we could be, this is no good.

(47:01)
So OpenAI was actually started, and it was meant to be open source. I named it OpenAI after open source. It is in fact a closed source, super closed. It should be renamed super closed source for maximum profit AI. Because this is what it actually is. Fay loves irony. In fact, a friend of mine

AMERICAN OVERSIGHT

says, the way to predict outcomes is the most ironic outcome is the most… It's like his Occam's razor, the simplest explanation is most likely. And my friend Jonah's view is that the most ironic outcome is the most likely. And that's what's happened with OpenAI. It is gone from an open source foundation, a 5123, to suddenly it's like a $90 billion for-profit corporation with closed source. So I don't know how you go from here to there.

Elon Musk (48:01):

I don't know how you get … Is this legal? I'm like, "That's legal?"

Andrew Ross Sorkin (48:06):

So as you saw Sam Altman get ousted by somebody you know, Ilya, and Ilya was a friend of yours, you brought him there, your relationship with Larry Page effectively broke down over you recruiting him away, I think.

Elon Musk (48:19):

That's correct. Larry refused to be friends with me after I recruited Ilya.

Andrew Ross Sorkin (48:25):

And so here's Ilya, apparently, saying something is very wrong.

Elon Musk (48:30):

I think we should be concerned about this because I think Ilya actually has a strong moral compass. He really sweats it over questions of what is right. And if Ilya felt strongly enough to want to fire Sam, well, I think the world should know what was that reason.

AMERICAN OVERSIGHT

Andrew Ross Sorkin (48:52):

Have you talked to him?

Elon Musk (48:54):

I've reached out, but he doesn't want to talk to anyone.

Andrew Ross Sorkin (48:57):

Have you talked to other people behind the scenes? Is this is all happening?

Elon Musk (49:01):

I've talked to a lot of people. I've not found anyone who knows why. Have you?

Andrew Ross Sorkin (49:12):

I think we are all still trying to find out.

Elon Musk (49:15):

One of two things is, either it was a serious thing and we should know what it is or it was not a serious thing and then the board should resign.

Andrew Ross Sorkin (49:24):

What do you think of Sam Altman?

Elon Musk (49:28):

AMERICAN OVERSIGHT

I have mixed feelings about Sam. The ring of power can corrupt, and he has the ring of power. So I don't know. I think I want to know why Ilya felt so strongly as to fire Sam. This sounds like a serious thing. I don't think it was trivial. And I'm quite concerned that there's some dangerous element of AI that they've created.

Andrew Ross Sorkin (50:09):

Discovered.

Elon Musk (50:09):

Yes.

Andrew Ross Sorkin (50:10):

You think they've discovered something.

Elon Musk (50:12):

That'd be my guess.

Andrew Ross Sorkin (50:15):

Where are you with your own AI efforts relative to where you think OpenAI is, where you think Google is, where you think the others are?

Elon Musk (50:31):

On the AI front, I'm in somewhat of a quandary here because I've thought AI could be something that would change the world in a significant way since I was in college, 30 years ago. Now, the reason I didn't go build AI

AMERICAN OVERSIGHT

right from the get-go was because I was uncertain about which edge of the double-edged sword would be sharper, the good edge or the bad edge.

(50:58)
So I held off on doing anything on AI, could've created, I think, a leading AI company, and OpenAI actually is that, because I was just uncertain, if you make this magic genie, what will happen, whereas I think building sustainable energy technology is much more of a single-edged sword that is single-edged good, making life multi-planetary, I think single-edged good, installing mostly single-edged good, giving people better connectivity to people that don't have connectivity or it's too expensive, I think is very much a good thing. Sonic was instrumental, by the way, in halting the Russian advance, and the Ukrainians said so. So I think, with AI, you've got the magic genie problem. You may think you want a magic genie, but once that genie's out of the bottle, it's hard to say what happens.

Andrew Ross Sorkin (52:09):

How far are we away from that genie being out of the bottle, do you think, or you think it's already out?

Elon Musk (52:15):

The genie is certainly poking its head out.

Andrew Ross Sorkin (52:17):

The AGI, the idea of artificial general intelligence, given what you now are working on yourself, and you know how easy or hard it is to train, to create

AMERICAN OVERSIGHT

the inferences, to create the weights, I hope I'm not getting too far in the weeds of just how this works, but those are the basics behind the software end of this.

Elon Musk (52:41):

It's funny, all these weights, they're just basically numbers in a common separated value file, and that's our digital god, the CSP file. I found that funny, but that's literally what it is. So I think it's coming pretty fast.

Andrew Ross Sorkin (53:05):

You famously have admitted to overstating how quickly things will happen, but how quickly do you think this will happen?

Elon Musk (53:16):

If you say smarter than the smartest human at anything?

Andrew Ross Sorkin (53:20):

Yep.

Elon Musk (53:22):

It may not be then quite smarter than all humans, well, machine-augmented humans, because people have got computers and stuff. There's a higher bar, but you say it's more than any … can write as good a novel as, say, JK Rowling, or discover new physics, or invent new technology, I would say that we're less than three years from that point.

AMERICAN OVERSIGHT

Andrew Ross Sorkin (53:47):

Let me ask you a question about XAI and what you're doing because there's an interesting thing that's different, I think, about what you have relative to some of the others, which is you have data, you have information, you have all of the stuff that everybody in here has put on the platform to sort through, and I don't know if everybody realized that initially. What is the value of that?

Elon Musk (54:21):

Yeah. Data is very important. You could say data is probably more valuable than gold.

Andrew Ross Sorkin (54:29):

But then maybe you have the gold in X in a different way, in a way, again, that I don't know if the public appreciates what that means.

Elon Musk (54:42):

Yes, X might be the single best source of data. People click on more links to X than anything else on earth. Sometimes people think Facebook or Instagram is a bigger thing, but actually, there are more links to X than anything. This is public information. You can Google it.

Andrew Ross Sorkin (55:06):

Okay, let me ask you a-

Elon Musk (55:08):

AMERICAN OVERSIGHT

So it is where you would find what is happening right now on earth at any given point in time. The whole OpenAI drama played out, in fact, on the X platform. Google certainly has a massive amount of data, so does Microsoft, but it is one of the best sources of data.

Andrew Ross Sorkin (55:35):

Can I ask you an interesting IP issue, which I think is actually something I can say, as somebody who's in the creator business and journalistic business and whatnot, where I care about copyright? So one of the things about training on data has been this idea that these things are not being trained on people's copyrighted information. Historically, that's been the concept.

Elon Musk (55:59):

Yeah, that's a huge lie.

Andrew Ross Sorkin (56:00):

Say that again?

Elon Musk (56:02):

These AIs are all trained on copyrighted data, obviously.

Andrew Ross Sorkin (56:06):

So you think it's a lie when OpenAI says that this is … None of these guys say they're training on copyrighted data.

AMERICAN OVERSIGHT

Elon Musk (56:13):

That's a lie.

Andrew Ross Sorkin (56:14):

It's a lie, straight up.

Elon Musk (56:15):

Yeah, straight up lie.

Andrew Ross Sorkin (56:16):

Okay.

Elon Musk (56:16):

100%. Obviously, it's been trained on copyrighted data.

Andrew Ross Sorkin (56:21):

Okay. So let me ask a second question, which is, all of the people who have been uploading-

Elon Musk (56:28):

It's one every minute here.

Andrew Ross Sorkin (56:28):

All of the people who have been uploading articles, the best quotes from different articles, videos to X, all of that can be trained on. And it's

AMERICAN OVERSIGHT

interesting because people put all of that there and those quotes have historically been considered fair use, right?

Elon Musk (56:47):

Yeah.

Andrew Ross Sorkin (56:47):

People are putting those quotes up there. And individually, on a fair use basis, you'd say, "Okay, that makes sense," but now, there are people who do threads, and by the way, there may be multiple people who've done an article that has 1,000 words. Technically, all 1,000 words could've made it onto X somehow. And effectively, now, you have this remarkable repository, and I wonder how you think about that, again, and how you think the creative community and those who were the original IP owners should think about that.

Elon Musk (57:20):

I don't know, except to say that, by the time these lawsuits are decided, we'll have digital God. So I'd ask digital God at that point. These lawsuits won't be decided before, on a timeframe that is relevant.

Andrew Ross Sorkin (57:34):

Is that a good thing or a bad thing?

Elon Musk (57:41):

AMERICAN OVERSIGHT

There's that … I don't know if it's actually a real Chinese thing or not, but may you live an interesting time is apparently not a good thing, but personally, I would prefer to live in interesting times, and we live in the most interesting of times. For awhile there, I was really getting demotivated and losing sleep over the threat of AI danger, and then I finally became fatalistic about it and said, "Well, even if I knew annihilation was certain, would I choose to be alive at that time or not?" And I said, "I probably would choose to be alive at that time because it's the most interesting thing, even if there's nothing I could do about it." So then basically, a fatalistic resignation helped me sleep at night because I was having trouble sleeping at night because of AI danger.

(58:43)
Now, what to do about it? I've been the one banging the drum the hardest, by far the longest, or at least one of longest for AI danger, and these regulatory things that are happening, the single biggest reason they're happening is because of me.

Andrew Ross Sorkin (59:02):

Do you think they're ever going to get their arms around it? We talked to the Vice President this afternoon. She said she wants to regulate it. People have been trying to regulate social media for years and have done nothing, effectively.

Elon Musk (59:13):

Well, there's regulation around anything which is a physical danger, a danger to the public. So cars are heavily regulated, communications are

AMERICAN OVERSIGHT

heavily regulated, rockets and aircraft are heavily regulated. The general philosophy about regulation is that, when something is a danger to the public, that there needs to be some government oversight. So I think, in my view, AI is more dangerous than nuclear bombs and we regulate nuclear bombs. You can't just go make a nuclear bomb in your backyard. I think we should have some kind of regulation with AI. Now, this tends to cause the AI accelerationist to get up in arms because they think AI is heaven, basically.

Andrew Ross Sorkin (01:00:04):

But you typically don't like regulation. You've pushed back on regulators, for the most part, in the world of Tesla and so many instances where we read articles about you pushing back on the regulators. I'm so curious why, in this, instance now you own one of these businesses.

Elon Musk (01:00:19):

As I said a moment ago, one should not take what is viewed in the media as being the whole picture. There are literally hundreds, this is not an exaggeration, say, there are probably 100 million regulations that my companies comply with and there are probably five that we don't. And if we disagree with some of those regulations, it's because we think the regulation that is meant to do good doesn't actually do good.

Andrew Ross Sorkin (01:00:53):

But that's an interesting thing because-

AMERICAN OVERSIGHT

Elon Musk (01:00:53):

It's not defying regulations for the sake of defiance.

Andrew Ross Sorkin (01:00:55):

The question, if there are laws and rules, whether the idea is that you're making the decision that the law and the rule shouldn't be the law and the rule and then … right?

Elon Musk (01:01:05):

No, I'm saying you're fundamentally mistaken, and it should be obvious that you're mistaken. My company's automotive is heavily regulated. We would not be allowed to put cars on the road if we did not comply with this vast body of regulation. Now, you could fill up the stage with, literally six foot high, the regulations that you have to comply with to make a car. You could have a room full of phone books. That's how big the regulations are. And if you don't comply with all of those, you can't sell the car. And if we don't comply with all the regulations for rockets or for Starlink, they shut us down.

(01:01:46)
So in fact, I am incredibly compliant with regulations. Now, once in awhile, there'll be something that I disagree with. The reason I would disagree with it is because I think the regulation, in that particular case, in that rare case, does not serve the public good. And therefore, I think it is my obligation to object to a regulation that is meant to serve the public good, but doesn't.

AMERICAN OVERSIGHT

That's the only time I object, not because I seek to object. In fact, I'm incredibly rule-following.

Andrew Ross Sorkin (01:02:14):

Let me ask you a separate question, a social-media-related question. We've been talking about TikTok today ahead of the election.

Elon Musk (01:02:21):

TikTok is-

Andrew Ross Sorkin (01:02:22):

What do you think of TikTok? Do you think it's a national security threat?

Elon Musk (01:02:30):

I don't use TikTok.

Andrew Ross Sorkin (01:02:32):

Say that again, you don't?

Elon Musk (01:02:33):

I don't personally use it, but for teenagers and people in their 20s, they seem almost religiously addicted to TikTok. Some people will watch TikTok for two hours a day. I stopped using TikTok when I felt the AI probing my mind and it made me uncomfortable, so I stopped using it. And in terms of antisemitic content, TikTok is rife with that. It has the most viral antisemitic content by far.

AMERICAN OVERSIGHT

Andrew Ross Sorkin (01:03:20):

But do you think the Chinese Government is using it to manipulate the minds of Americans?

Elon Musk (01:03:26):

No.

Andrew Ross Sorkin (01:03:26):

Is that something that you think we should worry about? You have different states that are trying to ban it.

Elon Musk (01:03:32):

I don't think this is some Chinese Government plot, but the TikTok algorithm is entirely AI-powered. So it is really just trying to find the most viral thing possible. It's what is going to keep you glued to the screen. That's it. Now, on sheer numbers, there are on the order of two billion Muslims in the world, and I think a much smaller number of Jewish people, 20 million, something, many orders of magnitude fewer. So if you just look at content production, just on sheer numbers basis, this is going to be overwhelmingly antisemitic, just on a numbers basis.

Andrew Ross Sorkin (01:04:21):

Let me ask you a political question, and I've been trying to square this one in my head for a long time. In the last two or three years, you have moved decidedly to the right, I think.

AMERICAN OVERSIGHT

Elon Musk (01:04:34):

Have I?

Andrew Ross Sorkin (01:04:34):

Well, we can discuss this. I think that you have been espousing and promoting a number of Republican candidates and others. You've been very frustrated with the Biden Administration over, I think, unions and feeling like they did not respect what you've created.

Elon Musk (01:04:56):

Well, doing nothing to provoke the Biden Administration, they held an electric vehicle summit at the White House and specifically refused to let Tesla attend. This was in the first six months of the administration. And we inquired, we're like, "We literally make more electric cars than everyone else combined. Why are we not allowed? Why are you only letting Ford, GM, Chrysler, and UAW, and you're specifically disallowing us from the EV summit at the White House?" We had done nothing to provoke them. Then Biden went on to add insult to injury and publicly said that GM was leading the electric car revolution. This was in the same quarter that Tesla made 300,000 electric cars and GM made 26. Does that seem fair to you?

Andrew Ross Sorkin (01:05:45):

But tell me this, then. It doesn't seem fair. And I've asked repeatedly, you've probably seen me-

Elon Musk (01:05:53):

AMERICAN OVERSIGHT

And by the way, I had a great relationship with Obama. So this was not a-

Andrew Ross Sorkin (01:05:57):

But then there's this.

Elon Musk (01:05:57):

I voted for Obama. I stood in line for six hours to shake Obama's hand. Okay?

Andrew Ross Sorkin (01:06:04):

Okay. So let me just ask on a personal level, I can see it in your face, this hurt you personally.

Elon Musk (01:06:11):

And it hurt the company, too, and it was an insult to … Tesla has 140,000 employees. Half of them are in the United States. Tesla has created more manufacturing jobs than everyone else combined.

Andrew Ross Sorkin (01:06:26):

So let me ask this, then. You've devoted at least the last close to 20 years of your life, if not more, to the climate, climate change, trying to get Tesla off the ground, in part to improve climate. You've talked about that.

Elon Musk (01:06:40):

Yeah, a real right-wing motive.

AMERICAN OVERSIGHT

Andrew Ross Sorkin (01:06:42):

Repeatedly.

Elon Musk (01:06:44):

God, far right, if anything.

Andrew Ross Sorkin (01:06:45):

No, I understand that.

Elon Musk (01:06:46):

It's a reverse psychology, next level.

Andrew Ross Sorkin (01:06:51):

Well, no, but here's then the question, which is how do you square the support that you have given … I believe you were at a fundraiser for Vivek Ramaswamy, for example, who says that the climate issue is a hoax, right?

Elon Musk (01:07:10):

Yeah, I disagree with him on that.

Andrew Ross Sorkin (01:07:12):

But I would think that that would be such a singular issue for you. I would think that the climate issue would be such a singular issue for you that, actually, it would disqualify almost anybody who didn't take that issue seriously.

AMERICAN OVERSIGHT

Elon Musk (01:07:25):

Well, I haven't endorsed anyone for president. I wanted to hear what Vivek had to say because I think that some of the things he says, I think, are pretty solid. He's concerned about government overreach, about government control of information. The degree to which old Twitter was basically a sock puppet of the government was ridiculous. So it seems to me that there's a very severe violation of the First Amendment in terms of how much control the government had over old Twitter, and it no longer does.

(01:08:04)
So there's a reason for the First Amendment. The reason for the First Amendment, for freedom of speech, is because the people that immigrated to this country came from places where there was not freedom of speech. And they were like, "You know what? We got to make sure that that's constitutional," because where they came from, if they said something, they'd be put in prison or something bad would happen to them. And freedom of speech, you have to say, when is it relevant? It's only relevant when someone you don't like can say something you don't like or it has no meaning. And as soon as you throw in the towel and concede to censorship, it is only a matter of time before someone censors you. And that is why we have the First Amendment.

Andrew Ross Sorkin (01:08:58):

Could you see yourself voting for President Biden, if it's a Biden-Trump election, for example?

AMERICAN OVERSIGHT

Elon Musk (01:09:09):

I think I would not vote for Biden.

Andrew Ross Sorkin (01:09:12):

You'd vote for Trump.

Elon Musk (01:09:14):

I'm not saying I'd vote for Trump, but this is definitely a difficult choice here.

Andrew Ross Sorkin (01:09:23):

Would you vote for Nikki Haley? Nikki Haley, by the way, wants all social media names to be exposed, as you know.

Elon Musk (01:09:31):

No, I think that's outrageous. I'm not going to vote for some pro-censorship candidate. Like I said, I think you have to consider that there's a lot of wisdom in these amendments, I mean, the constitution, and a lot of things that we take for granted here in the United States that don't even exist in Canada. There's no constitutional right to freedom of speech in Canada and there's no Miranda rights in Canada. People think you have the right to remain silent. You don't, actually, in Canada. I'm half Canadian, I can say these things, I suppose. So the freedom of speech is incredibly important, even when people … And like I said, it's actually especially important, in

AMERICAN OVERSIGHT

fact, it is only relevant, when people you don't like can say things you don't like. [inaudible 01:10:40] they're meaningless.

Andrew Ross Sorkin (01:10:41):

You think, right now, the Republican candidates or the Democrats are more inclined … This is where you go to, I assume, to woke and anti-woke and the mind virus issue that you've talked about. Which party do you think is more pro freedom of speech, given all the things you've seen? Because we also see DeSantis preventing people from reading certain things. Maybe you think that's correct.

Elon Musk (01:11:10):

Look, we actually are in an odd situation here where, on balance, the Democrats appear to be more pro-censorship than the Republicans, and that used to be the opposite. It used to be left position was freedom of speech. I believe, at one point, the ACLU even defended the right of someone to claim that they were Nazi or something like that. So the left was freedom of speech is fundamental. My perception, perhaps it isn't accurate, is that the pro-censorship is more on the left than the right.

Elon Musk (01:12:00):

… We certainly get more complaints from the left than the right, let me put it that way. But my aspiration for the X platform is that it is the best source of truth, or the least inaccurate source of truth. And while I don't know of you will believe me or not, but I think honesty is the best policy, and I think that the truth will win over time.

AMERICAN OVERSIGHT

(01:12:25)
And we've got this great system, and it's getting better, called Community Notes, which is fantastic I think at correcting falsehoods, or adding context. In fact, we make a point of not removing anything, but only adding context. Now that context could include that this is completely false and here's why. And no one is immune to this. I'm not immune to it. Advertisers are not immune to it. In fact, we've had Community Notes, which has caused us some loss in advertising. Speaking of loss in advertising revenue. If a community note… If there's false advertising, the Community Note will say, "This is false and here is why."

(01:13:12)
There's one specific example that is public knowledge, so I'll mention it, which is at one point Uber had this ad which said, "Earn like a boss." And it was community noted. "If by boss you mean $12 and forty-seven cents an hour." This did cause at least a temporary suspension of advertising from Uber.

Andrew Ross Sorkin (01:13:32):

I got to ask you a question that might make everybody in the room uncomfortable or not uncomfortable. It goes to the free speech issue. The New York Times company and the New York Times newspaper, it appeared over the summer to be throttled.

Elon Musk (01:13:45):

What did?

AMERICAN OVERSIGHT

Andrew Ross Sorkin (01:13:46):

The New York Times?

Elon Musk (01:13:47):

Well, we do require that everyone has to buy a subscription, and we don't make exceptions for anyone. And I think if I want the New York Times, I have to pay for a subscription, and they don't give me a free subscription. So I'm not going to give them a free subscription.

Andrew Ross Sorkin (01:14:05):

But were you throttling the New York Times, relative to other news organizations, relative to everybody else? Was it specific to The Times?

Elon Musk (01:14:13):

They didn't buy a subscription. By the way, it only cost like $1000 a month. So if they just do that, then they're back in the saddle.

Andrew Ross Sorkin (01:14:25):

But you are saying that it was throttled?

Elon Musk (01:14:27):

No, I'm saying-

Andrew Ross Sorkin (01:14:28):

AMERICAN OVERSIGHT

I mean was there a conversation that you had with somebody you said, " Look, I'm unhappy with The Times. They should either be buying the subscription, or I don't like their content or whatever."

Elon Musk (01:14:37):

Any organization that refuses to buy a subscription is not going to be recommended.

Andrew Ross Sorkin (01:14:46):

But then what does that say about free speech? And what does that say about amplifying certain voices-

Elon Musk (01:14:52):

Free speech is not exactly free, it costs a little bit.

Andrew Ross Sorkin (01:14:57):

But that's an interesting-

Elon Musk (01:14:58):

Yeah. It's like in South Park where they say, "Freedom isn't free, it costs a buck O' five." Or whatever. But it's pretty cheap. Okay? Low cost freedom.

Andrew Ross Sorkin (01:15:13):

I got a couple more questions for you. You're headed back to Texas after this-

AMERICAN OVERSIGHT

Elon Musk (01:15:17):

Freedom-

Andrew Ross Sorkin (01:15:18):

To launch the Cybertruck.

Elon Musk (01:15:20):

Yeah.

Andrew Ross Sorkin (01:15:21):

It's going to be a big launch, but I wanted to ask you right now more broadly just about the car business and what you see actually happening, and specifically the government put in place lots of policies, as you know, to try to encourage more EVs. And one of the things that's happened uniquely is you have now a lot of car companies saying, "Actually this is too ambitious for us. These plans are too ambitious." 4,000 dealers… I don't know if you saw just yesterday, sent a letter to the White House saying, "This has gone too far, you're going too far."

Elon Musk (01:15:53):

This is EV?

Andrew Ross Sorkin (01:15:56):

It was, "This is going too fast, too far." And that there's not enough demand. Underneath all this is this idea that maybe there's not enough

AMERICAN OVERSIGHT

demand for EVs. That the American public has not bought into… I mean they bought into it with your company, but they haven't bought into it broadly enough.

Elon Musk (01:16:13):

Well, I think if you make a compelling electric car, people will buy it. No question about it. I mean electric car sales in China are gigantic. That's by far the biggest category, and I think that would be the case… I mean it's worth noting, so probably the best reputation of that is that the Tesla model Y will be the best selling car of any kind on earth this year, of any kind, gasoline or otherwise.

Andrew Ross Sorkin (01:16:43):

Is there another car company that you think is doing a good job with EVs?

Elon Musk (01:16:49):

I think the Chinese car companies are extremely competitive. By far our toughest competition is in China. So I mean there's a lot of people who are out there who think the top 10 car company's is going to be Tesla followed by nine Chinese car companies. I think they might not be wrong. So China is super good at manufacturing, and the work ethic is incredible. So if we consider different leagues of competitiveness at Tesla, we consider the Chinese league to be the most competitive. And by the way, we do very well in China because our China team is the best in China.

Andrew Ross Sorkin (01:17:31):

AMERICAN OVERSIGHT

How worried are you that the unionization effort that just took place, well, I shouldn't say effort, but the new wages and the like at GM and Ford, that they're coming for you? And they are coming for you. What is that going to mean to you and your business?

Elon Musk (01:17:50):

Well, I mean I think it's generally not good to have an adversarial relationship between people on the line, one group at the company and another group. In fact, I disagree with the idea of unions, but perhaps for a reason that is different than people may expect, which is I just don't like anything which creates kind of a lords and peasants sort of thing. And I think the unions naturally try to create negativity in a company, and create a sort of lords and peasants situation.

(01:18:25)
There are many people at Tesla who have gone from working on the line to being in senior management. There is no lords and peasants. Everyone eats at the same table. Everyone parks in the same parking lot. At GM there's a special elevator for only for senior executives. We have no such thing at Tesla.

(01:18:45)
And the thing is that I actually know the people on the line, because I worked on the line and I walked the line and I slept in the factory and I worked beside them. So I'm no stranger to them. And there are actually many times where I've said, "Well, can't we just hold a union vote?" But apparently a company is not allowed to hold a union vote, so it has to be

AMERICAN OVERSIGHT

somehow called for, but the unions can't do it. So I said, "Well let's just hold a vote and see what happens."

(01:19:18)
The actual problem is the opposite. It's not that people are trapped at Tesla building cars. The challenge is, how do we retain great people to do the hard work of building cars when they have six other opportunities that they can do that are easier? That's the actual difficulty, is that building cars is hard work and there are much easier jobs. And I just want to say that I'm incredibly appreciative of those who build cars, and they know it.

(01:19:51)
So I don't know, maybe we'll be unionized. I say if Tesla gets unionized it will be because we deserve it and we failed in some way. But we certainly try hard to ensure the prosperity of everyone. We give everyone stock options. We've made many people who are just working the line who didn't even know what stocks were, we've made the millionaires.

Andrew Ross Sorkin (01:20:21):

We're going to run out of time. Final couple of quick questions. When do you have the time to tweet or to post? I actually think about it all the time. As I said, I use it-

Elon Musk (01:20:33):

well. I have to go to the bathroom sometimes.

Andrew Ross Sorkin (01:20:36):

AMERICAN OVERSIGHT

I use it all the time. Meaning, if we were to open up our phones and look at the screen time, what does yours look like?

Elon Musk (01:20:45):

Well, about every three hours, I make a trip to the lavatory.

Andrew Ross Sorkin (01:20:50):

And that's the only time you do this? Seems like you're on there a lot.

Elon Musk (01:20:58):

No, I mean there'll be brief moments between meetings. I mean obviously, I have 17 jobs and no, I guess technically it's work at this point.

Andrew Ross Sorkin (01:21:15):

It is, but I'm thinking just in terms of your mind share. I mean, by the way, there's a lot of people who should be working who are on this app.

Elon Musk (01:21:22):

Technically posting on Twitter or X is work. It does count as work. So there's that. But no, I mean I think I'm on… Well I guess usually, probably I'm on for longer than I think I am.

Andrew Ross Sorkin (01:21:38):

I know, but do you think that's five hours a day, four hours?

Elon Musk (01:21:40):

AMERICAN OVERSIGHT

If you look at the screen time of a number of hours per week, sometimes that's a scary number. It's probably, I don't know, it's a little over an hour a day, or something like that.

Andrew Ross Sorkin (01:21:51):

Just an hour a day? If we really looked at this together. Do you have your phone with you?

Elon Musk (01:21:56):

Yeah.

Andrew Ross Sorkin (01:21:57):

You want to look?

Elon Musk (01:21:59):

Okay.

Andrew Ross Sorkin (01:22:03):

Okay, here we go. You ready? Screen time in general?

Elon Musk (01:22:07):

Yeah, screen time. Sometimes this is a scary number though.

Andrew Ross Sorkin (01:22:11):

I know, that's why I thought…

AMERICAN OVERSIGHT

Elon Musk (01:22:22):

I just got a new phone, so I think this is not accurate. It's one minute. Pretty sure it's more than that. Wait, it's over the week. There we go.

Andrew Ross Sorkin (01:22:31):

Yeah, go to the week.

Elon Musk (01:22:35):

Okay, so it's still wrong. It's more than four minutes. I just got a new phone, so this is not accurate. It literally says four minutes.

Andrew Ross Sorkin (01:22:42):

New phone? Tim Cook sent you that phone?

Elon Musk (01:22:44):

New phone. [inaudible 01:22:45].

Andrew Ross Sorkin (01:22:47):

I should ask, by the way I just mentioned Tim Cook. Do you feel like you're going to have to have a battle with him eventually? Is that the next fight over the app store?

Elon Musk (01:22:56):

The idea of making a phone… What do you mean like-

AMERICAN OVERSIGHT

Andrew Ross Sorkin (01:22:58):

No, no, no.

Elon Musk (01:22:59):

The app store?

Andrew Ross Sorkin (01:23:01):

The app store. Are you going to make a phone? Sam Altman's apparently thinking about making a phone with Johnny Ive.

Elon Musk (01:23:05):

I mean, I don't think there's a real need to make a phone. I mean, if there's an essential need to make a phone, I'll make a phone, but I've got a lot of fish to fry. So I mean I do think there's a fundamental challenge that phone makers have at this point because you've got basically a black rectangle. How do you make that better?

Andrew Ross Sorkin (01:23:31):

So do you want to do that? What does that look like in Elon's head?

Elon Musk (01:23:36):

No, that's literally… Yeah, good phrase, in the head. A neural link.

Andrew Ross Sorkin (01:23:42):

Well there we go. We need to touch that before it's over.

AMERICAN OVERSIGHT

Elon Musk (01:23:46):

The best interface would be a neural interface directly to your brain. So that would be a neural link.

Andrew Ross Sorkin (01:23:52):

How far are we, do you think from that, and how excited or scary does that seem to be? And we read these headlines obviously, about monkeys who died, as you know, what should we think about that?

Elon Musk (01:24:03):

Yeah, actually this is… The USDA inspector who came by Neuralink facilities literally said in her entire career she has never seen a better animal care facility. We are the nicest to animals that you could possibly be, even to the rats and mice, even though they did the plague and everything. So it is like monkey paradise.

(01:24:35)
So the thing that gets conflated is that there were some terminal monkeys, where, this is actually several years ago, where the monkeys were about to die and we're like, okay, we've got an experimental device. It's a kind of thing which you would only put on a monkey that's about to die. And then now the monkey died, but it didn't die because of the Neuralink, it died because it had a terminal case of cancer or something like that.

(01:24:57)
Neuralink has never caused the death of a monkey, to the best… Unless

AMERICAN OVERSIGHT

they're hiding something from me, it's never caused death of a monkey. And in fact, we've now had monkeys with Neuralink implants for two, three years and they're doing great. And we've even replaced the Neuralink twice and we're getting ready to do the first implants, hopefully in a few months. The only implementations of Neuralink I think are unequivocally good. Speaking of the double-edged sword, I think these early implementations are single-edged sword, because the first implementations will be to enable people who have lost the brain-body connection to be able to operate a computer or a phone faster than someone who has hands that work. So you can imagine if Stephen Hawking could communicate faster than someone who had full-body functionality, how incredible that would be. Well, that's what this device will do, and we should have proof of that in a human, hopefully in a few months.

(01:26:07)
It already works in monkeys and works quite well with monkeys that can play video games just by thinking. So in the next application after dealing with tetraplegics and quadriplegics is going to be vision. Vision is the next thing. So it's like if somebody has lost both eyes, or the optic nerve has failed, basically where they have no possibility of having some ocular correction. That would be the next thing for Neuralink, is a direct vision interface. And in fact, then you could be like Geordi La Forge from Star Trek. You could see in any frequency, actually you could see in radar if you want.

Andrew Ross Sorkin (01:26:57):

AMERICAN OVERSIGHT

Two final questions, and then we're going to end this conversation, which I think has taken everybody inside the mind of Elon Musk today-

Elon Musk (01:27:05):

Not as well as Neuralink will though.

Andrew Ross Sorkin (01:27:12):

It actually goes to self-driving cars and vision and everything else. And I asked this question of Pete Buttigieg transportation secretary, it's actually something you retweeted. So I wanted to ask you the same question. There's a big question about autonomous vehicles and the safety of them, but there's also a question about when it will be politically palatable in this country for people to die in cars that are controlled by computers. Which is to say we have 35, 40,000 deaths every year in this country. If you could bring that number down to 10,000, 5,000, that might be a great thing. But do we think that the country will accept the idea that 5,000 people, that your family might have perished in a vehicle as a result, not of a human making a mistake, but of a computer?

Elon Musk (01:28:13):

Yes. Well, first of all, humans are terrible drivers. So people text and drive, they drink and drive, they get into arguments, they do all sorts of things in cars that they should not do. So it's actually remarkable that there are not more deaths than there are. What we'll find with computer driving is, I think probably an order of magnitude reduction in deaths.

AMERICAN OVERSIGHT

(01:28:45)
And the US has actually far fewer deaths per capita than the rest of the world. If you go worldwide, I think there's something close to a million deaths per year due to automotive accidents. So I think computer driving will probably drop that by 90% or more. It won't be perfect, but it'll be 10 times better.

Andrew Ross Sorkin (01:29:09):

And do you think that the public will accept that? Do you think the government will accept that?

Elon Musk (01:29:13):

Well, in large numbers, it will simply be so obviously true that it really cannot be denied.

Andrew Ross Sorkin (01:29:21):

And what do you think, I know we've talked about the timeline before, and I know people have criticized you for putting out timelines that may not have come true just yet, but what do you think it really is? And by the way, do you feel, do you ever say to yourself, oh, I shouldn't have said that?

Elon Musk (01:29:36):

Sure, of course. Wait, I shouldn't have said that. So yeah, I'm optimistic about… I think I'm naturally optimistic about time scales, and if I was not naturally optimistic, I wouldn't be doing the things that I'm doing. I mean, I

AMERICAN OVERSIGHT

certainly wouldn't have sold a rocket company or electric car company if I didn't have some sort of pathological optimism, frankly.

(01:30:04)
So as you pointed out, many people said that it would fail. And in fact, actually I agreed with them. I said, "Yes, it probably will fail." And they're like, "Hmm, okay." But I thought SpaceX and Tesla had less than a 10% chance of success when we started them. So yeah, anyway. But the self-driving thing is, I've been optimistic about it, but we've certainly made a lot of progress. If anybody has tried, has been using the sort of full self-driving beta, the progress every year has been substantial.

(01:30:42)
It's really now at the point where in most places it'll take you from one place to another with no interventions. And the data is unequivocal that supervised full self-driving is somewhere around four times safer or maybe more, than just a human driving by themselves. So I can certainly see it coming. Actually, really-

Andrew Ross Sorkin (01:31:12):

But do you think it's another five or 10 years? I mean, people say-

Elon Musk (01:31:14):

No, no, no, definitely not. Definitely not.

Andrew Ross Sorkin (01:31:17):

AMERICAN OVERSIGHT

Do you feel like investors have invested in something that hasn't happened yet? Is that fair to them? And that's the other question that people have about that.

Elon Musk (01:31:25):

Well, I mean I think they've all, with rare exception, thought it wasn't happening. So they were investing, despite thinking, they're very clear that they don't think it's real. So they're not saying, "Oh, we just believe everything Elon says, hook, line, and sinker." But the thing is that, I mean, it would be a fair criticism of me to say that I'm late, but I always deliver in the end.

Andrew Ross Sorkin (01:31:53):

Let me ask you a final question. I took note of this. It was November 11th and you took to Twitter and you wrote only two words. You said amplify empathy.

Elon Musk (01:32:03):

Right.

Andrew Ross Sorkin (01:32:05):

I was taken aback by that, given all the things that have been going on in the world. Do you remember what you were thinking?

Elon Musk (01:32:13):

Well, I think it's quite literally-

AMERICAN OVERSIGHT

Andrew Ross Sorkin (01:32:15):

I understand it, but what was going on? Why did you write that?

Elon Musk (01:32:21):

Well, I was encouraging people to amplify empathy, literally. I tend to be quite literal.

Andrew Ross Sorkin (01:32:28):

But was there something that had happened, that you had seen that you said to yourself, I want to say that?

Elon Musk (01:32:35):

I think I was talking to some friends, and we all agreed that we should try to amplify empathy. And so I wrote amplify empathy.

Andrew Ross Sorkin (01:32:46):

If you wanted an unvarnished look inside the mind of Elon Musk, I think you just saw it.

Elon Musk (01:32:50):

Look, sometimes it's pretty simple.

Andrew Ross Sorkin (01:32:54):

Elon Musk, thank you very, very much for the conversation.

AMERICAN OVERSIGHT

Elon Musk (01:32:57):

All right. Thank you.

Andrew Ross Sorkin (01:33:00):

Appreciate it very, very much. Thank you. Thank you so much. Here, take that with you for a second.

Elon Musk (01:33:03):

[inaudible 01:33:04].

Andrew Ross Sorkin (01:33:06):

I'm just going to say a thank you to everybody who stuck around for what has been a remarkable day. We are so appreciative of everybody who has been with us for so many years coming back to this every year. So thank you, thank you, thank you. I hope you had a great day, and I hope we have an opportunity to do this again. Elon Musk, everybody. Thank you.

AMERICAN OVERSIGHT

To: 'Santiago, Kaycie'[Kaycie.Santiago@FOX.COM]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Tue 12/5/2023 7:23:27 PM (UTC-06:00)
Subject: RE: FOX NEWS SATURDAY: CAVUTO BOOKING REQUEST

Hi Kaycie – Maddie Sieren, Comms Director for Missouri Attorney General Andrew Bailey here.
Since Mr. Cavuto has taken such an interest in the Media Matters issue/Elon Musk's lawsuit, I wanted to reach out to let you know that AG Bailey will have a big update on Monday 12/11 on this topic. I would be happy to share more details over the phone but essentially AG Bailey views it as 1) a consumer protection issue and 2) a free speech issue. He is formally investigating the matter and would be able to go into depth on what exactly his team is looking at.
Would Mr. Cavuto and your team have any interest in speaking to AG Bailey on this issue next week? Would love to let you break the story (planning to launch on Monday but we could be flexible).
Thank you,
Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

From: Green, Maddie <Maddie.Green@ago.mo.gov>
Sent: Friday, July 7, 2023 11:49 AM
To: 'Santiago, Kaycie' <Kaycie.Santiago@FOX.COM>
Cc: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Subject: RE: FOX NEWS SATURDAY: CAVUTO BOOKING REQUEST
All good! Thanks, Kaycie!
Maddie McMillian Green | Deputy Attorney General for Policy
Missouri Attorney General's Office
207 West High St.
Jefferson City, MO 65101
O: (573) 751-0477
C: (573) 645-7864
Maddie.Green@ago.mo.gov

From: Santiago, Kaycie <Kaycie.Santiago@FOX.COM>
Sent: Friday, July 7, 2023 8:18 AM
To: Green, Maddie <Maddie.Green@ago.mo.gov>
Cc: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Subject: Re: FOX NEWS SATURDAY: CAVUTO BOOKING REQUEST
Ok thanks! I wanted to confirm the interview details remain the same. Please let me know if this works and if you have any concerns.

From: Green, Maddie <Maddie.Green@ago.mo.gov>
Sent: Thursday, July 6, 2023 6:36:18 PM
To: Santiago, Kaycie <Kaycie.Santiago@FOX.COM>
Cc: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Subject: [EXTERNAL] RE: FOX NEWS SATURDAY: CAVUTO BOOKING REQUEST
Let's do Skype. The Skype name is live:.cid.1d1c3290f77824d0.
His phone number is 573-644-2424.
Please let me know what else you need. Thank you!
Maddie McMillian Green | Deputy Attorney General for Policy
Missouri Attorney General's Office
207 West High St.
Jefferson City, MO 65101
O: (573) 751-0477
C: (573) 645-7864
Maddie.Green@ago.mo.gov

AMERICAN OVERSIGHT

From: Santiago, Kaycie <Kaycie.Santiago@FOX.COM>
Sent: Thursday, July 6, 2023 9:43 AM

To: Green, Maddie <Maddie.Green@ago.mo.gov>
Cc: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Subject: Re: FOX NEWS SATURDAY: CAVUTO BOOKING REQUEST
Good morning,
The interview time is at 1027AM EST. Can he connect on Skype or FaceTime? When you can, please provide a number we can call to get him set up 15 mins before the interview.
Thank you,
Kaycie Santiago
Booker, "Cavuto LIVE" Fox News Channel
kaycie.santiago@fox.com
(646) 874-2222

From: Santiago, Kaycie <Kaycie.Santiago@FOX.COM>
Sent: Wednesday, July 5, 2023 3:53 PM
To: Green, Maddie <Maddie.Green@ago.mo.gov>
Cc: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Subject: Re: FOX NEWS SATURDAY: CAVUTO BOOKING REQUEST
Great! We appreciate his willingness to join us. I'll keep you posted with further details asap.
Thank you,
Kaycie Santiago
Booker, "Cavuto LIVE" Fox News Channel
kaycie.santiago@fox.com
(646) 874-2222

From: Green, Maddie <Maddie.Green@ago.mo.gov>
Sent: Wednesday, July 5, 2023 3:20 PM
To: Santiago, Kaycie <Kaycie.Santiago@FOX.COM>
Cc: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Subject: [EXTERNAL] RE: FOX NEWS SATURDAY: CAVUTO BOOKING REQUEST
He's in! Let me know timing and what you need from me. Thanks!
Best,
Maddie McMillian Green | Deputy Attorney General for Policy
Missouri Attorney General's Office
207 West High St.
Jefferson City, MO 65101
O: (573) 751-0477
C: (573) 645-7864
Maddie.Green@ago.mo.gov
From: Santiago, Kaycie <Kaycie.Santiago@FOX.COM>
Sent: Wednesday, July 5, 2023 1:51 PM
To: Green, Maddie <Maddie.Green@ago.mo.gov>
Cc: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Subject: Re: FOX NEWS SATURDAY: CAVUTO BOOKING REQUEST
Ok thanks for letting me know! The interview would be about 4-6 minutes within our program's airtime.
Thank you,
Kaycie Santiago
Booker, "Cavuto LIVE" Fox News Channel
kaycie.santiago@fox.com
(646) 874-2222

From: Green, Maddie <Maddie.Green@ago.mo.gov>
Sent: Wednesday, July 5, 2023 2:47 PM
To: Santiago, Kaycie <Kaycie.Santiago@FOX.COM>
Cc: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Subject: [EXTERNAL] RE: FOX NEWS SATURDAY: CAVUTO BOOKING REQUEST
Hi, Kaycie!
Thank you for reaching out. This sounds great. Let me check General Bailey's Saturday availability. I'll be in touch shortly!

AMERICAN OVERSIGHT

Best,
Maddie McMillian Green | Deputy Attorney General for Policy
Missouri Attorney General's Office
207 West High St.
Jefferson City, MO 65101
O: (573) 751-0477
C: (573) 645-7864
Maddie.Green@ago.mo.gov

From: Santiago, Kaycie <Kaycie.Santiago@FOX.COM>
Sent: Wednesday, July 5, 2023 1:45 PM
To: Green, Maddie <Maddie.Green@ago.mo.gov>
Subject: FOX NEWS SATURDAY: CAVUTO BOOKING REQUEST

Good afternoon,
I hope all is well. I wanted to see ifAG Andrew Bailey hasavailability to join David Asman this Saturday, July 8th, between 10AM to 12PM EST on Cavuto Live ?would like to talk about how a Judge limited Biden administration in working with social media companies in connection with a lawsuit from the Missouri AG's office and any news of the day.
We are live from New York this Saturday but we are able to do a remote interview. Please let me know your availability at your earliest convenience. We would really like to haveMissouri AGwith David this Saturday.
Thank you,
Kaycie Santiago
Booker, "Cavuto LIVE" Fox News Channel
kaycie.santiago@fox.com
(646) 874-2222

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee(s). If you are not an addressee indicated in this message (or responsible for delivery of the message to an addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of Fox Corporation, or its subsidiaries must be taken not to have been sent or endorsed by any of them. No representation is made that this email or its attachments are without defect.
This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee(s). If you are not an addressee indicated in this message (or responsible for delivery of the message to an addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of Fox Corporation, or its subsidiaries must be taken not to have been sent or endorsed by any of them. No representation is made that this email or its attachments are without defect.

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee(s). If you are not an addressee indicated in this message (or responsible for delivery of the message to an addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of Fox Corporation, or its subsidiaries must be taken not to have been sent or endorsed by any of them. No representation is made that this email or its attachments are without defect.

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee(s). If you are not an addressee indicated in this message (or responsible for delivery of the message to an addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of Fox Corporation, or its subsidiaries must be taken not to have been sent or endorsed by any of them. No representation is made that this email or its attachments are without defect.

AMERICAN OVERSIGHT

DRAFT DO NOT RELEASE

- Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.

- Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.

- Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **taken advantage** of by this **scheme**. We're encouraged other states, namely Texas, are taking action as well.

- Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:

AMERICAN OVERSIGHT

1. Social media platforms
    - We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS
2. President Trump
    - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms gaming the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
    - Elon Musk controversy: Mr. Musk has clarified several times what his views are. The point is that anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. They made that post in order to get advertisers to pull out of X. All Americans should be concerned because if this behavior goes

AMERICAN OVERSIGHT

unchecked, **the marketplace for free, fair and open debate will cease to exist**

- The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.
    1. We will never back down in the **fight** for free speech.

Local media:

- Media Matters lied when they took money from everyday Americans/little old ladies and used it in a way different from how they advertised it
- Media Matters appears to have used coordinated, inauthentic activity to solicit charitable donations from consumers across the country
    1. We have a law called the Missouri Merchandising Practices Act that gives the Attorney General the authority to prosecute deceptive, fraudulent or unfair business practices.
        - We have reason to believe Missourians have been affected by this behavior

AMERICAN OVERSIGHT

- To that end, we have launched a civil investigative demand/subpoenaed documents to get to the bottom of the magnitude of the fraudulent scheme Media Matters is perpetrating

AMERICAN OVERSIGHT

WHY: Protecting Missourians from legal fraud

Media Matters is perpetuating a scheme of fraud through its solicitation of charitable donations to take down the last platform dedicated to the protection of free speech, Twitter.

- Every American should care about this because free speech is at stake

What is the basis of your investigation/belief?

- Public attention
- Elon Musk's lawsuit is also extremely thorough in its analysis:
    1. aising serious allegations that your firm falsely and deceptively manipulated the algorithm on X (formerly known as Twitter) through coordinated, inauthentic behavior and that you did so in an attempt to defame the organization and cause advertisers to pull their support from the platform, thus harming free speech.
    2. lied to the public, falsely suggesting that fringe, extremist content regularly appears next to content from corporate advertisers when in fact the opposite is true.

Where Missouri comes in:

- Media Matters appears to have used this coordinated, inauthentic activity to solicit charitable donations from consumers across the country
    1. We have a law called the Missouri Merchandising Practices Act that gives the Attorney General the authority to prosecute deceptive, fraudulent or unfair business practices.
        - We have reason to believe Missourians are ….
        - We have launched a civil investigative demand/subpoenaed documents to get to the bottom of the magnitude of the fraudulent scheme Media Matters is perpetrating

Word cloud:

- Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** charitable donations from **unassuming** Americans.
- Media Matters **masquerades** as a news organization, but they're actually a non-profit ((501)©3/4(???)) taking advantage of unassuming Americans in order to take down/target the last social media platform committed to free speech, X/Twitter.
- We're going to use the authority given to us by statute to protect Missourians from being taken advantage of in this scheme.
- Missouri has been a champion for

AMERICAN OVERSIGHT

To: Bailey, Andrew[Andrew.Bailey@ago.mo.gov]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Fri 12/8/2023 11:29:01 AM (UTC-06:00)
Media Matters.docx

See attached.

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY

December 11, 2023

Angelo Carusone
President and CEO
Media Matters for America
PO Box 44811
Washington, DC 20026
Via email to: action@medimatters.org

Re: Notice of Pending Investigation

Dear Mr. Carusone,

This letter serves as a formal document hold notice under federal and Missouri law. The Missouri Attorney General's Office has opened an investigation into Media Matters for America ("Media Matters") regarding your firm's potentially unlawful business practices.

As you are no doubt aware, a federal lawsuit has been filed against Media Matters, raising serious allegations that your firm falsely and deceptively manipulated the algorithm on X (formerly known as Twitter) through coordinated, inauthentic behavior and that you did so in an attempt to defame the organization and cause advertisers to pull their support from the platform, thus harming free speech. The lawsuit alleges that you lied to the public, falsely suggesting that fringe, extremist content regularly appears next to content from corporate advertisers when in fact the opposite is true. At the same time, you appear to have used this coordinated, inauthentic activity to solicit charitable donations from consumers across the country.

I have reason to believe that your firm's alleged actions may have violated Missouri consumer protection laws, including laws that prohibit nonprofit entities from soliciting funds under false pretenses. *E.g.*, Mo. Rev. Stat. § 407.020.1. I am especially concerned that Media Matters' actions, if proven true, have hampered free speech by targeting an expressly pro free speech social media platform in an attempt

Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

to cause it financial harm while defrauding Missourians in the process.

You are thus hereby instructed to preserve all records that may relate to your alleged effort to engage in coordinated, inauthentic behavior on social media platforms in order to generate false statements that were used to solicit charitable contributions under false pretenses. You are instructed in particular to preserve all records that may relate to your webpage, which expressly solicits funds, at the following URL: https://www.mediamatters.org/twitter/musk-endorses-antisemitic-conspiracy-theory-x-has-been-placing-ads-apple-bravo-ibm-oracle. Records you must preserve include but are not limited to:

- Internal communications regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Communications with third parties regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Communications with IBM, Lions Gate Entertainment, Apple, Disney, Warner Brothers Discovery, Paramount Gold, NBCUniversal, Comcast, Sony, Ubisoft and Wal-Mart regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Internal communications regarding your policies, strategies or operations related to generating stories or content intended to "cancel," "deplatform," "demonetize," or otherwise interfere with businesses or organizations located in Missouri, or utilized by Missouri residents.
- Communications and documents related to soliciting charitable funds from residents of Missouri in relation to the webpage at the URL stated above.

Your obligation to preserve evidence extends to documents kept in any form, both physical and electronic. This includes letters, emails, instant messages, text messages, drafts, informal files, desk files, handwritten notes, faxes, memoranda, forms, calendar entries, address book entries, and voicemails. Your obligation applies to both hardcopy documents and electronic ones, including those kept on computers, laptops, tablets, smartphones, and any other electronic device, including both work and personal devices, personal email accounts and personal computers and tablets. Please ensure that all employees and contractors of Media Matters are aware of their obligations to preserve evidence in this case.

AMERICAN OVERSIGHT

You and your staff are further instructed to cease any protocol for the automatic deletion of emails or backup files on your computer systems. Please forward a copy of this letter to Media Matters IT managers and instruct them to suspend any such protocols.

Be advised that any failure to preserve documents of probative value to this case, even if inadvertent, will constitute spoliation of evidence and may result in a finding of contempt from the court or in sanctions.

Your cooperation in this matter is appreciated. Please feel free to contact me with any questions or concerns.

Respectfully,

ANDREW BAILEY
Missouri Attorney General

AMERICAN OVERSIGHT

To: 'Prasad, Shannon'[Shannon.Prasad@FOX.COM]; 'Conti, Andrew'[Andrew.conti@FOX.COM]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Sun 12/10/2023 12:45:55 PM (UTC-06:00)
Subject: RE: AG Bailey - Document Hold Notice to Media Matters
2023.12.11 Notice of Investigation - MMFA - Final.pdf

Hi Shannon and Andrew – just following up with this final version of the letter AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.

AG Bailey views it as such:

DRAFT DO NOT RELEASE

-Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.

-Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.

-Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.

-Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:

1.Social media platforms

- We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS

2.President Trump

- We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates

3.The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**

- Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

-The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.

1.We will never back down in the **fight** for free speech.

He is available this week if Laura is interested in an interview.

Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

From: Sieren, Madeline
Sent: Thursday, December 7, 2023 12:28 AM
To: Prasad, Shannon <Shannon.Prasad@FOX.COM>; 'Conti, Andrew' <Andrew.conti@FOX.COM>
Subject: AG Bailey - Document Hold Notice to Media Matters
Importance: High

Hi Shannon and Andrew – hope you're both well.

Please see the attached letter AG Bailey plans to send to Media Matters on Monday, 12/11. This is a very mature draft, though if you are interested in the story, I would obviously provide you with an updated version in time for an interview with the AG.

Thanks,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

AMERICAN OVERSIGHT

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY

December 11, 2023

Angelo Carusone
President and CEO
Media Matters for America
PO Box 44811
Washington, DC 20026
Via email to: action@medimatters.org

Re: Notice of Pending Investigation

Dear Mr. Carusone,

This letter serves as a formal document hold notice under federal and Missouri law. The Missouri Attorney General's Office has opened an investigation into Media Matters for America ("Media Matters") regarding your firm's potentially unlawful business practices.

As you are no doubt aware, a federal lawsuit has been filed against Media Matters, raising serious allegations that your firm falsely and deceptively manipulated the algorithm on X (formerly known as Twitter) through coordinated, inauthentic behavior and that you did so in an attempt to defame the organization and cause advertisers to pull their support from the platform, thus harming free speech. The lawsuit alleges that you lied to the public, falsely suggesting that fringe, extremist content regularly appears next to content from corporate advertisers when in fact the opposite is true. At the same time, you appear to have used this coordinated, inauthentic activity to solicit charitable donations from consumers across the country.

I have reason to believe that your firm's alleged actions may have violated Missouri consumer protection laws, including laws that prohibit nonprofit entities from soliciting funds under false pretenses. *E.g.*, Mo. Rev. Stat. § 407.020.1. I am especially concerned that Media Matters' actions, if proven true, have hampered free speech by targeting an expressly pro free speech social media platform in an attempt

Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

to cause it financial harm while defrauding Missourians in the process.

You are thus hereby instructed to preserve all records that may relate to your alleged effort to engage in coordinated, inauthentic behavior on social media platforms in order to generate false statements that were used to solicit charitable contributions under false pretenses. You are instructed in particular to preserve all records that may relate to your webpage, which expressly solicits funds, at the following URL: https://www.mediamatters.org/twitter/musk-endorses-antisemitic-conspiracy-theory-x-has-been-placing-ads-apple-bravo-ibm-oracle. Records you must preserve include but are not limited to:

- Internal communications regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Communications with third parties regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Communications with IBM, Lions Gate Entertainment, Apple, Disney, Warner Brothers Discovery, Paramount Gold, NBCUniversal, Comcast, Sony, Ubisoft and Wal-Mart regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Internal communications regarding your policies, strategies or operations related to generating stories or content intended to "cancel," "deplatform," "demonetize," or otherwise interfere with businesses or organizations located in Missouri, or utilized by Missouri residents.
- Communications and documents related to soliciting charitable funds from residents of Missouri in relation to the webpage at the URL stated above.

Your obligation to preserve evidence extends to documents kept in any form, both physical and electronic. This includes letters, emails, instant messages, text messages, drafts, informal files, desk files, handwritten notes, faxes, memoranda, forms, calendar entries, address book entries, and voicemails. Your obligation applies to both hardcopy documents and electronic ones, including those kept on computers, laptops, tablets, smartphones, and any other electronic device, including both work and personal devices, personal email accounts and personal computers and tablets. Please ensure that all employees and contractors of Media Matters are aware of their obligations to preserve evidence in this case.

AMERICAN OVERSIGHT

You and your staff are further instructed to cease any protocol for the automatic deletion of emails or backup files on your computer systems. Please forward a copy of this letter to Media Matters IT managers and instruct them to suspend any such protocols.

Be advised that any failure to preserve documents of probative value to this case, even if inadvertent, will constitute spoliation of evidence and may result in a finding of contempt from the court or in sanctions.

Your cooperation in this matter is appreciated. Please feel free to contact me with any questions or concerns.

Respectfully,

ANDREW BAILEY
Missouri Attorney General

AMERICAN OVERSIGHT

To: 'Chavez, Ari'[ari.chavez@FOX.COM]; 'McNally, Kelly'[kelly.mcnally@FOX.COM]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Sun 12/10/2023 12:54:35 PM (UTC-06:00)
Subject: AG BAILEY INTERVIEW
2023.12.11 Notice of Investigation - MMFA - Final.pdf

Hi Ari and Kelly,
This is the final version of the letter AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.
AG Bailey views it as such:

DRAFT DO NOT RELEASE

-Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.
-Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.
-Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.
-Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:
1. Social media platforms
    - We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS
2. President Trump
    - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
    - Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

-The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.
1. We will never back down in the **fight** for free speech.

Best,
Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov
This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY

December 11, 2023

Angelo Carusone
President and CEO
Media Matters for America
PO Box 44811
Washington, DC 20026
Via email to: action@medimatters.org

Re: Notice of Pending Investigation

Dear Mr. Carusone,

This letter serves as a formal document hold notice under federal and Missouri law. The Missouri Attorney General's Office has opened an investigation into Media Matters for America ("Media Matters") regarding your firm's potentially unlawful business practices.

As you are no doubt aware, a federal lawsuit has been filed against Media Matters, raising serious allegations that your firm falsely and deceptively manipulated the algorithm on X (formerly known as Twitter) through coordinated, inauthentic behavior and that you did so in an attempt to defame the organization and cause advertisers to pull their support from the platform, thus harming free speech. The lawsuit alleges that you lied to the public, falsely suggesting that fringe, extremist content regularly appears next to content from corporate advertisers when in fact the opposite is true. At the same time, you appear to have used this coordinated, inauthentic activity to solicit charitable donations from consumers across the country.

I have reason to believe that your firm's alleged actions may have violated Missouri consumer protection laws, including laws that prohibit nonprofit entities from soliciting funds under false pretenses. *E.g.*, Mo. Rev. Stat. § 407.020.1. I am especially concerned that Media Matters' actions, if proven true, have hampered free speech by targeting an expressly pro free speech social media platform in an attempt

Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

to cause it financial harm while defrauding Missourians in the process.

You are thus hereby instructed to preserve all records that may relate to your alleged effort to engage in coordinated, inauthentic behavior on social media platforms in order to generate false statements that were used to solicit charitable contributions under false pretenses. You are instructed in particular to preserve all records that may relate to your webpage, which expressly solicits funds, at the following URL: https://www.mediamatters.org/twitter/musk-endorses-antisemitic-conspiracy-theory-x-has-been-placing-ads-apple-bravo-ibm-oracle. Records you must preserve include but are not limited to:

- Internal communications regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Communications with third parties regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Communications with IBM, Lions Gate Entertainment, Apple, Disney, Warner Brothers Discovery, Paramount Gold, NBCUniversal, Comcast, Sony, Ubisoft and Wal-Mart regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Internal communications regarding your policies, strategies or operations related to generating stories or content intended to "cancel," "deplatform," "demonetize," or otherwise interfere with businesses or organizations located in Missouri, or utilized by Missouri residents.
- Communications and documents related to soliciting charitable funds from residents of Missouri in relation to the webpage at the URL stated above.

Your obligation to preserve evidence extends to documents kept in any form, both physical and electronic. This includes letters, emails, instant messages, text messages, drafts, informal files, desk files, handwritten notes, faxes, memoranda, forms, calendar entries, address book entries, and voicemails. Your obligation applies to both hardcopy documents and electronic ones, including those kept on computers, laptops, tablets, smartphones, and any other electronic device, including both work and personal devices, personal email accounts and personal computers and tablets. Please ensure that all employees and contractors of Media Matters are aware of their obligations to preserve evidence in this case.

AMERICAN OVERSIGHT

You and your staff are further instructed to cease any protocol for the automatic deletion of emails or backup files on your computer systems. Please forward a copy of this letter to Media Matters IT managers and instruct them to suspend any such protocols.

Be advised that any failure to preserve documents of probative value to this case, even if inadvertent, will constitute spoliation of evidence and may result in a finding of contempt from the court or in sanctions.

Your cooperation in this matter is appreciated. Please feel free to contact me with any questions or concerns.

Respectfully,

ANDREW BAILEY
Missouri Attorney General

AMERICAN OVERSIGHT

To: 'kaycie.santiago@fox.com'[kaycie.santiago@fox.com]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Sun 12/10/2023 12:57:25 PM (UTC-06:00)
Subject: AG BAILEY - MEDIA MATTERS
2023.12.11 Notice of Investigation - MMFA - Final.pdf

Hi Kaycie,
This is final version of the letter AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.
AG Bailey views it as such:

DRAFT DO NOT RELEASE

-Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.
-Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.
-Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.
-Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:
1. Social media platforms
    - We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS
2. President Trump
    - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
    - Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

-The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.
1. We will never back down in the **fight** for free speech.

He is available this week if Neil is interested in an interview.
Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY

December 11, 2023

Angelo Carusone
President and CEO
Media Matters for America
PO Box 44811
Washington, DC 20026
Via email to: action@medimatters.org

Re: Notice of Pending Investigation

Dear Mr. Carusone,

This letter serves as a formal document hold notice under federal and Missouri law. The Missouri Attorney General's Office has opened an investigation into Media Matters for America ("Media Matters") regarding your firm's potentially unlawful business practices.

As you are no doubt aware, a federal lawsuit has been filed against Media Matters, raising serious allegations that your firm falsely and deceptively manipulated the algorithm on X (formerly known as Twitter) through coordinated, inauthentic behavior and that you did so in an attempt to defame the organization and cause advertisers to pull their support from the platform, thus harming free speech. The lawsuit alleges that you lied to the public, falsely suggesting that fringe, extremist content regularly appears next to content from corporate advertisers when in fact the opposite is true. At the same time, you appear to have used this coordinated, inauthentic activity to solicit charitable donations from consumers across the country.

I have reason to believe that your firm's alleged actions may have violated Missouri consumer protection laws, including laws that prohibit nonprofit entities from soliciting funds under false pretenses. *E.g.*, Mo. Rev. Stat. § 407.020.1. I am especially concerned that Media Matters' actions, if proven true, have hampered free speech by targeting an expressly pro free speech social media platform in an attempt

Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

to cause it financial harm while defrauding Missourians in the process.

You are thus hereby instructed to preserve all records that may relate to your alleged effort to engage in coordinated, inauthentic behavior on social media platforms in order to generate false statements that were used to solicit charitable contributions under false pretenses. You are instructed in particular to preserve all records that may relate to your webpage, which expressly solicits funds, at the following URL: https://www.mediamatters.org/twitter/musk-endorses-antisemitic-conspiracy-theory-x-has-been-placing-ads-apple-bravo-ibm-oracle. Records you must preserve include but are not limited to:

- Internal communications regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Communications with third parties regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Communications with IBM, Lions Gate Entertainment, Apple, Disney, Warner Brothers Discovery, Paramount Gold, NBCUniversal, Comcast, Sony, Ubisoft and Wal-Mart regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Internal communications regarding your policies, strategies or operations related to generating stories or content intended to "cancel," "deplatform," "demonetize," or otherwise interfere with businesses or organizations located in Missouri, or utilized by Missouri residents.
- Communications and documents related to soliciting charitable funds from residents of Missouri in relation to the webpage at the URL stated above.

Your obligation to preserve evidence extends to documents kept in any form, both physical and electronic. This includes letters, emails, instant messages, text messages, drafts, informal files, desk files, handwritten notes, faxes, memoranda, forms, calendar entries, address book entries, and voicemails. Your obligation applies to both hardcopy documents and electronic ones, including those kept on computers, laptops, tablets, smartphones, and any other electronic device, including both work and personal devices, personal email accounts and personal computers and tablets. Please ensure that all employees and contractors of Media Matters are aware of their obligations to preserve evidence in this case.

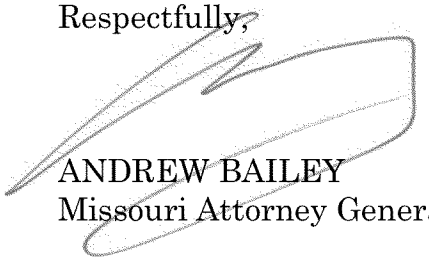
AMERICAN OVERSIGHT

You and your staff are further instructed to cease any protocol for the automatic deletion of emails or backup files on your computer systems. Please forward a copy of this letter to Media Matters IT managers and instruct them to suspend any such protocols.

Be advised that any failure to preserve documents of probative value to this case, even if inadvertent, will constitute spoliation of evidence and may result in a finding of contempt from the court or in sanctions.

Your cooperation in this matter is appreciated. Please feel free to contact me with any questions or concerns.

Respectfully,



ANDREW BAILEY
Missouri Attorney General

AMERICAN OVERSIGHT

From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Sun 12/10/2023 1:09:00 PM (UTC-06:00)
Subject: [EXTERNAL] AG Bailey - Media Matters
2023.12.11 Notice of Investigation - MMFA - Final.pdf

Hi,
Attached is the final version of the EMBARGOED letter that AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.
AG Bailey views it as such:

DRAFT DO NOT RELEASE

-Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.
-Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.
-Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.
-Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:
    1. Social media platforms
        - We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS
    2. President Trump
        - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
    3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
        - Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**
-The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.
    1. We will never back down in the **fight** for free speech.

He is available this week if you have interest in an interview.
Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: Sieren, Madeline
From: Mail Delivery Subsystem[MAILER-DAEMON@mx0a-0051e301.pphosted.com]
Sent: Sun 12/10/2023 1:09:43 PM (UTC-06:00)
Subject: Undeliverable: AG Bailey - Media Matters
[EXTERNAL] AG Bailey - Media Matters

The original message was received at Sun, 10 Dec 2023 14:09:41 -0500
from m0234249.ppops.net [127.0.0.1]

----- The following addresses had permanent fatal errors -----
<hayley.silverman@siriusxm.com>
(reason: 550 5.4.1 Recipient address rejected: Access denied.
[CO1PEPF000044FC.namprd21.prod.outlook.com 2023-12-10T19:09:42.097Z 08DBF8867D0AF43B])

----- Transcript of session follows -----
... while talking to siriusradio.mail.protection.outlook.com.:
>>> DATA
<<< 550 5.4.1 Recipient address rejected: Access denied.
[CO1PEPF000044FC.namprd21.prod.outlook.com 2023-12-10T19:09:42.097Z 08DBF8867D0AF43B]
550 5.1.1 <hayley.silverman@siriusxm.com>... User unknown

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
Cc: McNally, Kelly[kelly.mcnally@FOX.COM]
From: Chavez, Ari[ari.chavez@FOX.COM]
Sent: Sun 12/10/2023 2:00:08 PM (UTC-06:00)
Subject: Re: [EXTERNAL] AG BAILEY INTERVIEW

Thanks so much!

Sent from my iPhone

On Dec 10, 2023, at 1:54 PM, Sieren, Madeline <Madeline.Sieren@ago.mo.gov> wrote:

Hi Ari and Kelly,
This is the final version of the letter AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.
AG Bailey views it as such:

DRAFT DO NOT RELEASE

-Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.
-Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.
-Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.
-Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:
1.Social media platforms
♍We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS
2.President Trump
♍We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
3.The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
♍Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**
-The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.
1.We will never back down in the **fight** for free speech.

Best,
Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov
This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.
<2023.12.11 Notice of Investigation - MMFA - Final.pdf>

AMERICAN OVERSIGHT

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee(s). If you are not an addressee indicated in this message (or responsible for delivery of the message to an addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of Fox Corporation, or its subsidiaries must be taken not to have been sent or endorsed by any of them. No representation is made that this email or its attachments are without defect.

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: Alex Lorusso[alx@bennyjohnson.com]
Sent: Sun 12/10/2023 7:26:21 PM (UTC-06:00)
Subject: Re: AG Bailey - Media Matters

Excellent thanks
Alexander J. Lorusso
Executive Producer
Team Benny
774.242.9007

On Dec 10, 2023, at 2:11 PM, Sieren, Madeline <Madeline.Sieren@ago.mo.gov> wrote:

Hi,
Attached is the final version of the EMBARGOED letter that AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.
AG Bailey views it as such:

DRAFT DO NOT RELEASE

-Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.
-Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.
-Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.
-Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:
1. Social media platforms
    - We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS
2. President Trump
    - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
    - Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

-The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.
1. We will never back down in the **fight** for free speech.

He is available this week if you have interest in an interview.
Best,
Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov
This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original

AMERICAN OVERSIGHT

message. Thank you.
<2023.12.11 Notice of Investigation - MMFA - Final.pdf>

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY

December 11, 2023

Angelo Carusone
President and CEO
Media Matters for America
PO Box 44811
Washington, DC 20026
Via email to: action@medimatters.org

Re: Notice of Pending Investigation

Dear Mr. Carusone,

This letter serves as a formal document hold notice under federal and Missouri law. The Missouri Attorney General's Office has opened an investigation into Media Matters for America ("Media Matters") regarding your firm's potentially unlawful business practices.

As you are no doubt aware, a federal lawsuit has been filed against Media Matters, raising serious allegations that your firm falsely and deceptively manipulated the algorithm on X (formerly known as Twitter) through coordinated, inauthentic behavior and that you did so in an attempt to defame the organization and cause advertisers to pull their support from the platform, thus harming free speech. The lawsuit alleges that you lied to the public, falsely suggesting that fringe, extremist content regularly appears next to content from corporate advertisers when in fact the opposite is true. At the same time, you appear to have used this coordinated, inauthentic activity to solicit charitable donations from consumers across the country.

I have reason to believe that your firm's alleged actions may have violated Missouri consumer protection laws, including laws that prohibit nonprofit entities from soliciting funds under false pretenses. *E.g.*, Mo. Rev. Stat. § 407.020.1. I am especially concerned that Media Matters' actions, if proven true, have hampered free speech by targeting an expressly pro free speech social media platform in an attempt

Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

to cause it financial harm while defrauding Missourians in the process.

You are thus hereby instructed to preserve all records that may relate to your alleged effort to engage in coordinated, inauthentic behavior on social media platforms in order to generate false statements that were used to solicit charitable contributions under false pretenses. You are instructed in particular to preserve all records that may relate to your webpage, which expressly solicits funds, at the following URL: https://www.mediamatters.org/twitter/musk-endorses-antisemitic-conspiracy-theory-x-has-been-placing-ads-apple-bravo-ibm-oracle. Records you must preserve include but are not limited to:

- Internal communications regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Communications with third parties regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Communications with IBM, Lions Gate Entertainment, Apple, Disney, Warner Brothers Discovery, Paramount Gold, NBCUniversal, Comcast, Sony, Ubisoft and Wal-Mart regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Internal communications regarding your policies, strategies or operations related to generating stories or content intended to "cancel," "deplatform," "demonetize," or otherwise interfere with businesses or organizations located in Missouri, or utilized by Missouri residents.
- Communications and documents related to soliciting charitable funds from residents of Missouri in relation to the webpage at the URL stated above.

Your obligation to preserve evidence extends to documents kept in any form, both physical and electronic. This includes letters, emails, instant messages, text messages, drafts, informal files, desk files, handwritten notes, faxes, memoranda, forms, calendar entries, address book entries, and voicemails. Your obligation applies to both hardcopy documents and electronic ones, including those kept on computers, laptops, tablets, smartphones, and any other electronic device, including both work and personal devices, personal email accounts and personal computers and tablets. Please ensure that all employees and contractors of Media Matters are aware of their obligations to preserve evidence in this case.

AMERICAN OVERSIGHT

You and your staff are further instructed to cease any protocol for the automatic deletion of emails or backup files on your computer systems. Please forward a copy of this letter to Media Matters IT managers and instruct them to suspend any such protocols.

Be advised that any failure to preserve documents of probative value to this case, even if inadvertent, will constitute spoliation of evidence and may result in a finding of contempt from the court or in sanctions.

Your cooperation in this matter is appreciated. Please feel free to contact me with any questions or concerns.

Respectfully,

ANDREW BAILEY
Missouri Attorney General

AMERICAN OVERSIGHT

Bcc: 'jillv@newsmax.com'[jillv@newsmax.com]; 'jaclyna@newsmax.com'[jaclyna@newsmax.com]; 'alx@bennyjohnson.com'[alx@bennyjohnson.com]; 'bridget.gleason@fox.com'[bridget.gleason@fox.com]; 'Kristen.gubala@fox.com'[Kristen.gubala@fox.com]; 'Amy.munneke@fox.com'[Amy.munneke@fox.com]; 'John.maresco@fox.com'[John.maresco@fox.com]; 'John.bruno@fox.com'[John.bruno@fox.com]; 'Dennis.murphy@fox.com'[Dennis.murphy@fox.com]; 'Scott.sanders@fox.com'[Scott.sanders@fox.com]; 'Chelsea.leo@fox.com'[Chelsea.leo@fox.com]; 'Jennifer.cohen@fox.com'[Jennifer.cohen@fox.com]; 'jj.smith@fox.com'[jj.smith@fox.com]; 'owen.renfro@fox.com'[owen.renfro@fox.com]; 'jillian.randle@fox.com'[jillian.randle@fox.com]; 'tara.nicaj@fox.com'[tara.nicaj@fox.com]; 'megani@newsmax.com'[megani@newsmax.com]; 'erinp@newsmax.com'[erinp@newsmax.com]; 'malenal@newsmax.com'[malenal@newsmax.com]; 'tylerb@newsmax.com'[tylerb@newsmax.com]; 'Maslar, Mija'[Mija.Maslar@FOX.COM]; 'Nicholas.Hahn@fox.com'[Nicholas.Hahn@fox.com]; 'michael.lamarca@fox.com'[michael.lamarca@fox.com]; 'michaela.hebbeler@fox.com'[michaela.hebbeler@fox.com]; 'mary.butterfield@fox.com'[mary.butterfield@fox.com]; 'Moshe Maryles'[MosheM@newsmax.com]; 'Ashley Gian'[AGian@newsmax.com]; 'PRESS FOX Kaitlyn Chamberlin'[Kaitlyn.Chamberlin@FOXNEWS.COM]; 'kaitlyn.garvey@fox.com'[kaitlyn.garvey@fox.com]; 'james.coffey@fox.com'[james.coffey@fox.com]; 'Robbins, Christina'[Christina.Robbins@FOX.COM]; 'Dagger, Christian'[Christian.Dagger@FOX.COM]; 'Glasgow, Chris'[Chris.Glasgow@Siriusxm.com]; 'Kenneth Chan'[kchan@frc.org]; 'Whiteman, Caroline'[Caroline.Whiteman@FOX.COM]; 'ryan.tillman@fox.com'[ryan.tillman@fox.com]; 'ryan.cofini@fox.com'[ryan.cofini@fox.com]; 'Sarah Kolk'[skolk@glennbeck.com]; 'sarah.daniello@fox.com'[sarah.daniello@fox.com]; 'Higgins, Michael'[Michael.Higgins@FOX.COM]; 'bryn.jeffers@fox.com'[bryn.jeffers@fox.com]; 'bryn.mccarthy@fox.com'[bryn.mccarthy@fox.com]; 'Leopold, Courtney'[courtney.leopold@FOX.COM]; 'brigid.mcdonnell@fox.com'[brigid.mcdonnell@fox.com]; 'tom.oconnor@fox.com'[tom.oconnor@fox.com]; 'Novotny Reda, Laura'[Laura.novotny-Reda@FOX.COM]; 'laura.taglianetti@fox.com'[laura.taglianetti@fox.com]; 'taylor.walters@fox.com'[taylor.walters@fox.com]; 'antaria.phillips@fox.com'[antaria.phillips@fox.com]; 'Monica Wallace'[Monica@joepags.com]; 'AMroczkowski@premierenetworks.com'[AMroczkowski@premierenetworks.com]; 'ngiordano@pasreport.com'[ngiordano@pasreport.com]; 'steve@stevedeace.com'[steve@stevedeace.com]; 'media@briankilmeade.com'[media@briankilmeade.com]; 'Alyson.Mansfield@foxnews.com'[Alyson.Mansfield@foxnews.com]; 'Peter.Caterina@foxnews.com'[Peter.Caterina@foxnews.com]; 'eric.albeen@foxnews.com'[eric.albeen@foxnews.com]; 'Allen, Virginia'[Virginia.Allen@heritage.org]; 'Rivera, Anthony'[Anthony.Rivera@siriusxm.com]; 'Ramirez, Edwin'[Edwin.Ramirez@siriusxm.com]; 'Gregory.sahakian@siriusxm.com'[Gregory.sahakian@siriusxm.com]; 'emily@thefederalist.com'[emily@thefederalist.com]; 'jon.constantino@foxnews.com'[jon.constantino@foxnews.com]; 'jon.decker@foxnews.com'[jon.decker@foxnews.com]; 'Danielle Hitchen'[bookings@hughhewitt.com]; 'pascarella@foxnews.com'[pascarella@foxnews.com]; 'sam@joepags.com'[sam@joepags.com]; 'pags@joepags.com'[pags@joepags.com]; 'viewsandnews@icloud.com'[viewsandnews@icloud.com]; 'Christine.desanctis@foxnews.com'[Christine.desanctis@foxnews.com]; 'lynda@hannity.com'[lynda@hannity.com]; 'jjverdi@live.com'[jjverdi@live.com]; 'savagemikesavage@aol.com'[savagemikesavage@aol.com]; 'r.ocallaghan15@gmail.com'[r.ocallaghan15@gmail.com]; 'hayley.silverman@siriusxm.com'[hayley.silverman@siriusxm.com]; 'jpauldecker@gmail.com'[jpauldecker@gmail.com]; 'Binns, Michael'[Michael.Binns@siriusxm.com]; 'bschrader@mercurystudios.com'[bschrader@mercurystudios.com]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Sun 12/10/2023 1:09:00 PM (UTC-06:00)
Subject: AG Bailey - Media Matters
2023.12.11 Notice of Investigation - MMFA - Final.pdf

Hi,
Attached is the final version of the EMBARGOED letter that AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.
AG Bailey views it as such:

DRAFT DO NOT RELEASE

-Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.
-Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.
-Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.
-Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:

1.Social media platforms
♍We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS
2.President Trump
♍We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all

AMERICAN OVERSIGHT

presidential candidates

3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
    - ♍Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

-The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.

1. We will never back down in the **fight** for free speech.

He is available this week if you have interest in an interview.

Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY

December 11, 2023

Angelo Carusone
President and CEO
Media Matters for America
PO Box 44811
Washington, DC 20026
Via email to: action@medimatters.org

Re: Notice of Pending Investigation

Dear Mr. Carusone,

This letter serves as a formal document hold notice under federal and Missouri law. The Missouri Attorney General's Office has opened an investigation into Media Matters for America ("Media Matters") regarding your firm's potentially unlawful business practices.

As you are no doubt aware, a federal lawsuit has been filed against Media Matters, raising serious allegations that your firm falsely and deceptively manipulated the algorithm on X (formerly known as Twitter) through coordinated, inauthentic behavior and that you did so in an attempt to defame the organization and cause advertisers to pull their support from the platform, thus harming free speech. The lawsuit alleges that you lied to the public, falsely suggesting that fringe, extremist content regularly appears next to content from corporate advertisers when in fact the opposite is true. At the same time, you appear to have used this coordinated, inauthentic activity to solicit charitable donations from consumers across the country.

I have reason to believe that your firm's alleged actions may have violated Missouri consumer protection laws, including laws that prohibit nonprofit entities from soliciting funds under false pretenses. *E.g.*, Mo. Rev. Stat. § 407.020.1. I am especially concerned that Media Matters' actions, if proven true, have hampered free speech by targeting an expressly pro free speech social media platform in an attempt

Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

to cause it financial harm while defrauding Missourians in the process.

You are thus hereby instructed to preserve all records that may relate to your alleged effort to engage in coordinated, inauthentic behavior on social media platforms in order to generate false statements that were used to solicit charitable contributions under false pretenses. You are instructed in particular to preserve all records that may relate to your webpage, which expressly solicits funds, at the following URL: https://www.mediamatters.org/twitter/musk-endorses-antisemitic-conspiracy-theory-x-has-been-placing-ads-apple-bravo-ibm-oracle. Records you must preserve include but are not limited to:

- Internal communications regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Communications with third parties regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Communications with IBM, Lions Gate Entertainment, Apple, Disney, Warner Brothers Discovery, Paramount Gold, NBCUniversal, Comcast, Sony, Ubisoft and Wal-Mart regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Internal communications regarding your policies, strategies or operations related to generating stories or content intended to "cancel," "deplatform," "demonetize," or otherwise interfere with businesses or organizations located in Missouri, or utilized by Missouri residents.
- Communications and documents related to soliciting charitable funds from residents of Missouri in relation to the webpage at the URL stated above.

Your obligation to preserve evidence extends to documents kept in any form, both physical and electronic. This includes letters, emails, instant messages, text messages, drafts, informal files, desk files, handwritten notes, faxes, memoranda, forms, calendar entries, address book entries, and voicemails. Your obligation applies to both hardcopy documents and electronic ones, including those kept on computers, laptops, tablets, smartphones, and any other electronic device, including both work and personal devices, personal email accounts and personal computers and tablets. Please ensure that all employees and contractors of Media Matters are aware of their obligations to preserve evidence in this case.

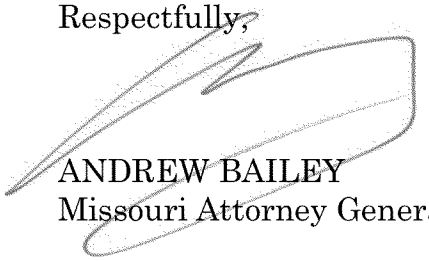
AMERICAN OVERSIGHT

You and your staff are further instructed to cease any protocol for the automatic deletion of emails or backup files on your computer systems. Please forward a copy of this letter to Media Matters IT managers and instruct them to suspend any such protocols.

Be advised that any failure to preserve documents of probative value to this case, even if inadvertent, will constitute spoliation of evidence and may result in a finding of contempt from the court or in sanctions.

Your cooperation in this matter is appreciated. Please feel free to contact me with any questions or concerns.

Respectfully,



ANDREW BAILEY
Missouri Attorney General

AMERICAN OVERSIGHT

From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Sun 12/10/2023 1:09:00 PM (UTC-06:00)
Subject: AG Bailey - Media Matters
2023.12.11 Notice of Investigation - MMFA - Final.pdf

Hi,
Attached is the final version of the EMBARGOED letter that AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.
AG Bailey views it as such:

DRAFT DO NOT RELEASE

-Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.
-Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.
-Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.
-Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:
1. Social media platforms
    - We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS
2. President Trump
    - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
    - Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

-The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.
1. We will never back down in the **fight** for free speech.

He is available this week if you have interest in an interview.
Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: Sieren, Madeline
From: Mail Delivery Subsystem[MAILER-DAEMON@momail2.mo.gov]
Sent: Sun 12/10/2023 1:11:37 PM (UTC-06:00)
Subject: Undeliverable: AG Bailey - Media Matters
AG Bailey - Media Matters

The original message was received at Sun, 10 Dec 2023 13:09:01 -0600
from momail2.mo.gov [127.0.0.1]

----- The following addresses had permanent fatal errors -----
<media@briankilmeade.com>
(reason: 550-5.1.1 The email account that you tried to reach does not exist. Please try)

----- Transcript of session follows -----
... while talking to aspmx.l.google.com.:
>>> DATA
<<< 550-5.1.1 The email account that you tried to reach does not exist. Please try
<<< 550-5.1.1 double-checking the recipient's email address for typos or
<<< 550-5.1.1 unnecessary spaces. For more information, go to
<<< 550 5.1.1
https://urldefense.com/v3/__https://support.google.com/mail/?p=NoSuchUser__;!!EErPFA7f--AJOw!F3anK3kSlx1EGe6ib4XZwz72lxwyx2zj6urPjynybQR0QtAgAgic9wUawH_M5_OhC3y1f9dCMtOcT6b-qAcGoJjD_A$ f7-20020a056e020b4700b0035e6c1bd92csi2516379ilu.98 - gsmtp
550 5.1.1 <media@briankilmeade.com>... User unknown
<<< 503-5.5.1 RCPT first. A mail transaction protocol command was issued out of
<<< 503-5.5.1 sequence. For more information, go to
<<< 503-5.5.1 https://urldefense.com/v3/__https://support.google.com/a/answer/3221692__;!!EErPFA7f--AJOw!F3anK3kSlx1EGe6ib4XZwz72lxwyx2zj6urPjynybQR0QtAgAgic9wUawH_M5_OhC3y1f9dCMtOcT6b-qAcHV71b3Q$ and review RFC 5321
<<< 503 5.5.1 specifications. f7-20020a056e020b4700b0035e6c1bd92csi2516379ilu.98 - gsmtp

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: Chavez, Ari[ari.chavez@FOX.COM]
Sent: Mon 12/11/2023 5:54:09 AM (UTC-06:00)
Subject: VARNEY TODAY 1030 AM ET

Good Morning Madeline!
All set for the AG today at 1030 AM ET at the STUDIO 57
The topic: TOPIC: YOU ARE SERVING MEDIA MATTERS WITH A LETTER NOTIFYING THEM OF AN INVESTIGATION INTO PRACTICES RELATED TO X AND AD PLACEMENT
Let me know if you need anything!

Ari Chavez
Fox Business Network |*Varney & Co.* |
O: 212- 301-5309
C: 347-702-3164
1211 Avenue of the Americas
New York, NY 10036
FOX BUSINESS

From: Chavez, Ari
Sent: Sunday, December 10, 2023 3:00 PM
To: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Cc: McNally, Kelly <kelly.mcnally@FOX.COM>
Subject: Re: [EXTERNAL] AG BAILEY INTERVIEW
Thanks so much!

Sent from my iPhone

On Dec 10, 2023, at 1:54 PM, Sieren, Madeline <Madeline.Sieren@ago.mo.gov> wrote:

Hi Ari and Kelly,
This is the final version of the letter AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.
AG Bailey views it as such:

DRAFT DO NOT RELEASE

-Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.
-Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.
-Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.
-Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:
1.Social media platforms
♍We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS
2.President Trump
♍We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
3.The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
♍Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**
-The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.

AMERICAN OVERSIGHT

1.We will never back down in the **fight** for free speech.

Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

<2023.12.11 Notice of Investigation - MMFA - Final.pdf>

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee(s). If you are not an addressee indicated in this message (or responsible for delivery of the message to an addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of Fox Corporation, or its subsidiaries must be taken not to have been sent or endorsed by any of them. No representation is made that this email or its attachments are without defect.

AMERICAN OVERSIGHT

To: Chavez, Ari[ari.chavez@fox.com]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Mon 12/11/2023 5:55:44 AM (UTC-06:00)
Subject: Re: VARNEY TODAY 1030 AM ET

Confirmed. Thank you!!

Sent from my iPhone

On Dec 11, 2023, at 5:54 AM, Chavez, Ari <ari.chavez@fox.com> wrote:

Good Morning Madeline!
All set for the AG today at 1030 AM ET at the STUDIO 57
The topic: TOPIC: YOU ARE SERVING MEDIA MATTERS WITH A LETTER NOTIFYING THEM OF AN INVESTIGATION INTO PRACTICES RELATED TO X AND AD PLACEMENT
Let me know if you need anything!

Ari Chavez
Fox Business Network | *Varney & Co.* |
O: 212- 301-5309
C: 347-702-3164
1211 Avenue of the Americas
New York, NY 10036
FOX BUSINESS

From: Chavez, Ari
Sent: Sunday, December 10, 2023 3:00 PM
To: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Cc: McNally, Kelly <kelly.mcnally@FOX.COM>
Subject: Re: [EXTERNAL] AG BAILEY INTERVIEW
Thanks so much!

Sent from my iPhone

On Dec 10, 2023, at 1:54 PM, Sieren, Madeline <Madeline.Sieren@ago.mo.gov> wrote:

Hi Ari and Kelly,
This is the final version of the letter AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.
AG Bailey views it as such:

DRAFT DO NOT RELEASE

-Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.
-Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.
-Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.
-Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:

1. Social media platforms
   - We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS

AMERICAN OVERSIGHT

2. President Trump
    - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
    - Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

-The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.

1. We will never back down in the **fight** for free speech.

Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

<2023.12.11 Notice of Investigation - MMFA - Final.pdf>

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee(s). If you are not an addressee indicated in this message (or responsible for delivery of the message to an addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of Fox Corporation, or its subsidiaries must be taken not to have been sent or endorsed by any of them. No representation is made that this email or its attachments are without defect.

AMERICAN OVERSIGHT

Form Letter -- Inform of Media Matters Investigation

Dear [*Constituent*]:

Thank you for bringing your concerns to the attention of the Missouri Attorney General's Office regarding the fraudulent schemes being perpetuated by Media Matters.

I too find it unacceptable to hear the reports of this progressive activist group masquerading itself as a news organization to solicit donations from Americans, which are then used to target free speech and the last social media platform committed to protecting it, X/Twitter.

Missouri has been a champion for free speech at every turn and I have made it clear that this state is willing to take on the Radical Left in their war against the First Amendment. That is why my office was the first out of the gate to get involved in this issue. We are utilizing the legal powers given to this office to protect Missourians from being ripped off by the Media Matters scheme and to shed light on the subject.

If you would like to learn more about this issue, please visit our website (ago.mo.gov) and subscribe to our office newsletter.

Thank you again for bringing these concerns to my office. The input of sincere, involved citizens is vital to good government, and your comments and suggestions regarding the issues facing our state are always welcome. Should you ever require assistance in the future, please do not hesitate to reach out for help.

Respectfully,

Andrew Bailey
Missouri Attorney General

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]
From: Childers, Cooper[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6C32636500F344859D96C51A321BD660-CHILDERS, COOPER]
Sent: Mon 12/11/2023 10:03:07 AM (UTC-06:00)
Subject: RE: AG BAILEY INTERVIEW
UNNAPROVED_Media_Matters.docx

Maddie and Brandon:
Attached is a draft for the CS Team's form letter response on the Media Matters Investigation. Let me know if you have any edits!
Respectfully,
Cooper Childers | Director of Constituent Services
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
(573) 751-8817
Cooper.Childers@ago.mo.gov

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Monday, December 11, 2023 8:36 AM
To: Rathert, Branden <Branden.Rathert@ago.mo.gov>; McCuien, Grace <Grace.McCuien@ago.mo.gov>; Bryson, Isabelle <Isabelle.Bryson@ago.mo.gov>; Childers, Cooper <Cooper.Childers@ago.mo.gov>; Dusheke, Sheala <Sheala.Dusheke@ago.mo.gov>; Clausner, Evan <Evan.Clausner@ago.mo.gov>
Subject: FW: AG BAILEY INTERVIEW
See final letter and talking points re: Media Matters. PR will go out by 11AM. Hope this is helpful for messaging/constituents.
CS team: if we could get a draft of form letters, that would be awesome.
Thank you,
Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

From: Sieren, Madeline
Sent: Sunday, December 10, 2023 12:55 PM
To: 'Chavez, Ari' <ari.chavez@FOX.COM>; 'McNally, Kelly' <kelly.mcnally@FOX.COM>
Subject: AG BAILEY INTERVIEW
Hi Ari and Kelly,
This is the final version of the letter AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.
AG Bailey views it as such:

DRAFT DO NOT RELEASE

-Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.
-Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.
-Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.
-Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:
1.Social media platforms
- We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS

2.President Trump
- We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates

3.The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
- Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying

AMERICAN OVERSIGHT

to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

-The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.

1. We will never back down in the **fight** for free speech.

Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY

December 11, 2023

Angelo Carusone
President and CEO
Media Matters for America
PO Box 44811
Washington, DC 20026
Via email to: action@medimatters.org

Re: Notice of Pending Investigation

Dear Mr. Carusone,

This letter serves as a formal document hold notice under federal and Missouri law. The Missouri Attorney General's Office has opened an investigation into Media Matters for America ("Media Matters") regarding your firm's potentially unlawful business practices.

As you are no doubt aware, a federal lawsuit has been filed against Media Matters, raising serious allegations that your firm falsely and deceptively manipulated the algorithm on X (formerly known as Twitter) through coordinated, inauthentic behavior and that you did so in an attempt to defame the organization and cause advertisers to pull their support from the platform, thus harming free speech. The lawsuit alleges that you lied to the public, falsely suggesting that fringe, extremist content regularly appears next to content from corporate advertisers when in fact the opposite is true. At the same time, you appear to have used this coordinated, inauthentic activity to solicit charitable donations from consumers across the country.

I have reason to believe that your firm's alleged actions may have violated Missouri consumer protection laws, including laws that prohibit nonprofit entities from soliciting funds under false pretenses. *E.g.*, Mo. Rev. Stat. § 407.020.1. I am especially concerned that Media Matters' actions, if proven true, have hampered free speech by targeting an expressly pro free speech social media platform in an attempt

Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

to cause it financial harm while defrauding Missourians in the process.

You are thus hereby instructed to preserve all records that may relate to your alleged effort to engage in coordinated, inauthentic behavior on social media platforms in order to generate false statements that were used to solicit charitable contributions under false pretenses. You are instructed in particular to preserve all records that may relate to your webpage, which expressly solicits funds, at the following URL: https://www.mediamatters.org/twitter/musk-endorses-antisemitic-conspiracy-theory-x-has-been-placing-ads-apple-bravo-ibm-oracle. Records you must preserve include but are not limited to:

- Internal communications regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Communications with third parties regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Communications with IBM, Lions Gate Entertainment, Apple, Disney, Warner Brothers Discovery, Paramount Gold, NBCUniversal, Comcast, Sony, Ubisoft and Wal-Mart regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Internal communications regarding your policies, strategies or operations related to generating stories or content intended to "cancel," "deplatform," "demonetize," or otherwise interfere with businesses or organizations located in Missouri, or utilized by Missouri residents.
- Communications and documents related to soliciting charitable funds from residents of Missouri in relation to the webpage at the URL stated above.

Your obligation to preserve evidence extends to documents kept in any form, both physical and electronic. This includes letters, emails, instant messages, text messages, drafts, informal files, desk files, handwritten notes, faxes, memoranda, forms, calendar entries, address book entries, and voicemails. Your obligation applies to both hardcopy documents and electronic ones, including those kept on computers, laptops, tablets, smartphones, and any other electronic device, including both work and personal devices, personal email accounts and personal computers and tablets. Please ensure that all employees and contractors of Media Matters are aware of their obligations to preserve evidence in this case.

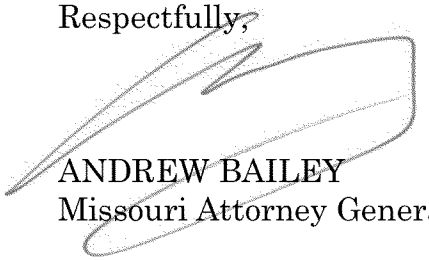
AMERICAN OVERSIGHT

You and your staff are further instructed to cease any protocol for the automatic deletion of emails or backup files on your computer systems. Please forward a copy of this letter to Media Matters IT managers and instruct them to suspend any such protocols.

Be advised that any failure to preserve documents of probative value to this case, even if inadvertent, will constitute spoliation of evidence and may result in a finding of contempt from the court or in sanctions.

Your cooperation in this matter is appreciated. Please feel free to contact me with any questions or concerns.

Respectfully,



ANDREW BAILEY
Missouri Attorney General

AMERICAN OVERSIGHT

To: Rathert, Branden[Branden.Rathert@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Mon 12/11/2023 8:35:52 AM (UTC-06:00)
Subject: FW: AG BAILEY INTERVIEW
2023.12.11 Notice of Investigation - MMFA - Final.pdf

See final letter and talking points re: Media Matters. PR will go out by 11AM. Hope this is helpful for messaging/constituents.
CS team: if we could get a draft of form letters, that would be awesome.
Thank you,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

From: Sieren, Madeline
Sent: Sunday, December 10, 2023 12:55 PM
To: 'Chavez, Ari' <ari.chavez@FOX.COM>; 'McNally, Kelly' <kelly.mcnally@FOX.COM>
Subject: AG BAILEY INTERVIEW

Hi Ari and Kelly,

This is the final version of the letter AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.

AG Bailey views it as such:

DRAFT DO NOT RELEASE

-Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.

-Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.

-Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.

-Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:

1. Social media platforms
   - We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS
2. President Trump
   - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
   - Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

-The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.

1. We will never back down in the **fight** for free speech.

Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Lewis, Jason[Jason.Lewis@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Wagner, Ray[Ray.Wagner@ago.mo.gov]
From: Lyday, Bennett[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EACD91D740F2406EB8A1385B65BBDDED-LYDAY, BENNETT]
Sent: Mon 12/11/2023 9:12:46 AM (UTC-06:00)
Subject: Daily News/Media Roundup - Monday, December 11th, 2023

Good morning all,
Below is the relevant news for today and yesterday relating to the AGO, Missouri, and Nation:

AGO News:

Missouri Attorney General Bailey suing Washington University pediatric transgender clinic
KY3 | No Author Listed
https://www.ky3.com/2023/12/08/missouri-attorney-general-bailey-suing-washington-university-pediatric-transgender-clinic/

-"Missouri Attorney General Andrew Bailey is fighting back against a Washington University lawsuit against him by now suing the university. The attorney general is being sued by Washington University over violations for demanding patient files from the university's pediatric transgender clinic. Bailey is suing the university for failing to hand over documents they previously agreed to provide the AG's office. Bailey launched the investigation into the clinic back in February after a whistleblower came forward saying the center used experimental drugs on children, distributed puberty blockers without individualized assessment, and bullied parents into "consenting" to give their children life-altering drugs. The attorney general issued a subpoena to the pediatric transgender clinic and is now seeking a court order, which would force the university to comply with the subpoena and hand over the documents within 20 days."

Inside the GOP's tense negotiations with Democrats to ban Pentagon-funded 'censorship'
Washington Examiner | Gabe Kaminsky
https://www.washingtonexaminer.com/news/gop-pentagon-defund-censorship-groups-newsguard-gdi

-"The final draft of the 2024 National Defense Authorization Act, an $886 billion spending bill released this week by the Senate and House armed services committees, includes an amendment Republicans hope will stop the Pentagon from contracting with groups "censoring" conservatives. That provision, which along with others will need to pass both chambers and receive President Joe Biden's signature before becoming law, made it into the bill text after House Speaker Mike Johnson (R-LA) and Republicans fought "tooth and nail" with Senate Majority Leader Chuck Schumer (D-NY) and Senate Majority Whip Dick Durbin (D-IL), according to eight congressional staffers and sources… "For the first time ever, the NDAA will prevent the Pentagon from using any advertiser for recruitment that uses biased censorship entities like NewsGuard and GDI," Taylor Haulsee, a spokesman for the House speaker… The release of the bill text on Wednesday came one day after the state of Texas joined two conservative news outlets, the Federalist and the Daily Wire, in filing a lawsuit against the State Department accusing the agency of "one of the most egregious government operations to censor the American press in the history of the nation." The lawsuit cited how the Global Engagement Center and Pentagon awarded grants or contracts to GDI and NewsGuard, a New York-based "misinformation" tracking company that rates media organizations on purported accuracy. GDI, in particular, is far less transparent than NewsGuard on its ratings system and does not make public the outlets on its "dynamic exclusion list," which GDI feeds monthly to advertisers to inform them of which media operations they should defund… Microsoft launched an internal investigation into its relationship with GDI earlier this year, followed by Oracle cutting ties with the think tank over "free speech" concerns… The NDAA amendment on NewsGuard and GDI specifically pertains to "military recruitment advertisements" and would require the Pentagon to certify entities receiving contracts in connection to this process don't "place advertisements in news sources based on personal or institutional political preferences or biases, or determinations of misinformation," according to the bill text. Moreover, the amendment holds that the Pentagon would have to "submit a notification" to Congress if the agency ever does enter into "a contract related to the placement of recruitment advertising" with NewsGuard, GDI, and "any similar entity" that purports to track "misinformation." Still, many Republicans are pleased with the NDAA's "misinformation" amendment language, viewing it as a historic congressional action to thwart what they have continued to dub the "Censorship Industrial Complex." The Biden administration likely skirted the First Amendment while urging social media companies "to remove disfavored content and accounts from their sites" an arrangement heavily covered in the "Twitter Files," sets of documents X Owner Elon Musk released to journalists showing the company's communications with the U.S. government about content moderation under ex-CEO Jack Dorsey, according to a federal appellate court's September ruling in the landmark

AMERICAN OVERSIGHT

free speech case Missouri v. Biden. "This amendment is a monumental step forward in protecting the freedom of speech and combating state-sponsored censorship," said Sen. Eric Schmitt (R-MO), who, as the Show-Me State's attorney general in 2022, led Missouri v. Biden. "Previous to this amendment, in certain instances, the Biden administration would not allow the military to place recruiting advertisements in conservative media outlets," Schmitt told the Washington Examiner… The 2024 NDAA amendment stems from Rep. Rich McCormick's (R-GA) proposal in June called "Prohibition on Availability of Funds Relating to Censorship or Blacklisting of News Sources Based on Subjective Criteria or Political Biases." The amendment from McCormick…, broadly sought to ban Pentagon funds for any reason to NewsGuard, GDI, a New York-based company called Graphika Inc., or "any other entity the function of which is to advise the censorship or blacklisting of news sources based on subjective criteria or political biases, under the stated function of 'fact checking' or otherwise removing 'misinformation,'" documents show… "At the end of the day, we are grateful that some of the language still made it in, because that's the only significant language that addresses censorship that's going to pass this year," Singleton said. "That's a Republican win. It didn't go as far as it did in our original amendment. This is still good progress for free speech." A senior Republican Senate aide, who spoke on the condition of anonymity, said "Schumer and Durbin were really pissed about" the GDI and NewsGuard amendment. The person emphasized that the amendment is "pretty strong" given Democrats control the Senate and presidency and that the amendment will "reform the contracting process to bar these organizations from conservative media censorship."…"

20 People Who Could Be Trump's Next Attorney General

TheMessenger l Darren Samuelsohn and Warren Rojas

https://themessenger.com/politics/trump-second-term-attorney-general-possible-picks?utm_source=onsite&utm_medium=latest_news

-"Andrew Bailey: Missouri's 42-year old attorney general is generating attention with a number of culture war moves as he runs for a full term in 2024, including saying he'd investigate a dispute between X owner Elon Musk and liberal advocacy group Media Matters. Bailey has checked a number of other boxes that put him in the mix, including on abortion rights, challenging Biden-era environmental measures and signing onto the gag order brief led by Bird and West Virginia Attorney General Patrick Morrisey, who touts himself as "one of President Trump's most vocal supporters" in fundraising messages for his 2024 gubernatorial run."

Pro Research: Wall Street eyes Dollar General's strategic shifts

Block Journall No Author Listed

https://blockjournal.io/markets/stocks/pro-research-wall-street-eyes-dollar-generals-strategic-shifts/

-"In the competitive landscape of discount retailing, Dollar General Corporation (NYSE:) has been a subject of intense scrutiny by Wall Street. The company, known for its broad network of stores offering a variety of consumer goods at low prices, is at a pivotal juncture as it navigates through a challenging economic climate and a recent management shake-up… Analysts have expressed concerns regarding Dollar General's market position, observing a significant decline in the company's stock, which dropped approximately 55% from its levels a year prior… The company's management anticipates improved customer satisfaction and inventory allocation to drive unit share gains and a return to 2-4% comp growth over time. However, there is no commitment to operating margin expansion for the foreseeable future due to challenges such as elevated levels of shrink, a high mix of lower-margin consumables, uncertain promotional backdrop, and structural labor and wage investments. A recent lawsuit by the Missouri Attorney General accused Dollar General of charging higher prices at the point of sale than advertised on tags or shelves, an issue that has previously arisen in other states. This underscores the potential need for Dollar General to invest further in both pricing strategies to remain competitive and labor to ensure price accuracy in stores…"

AGO Interviews:

AG Andrew Bailey joins Trey Gowdy to Discuss the Political Infiltration of America's Foster Care System

Sunday Night in America with Trey Gowdy

https://twitter.com/i/status/1733196172506841239

AGO Tweets:

AMERICAN OVERSIGHT



Missouri News:

St. Louis police ranks hit a new low after years of departures

STL Post-Dispatch l Dana Rieck

https://www.stltoday.com/news/local/crime-courts/st-louis-police-ranks-hit-a-new-low-after-years-of-departures/article_0928f476-946b-11ee-b0a1-1baa916f7c7b.html#tncms-source=login

-"The St. Louis Police Department's staffing has hit its lowest levels on record after it lost another 17 cops — almost 2% of its commissioned workforce — over the past month. The city is budgeted for 1,224 officers, but just 912 of those positions were filled as of the first week in December. After years of staffing woes, that number marks a low point in recorded history for the department… "When I started back in 1995, there were closer to 1,600 officers, and now they're down under 1,000. That's just crazy." [said Joe Steiger, business manager for the St. Louis Police Officers Association]. The agency's current 25% vacancy rate has strained the rank-and-file as they try to cover three patrol shifts in the city's six districts. In September, only two police officers were initially assigned to a district just south of downtown, when they both called in sick, leaving the department scrambling… Some neighborhoods, including downtown, have used outside sources to staff police officers to combat high crime levels… At the same time, crime in the city has decreased. Property crimes are down about 17%, aggravated assaults are down 9% and homicides are down by about 22% from last year. Homicides are expected to hit the biggest year-over-year drop in roughly 90 years… But earlier this year, Tracy tapped the St. Louis Police Foundation, a nonprofit that also provides about one-third of his annual pay, to dedicate almost $1 million to pay city officers $70 an hour to work overtime downtown patrols… And after remaining relatively steady with a force of roughly 1,200 over the past decade, according to department data, the pace of police vacancies has quickened. In 2022, the department lost almost 120 officers between January 2022 and January 2023. Since then, about 100 more have left. Steiger said the numbers don't account for Jones' vote in 2021 to cut vacant commissioned positions by almost 100. Available records go back to May 2011, when 1,268 of the 1,296 positions were filled, said St. Louis police Sgt. Charles Wall. These numbers include all ranks, except the officers who are attending the police academy. Dunne said there are 30 people currently training in the academy… Despite this year's low staffing levels, Steiger said the department has slowed the rate of resignations and retirements this year compared with last. Steiger credited the union's negotiated pay increases for officers, and Wall pointed to a change in city policy this year that allows the department to pay new hires based on how many years of commissioned experience they have, even if that experience was at another agency… But, Steiger said, if the department doesn't turn its staffing woes around in the next two years, it may lose more than 100 officers who will be

AMERICAN OVERSIGHT

eligible to retire… St. Louis isn't alone. In St. Louis County, where the police department has just 826 of its 961 budgeted positions filled, the situation is much the same: Lt. Col. Juan Cox said last month that about 20% of the county's officers will be able to retire in the next five years… The city police department was under state control until 2013, when a statewide referendum put the agency back into the hands of city leadership. Since then, Steiger said the city has been heavily involved in the department's hiring process and argued the bureaucracy and red tape in the process slows down hiring an applicant, allowing time for other agencies to "pluck" that officer…"

Hays Secures Another Two-Year Term As MOFB Vice President

Central Mo Info l No Author Listed

https://www.centralmoinfo.com/hays-secures-another-two-year-term-as-mofb-vice-president/

-"A Monroe City farmer has earned another two-year term as vice president of Missouri Farm Bureau.Todd Hays won re-election at this week's annual meeting in Osage Beach, having first been elected to the post in 2010.Hays previously served on the Board of Directors as Northeast Missouri's representative, as well as the Young Farmers and Ranchers chairman in 2003.As vice president, Hays will continue to serve as chairman of Farm Bureau's Resolutions and FARM PAC Review committees. Hays' fifth-generation family farm includes a 600-sow herd and hog-finishing operation, as well as row crops.He's also a former member of the Monroe City R-1 school board."

Crisis on campus: Financial troubles threaten the survival of colleges across St. Louis

STL Post-Dispatch l Steph Kukuljan, Blythe Bernhard

https://www.stltoday.com/news/local/metro/crisis-on-campus-financial-troubles-threaten-the-survival-of-colleges-across-st-louis/article_f388d2c0-93b7-11ee-b9a8-939f729720ca.html#tracking-source=home-the-latest

-"Colleges across the St. Louis area face questions about their long-term sustainability amid a nationwide crisis in higher education… Public funding is harder to come by, while tuition and operating costs continue to increase. And, perhaps most foreboding, public opinion around the value of higher education has shifted, leading more students to not attend college. Universities nationwide were already challenged by a long-term decline in birth rates when the coronavirus pandemic exacerbated enrollment declines. Every university in the St. Louis region saw fewer students enroll in the fall 2020 semester, according to a Post-Dispatch review of enrollment data… Experts believe many of those struggling institutions will not exist for long… Nationwide, enrollment fell 16% from its peak in the 2010-2011 school year to the 2021-2022 school year, according to the latest available data from the National Center for Education Statistics… Year over year, enrollment fell 1.8% in the 2021-2022 school year. But the declines have been worse than average in Missouri. Enrollment fell 3.5% in Missouri from the 2020-2021 to 2021-2022 school year — accounting for most of the decline experienced in all of the Midwest that year… Over the past five years, about 60% of U.S. colleges have experienced deficits because of insufficient tuition dollars… Webster University experienced a 50% drop in enrollment and a loss of $128 million over the past decade. Its longtime leader, Chancellor Beth Stroble, announced her resignation last month after the Post-Dispatch reported that Webster's board of trustees had given her and her second-in-command big pay raises despite the financial turmoil. Moody's credit agency last month downgraded Webster's bond rating, indicating the private university is at higher risk of defaulting on payments because of its $100 million deficit and thinning financial reserves… Revenues at Fontbonne University declined more than $14 million over the past decade, leading to the recent elimination of 21 academic programs and 19 faculty positions. An effort to boost enrollment by launching a new football program largely failed when half the team dropped out of the Catholic institution in Clayton… Harris-Stowe State University, one of two historically Black colleges in the state, faces a critical test this spring, when the Higher Learning Commission visits the school. The commission placed Harris-Stowe's accreditation "on notice" last year due to the school's late audit of fiscal year 2021… At Lindenwood University, enrollment has fallen 39% over the past decade, from a little over 12,000 students to 7,288 this fall. Officials at the St. Charles County college attribute the decline to the closing of its Belleville campus and the phasing out of satellite locations. Last week, the school announced it would eliminate 10 athletic programs at the end of the academic year, impacting 280 students… The school in recent years has focused on expanding its online classes and creating flexible programs for non-traditional students that allow them to start mid-semester… There are more career and training options available that don't require a four-year degree. And the Regional Business Council has made more of an effort to connect K-12 school counselors and administrators from low-income communities with businesses in the region to show students potential career paths. Some won't require a traditional college degree; other careers may inspire students to obtain a degree years later. Colleges will have to think creatively and be proactive in order to survive, she added…"

University of Kansas deal with Missouri hospital feels 'terribly wrong' to lawmakers

Missouri Independent l Allison Kite

https://missouriindependent.com/2023/12/11/university-of-kansas-deal-with-missouri-hospital-feels-terribly-wrong-to-lawmakers/

-"The proposed takeover of Liberty Hospital in Missouri by the University of Kansas Health System is being greeted with scorn by lawmakers from both sides of the state line and both political parties. Leading the charge against the takeover in Missouri is Kansas City Democratic state Sen. Greg Razer, who said the idea of KU owning a hospital in suburban Missouri is "terribly wrong."… The Republican leader of the Kansas Senate also has expressed concern about the takeover, along with at least one member of Liberty Hospital's board of trustees. Earlier this month, Razer pre-filed a bill in the Missouri General

AMERICAN OVERSIGHT

Assembly that would put a stop to a proposed partnership between the University of Kansas Health System and Liberty Hospital by prohibiting hospital boards to partner with an out-of-state health system "operated by an institution of higher education" without voter approval… Liberty Hospital announced in May it was looking to partner with another health system to help it expand to meet growing demand in the Kansas City suburbs north of the Missouri River. In October, it announced it had chosen KU. The two health systems have signed a letter of intent but are still in negotiations, and the terms of the deal are not yet available. But Liberty Hospital CEO Dr. Raghu Adiga said in an interview Friday that KU had pledged to continue the services the hospital provides, including cardiothoracic surgery and a level-two trauma center… Razer said the arrangement would take health care dollars from Missouri to "prop up Kansas," and feared it would be a recruiting tool for the University of Kansas… Razer's primary objection centered on the idea of having a Kansas state institution plant its flag in Missouri. The University of Kansas Health System is governed by the University of Kansas Hospital Authority, a board established in Kansas statute, primarily appointed by the Kansas governor and affiliated with the University of Kansas School of Medicine. But the health system hasn't been owned by the state in 25 years. It receives no state or local tax dollars… Missouri Sen. Denny Hoskins, R-Warrensburg, shared Razer's misgivings about the arrangement. "That would be my concern from Missouri: Will a state-owned Kansas hospital put forth the necessary resources for a hospital in Missouri that does not serve any Kansas taxpayers," Hoskins said. Even knowing KU doesn't receive Kansas tax funds, Hoskins said his concerns remained… Across the state line, Kansas Senate President Ty Masterson, a Republican from Andover, expressed frustration to fellow members of a confirmation oversight committee in November. "Going outside the state when you have … 29 struggling hospitals inside the state of Kansas that probably could have benefitted from an arrangement like that," Masterson said… Myron Neth, a member of Liberty Hospital's board of trustees and a former Republican state lawmaker, also objected to the partnership, saying the board didn't give enough consideration to proposals it received from other health systems…he said, there's nothing in the tentative agreement between Liberty and KU to ensure money generated by the Missouri hospital stays in the hospital district — or the state of Missouri. He doesn't like the idea of a Missouri public subdivision being turned over to the citizens of Kansas. "There's just kind of something weird about that," Neth said… Adiga said the hospital hopes to finalize an agreement with the University of Kansas Health System in early 2024, giving Razer's bill little time to get through the Missouri General Assembly, which convenes Jan. 3. The "New Liberty Hospital District" and "New Liberty Hospital Corporation" have hired eight Missouri lobbyists since the beginning of the month. "They're going to be rushing," Razer said, "and I think we will, too.'"

'Morally, this is obscene': GOP divided over stripping compensation for radiation victims from NDAA

The Hill I Rachel Frazin and Zack Budryk

https://thehill.com/policy/energy-environment/4350583-republicans-divided-defense-bill-radiation-victims-compensation-mcconnell-johnson-hawley-crapo-schmitt/

-"The bipartisan amendment to the National Defense Authorization Act (NDAA) passed the Senate with a supermajority in August but was not included in the House version of the bill and was ultimately dropped from the final legislation. Co-sponsor Sen. Josh Hawley (R-Mo.) called its removal a "betrayal" of the country's commitment to the victims of such radiation. Proponents of the measure are pointing the finger at Republican leadership, saying they are responsible for stripping it from the NDAA… Hawley was more explicit. Asked why the amendment was taken out, he told The Hill, "You ought to ask" Speaker Mike Johnson (R-La.) and Sen. Mitch McConnell. He said Democratic leaders Sen. Chuck Schumer (D-N.Y.) and Rep. Hakeem Jeffries (D-N.Y.) "were supportive" and that he was not given an explanation from Johnson or McConnell about why the measure was dropped. "Morally, this is obscene," he added… The amendment would have extended compensation for people who were exposed to nuclear testing and nuclear waste radiation as a result of U.S. government activity and suffered negative health impacts. These funds are set to expire next year, while the amendment would reauthorize them for another 19 years. The amendment would also expand compensation — offering it for the first time to people in New Mexico, where the atomic bomb was tested in 1945, and Missouri, where uranium storage contaminated the Coldwater Creek, as well as Idaho, Montana, Guam and Colorado… The differences over the measure mark a source of division among Republicans, as three of the leading voices calling for compensation were members of the GOP — Hawley, Sen. Mike Crapo (Idaho) and Sen. Eric Schmitt (Mo.). Of the three, Hawley has been particularly vocal in condemning Republican leaders over the move to drop the amendment and has also said he would seek to delay the defense bill in response. He told The Hill he'd force "every vote that I can" and pursue "every procedural hurdle."… Some of the objections appeared to center around cost. One fiscally conservative group — the Committee for a Responsible Federal Budget — opposed the measure on those grounds… However, Gordon said he would have been more amenable to the legislation if there were efforts to cut its costs… Negotiators attempted to lower the price by proposing to reduce the number of years of the extension or offset its costs, ABC News reported Friday, noting the efforts were ultimately not enough. The issue — and particularly the procedural standoff that Hawley is leading — marks the latest in a series of rifts among congressional Republicans…"

Tensions rise as counterprotest turns up alongside Jewish Federation march

STL Post-Dispatch I Michele Munz

https://www.stltoday.com/news/local/metro/tensions-rise-as-counterprotest-turns-up-alongside-jewish-federation-march/article_40afda8e-97b0-11ee-b95c-5b864298577c.html

AMERICAN OVERSIGHT

-"Tensions rose Sunday between pro-Palestinian demonstrators and those participating in a march held by the Jewish Federation of St. Louis to show solidarity with Israel and demand the return of hostages still being held by Hamas, the Palestinian militant organization operating in opposition to Israel. An estimated 400 to 500 people participated in the march, which closed a few blocks of Delmar Boulevard in University City between about 1 and 2 p.m… A group of about 30 people calling for an end to Israel's military offensive in Gaza also walked down the sidewalk alongside the marchers, chanting slogans such as "free Palestine" and carrying signs that read "Stop the Killing." One pro-Palestinian demonstrator screamed the number of Palestinian children killed as participants sang the U.S. national anthem before starting their march… During the march, participants chanted "bring them home" over the chants and songs of pro-Palestinian demonstrators…"

Missouri Using Hoe Genealogy Testing to Solve Crimes

MissouriNet l Marshall Griffin

https://www.missourinet.com/2023/12/11/missouri-using-home-genealogy-testing-to-solve-crimes/

-"Various law enforcement agencies across the country are using results from home genealogy test kits to solve criminal cases that have gone cold, and Missouri is no exception. Darren Haslag is a master sergeant with the Missouri State Highway Patrol who's assigned to the Division of Drug and Crime Control. He doesn't know exactly when the use of genetic genealogy to solve cold cases started, but said it really took off about five years ago with the identity of the Golden State Killer in California. "They were collecting DNA, but the DNA really wasn't matching to anybody that's in a system that many states have," Haslag told Missourinet… Joseph James DeAngelo is now serving 12 life sentences without parole for 13 murders and 51 rapes committed in California during the 1970's and 80's. Haslag explained how genetic genealogy works as a crime fighting tool. "You can get a line of family members that share the DNA of the sample that you submitted, but you still have to do the work," he said. "You still have to figure out of this group of family members, and depending on how the markers in the DNA and the results come back, you may have three brothers that could have done this crime or you could have the ancestors of a certain great grandpa." But that has led some people to raise privacy concerns about submitting DNA samples to learn about their ancestry. Haslag said some companies choose not to share their customers' DNA info with law enforcement. "Other ones that do (share) give the customers an option to opt out of it when they submit their sample," he said. "There's always an option that when you submit it that you can opt out of it. Most sites have that. The ones that will not participate with us just are not available for those searches through companies that we use." Haslag said the Highway Patrol is currently using genetic genealogy to investigate two violent sexual assaults that occurred in southern Missouri. He can't comment any further on those two cases."

Missouri lawmakers take aim at meatpacking sludge that has roiled rural residents

STL Post-Dispatch l Kurt Erickson

https://www.stltoday.com/news/local/government-politics/missouri-lawmakers-take-aim-at-meatpacking-sludge-that-has-roiled-rural-residents/article_7b602ae4-95f3-11ee-8e2f-b7520c613888.html

-"Sen. Jill Carter, R-Granby, is sponsoring legislation that could rein in companies like Denali Water Solutions, an Arkansas-based firm that collects animal waste products from meatpacking companies and then applies it for free to agricultural lands. Rep. Ed Lewis, R-Moberly, also has filed a proposal in the House taking aim at companies that store slaughterhouse waste in massive basins before spreading it on fields. The practice has become controversial among rural residents at the same time Republican Gov. Mike Parson, a cattle farmer, has led the charge to expand meatpacking facilities in Missouri… Complaints include strong odors and concerns about the waste flowing into the state's waterways, spoiling creeks, rivers and lakes. Residents living nearby have filed lawsuits and issued calls for tougher enforcement and legislative intervention. Carter's proposal would strengthen the permitting process, potentially making it harder for companies to collect the material from meatpackers unless it is tested and deemed safe for spreading… Local groups suing Denali include the southwestern Missouri-based Stop Land Use Damaging our Ground and Environment, or SLUDGE… Along with southwestern Missouri residents, a group of opponents have been fighting a similar situation in Randolph County, spurring Lewis to file his plan. Environmental attorney Stephen Jeffery called Carter's proposed legislation a good start because it focuses on the earthen basins used to store millions of gallons of sludge and waste before it is pumped onto nearby land… In the meantime, DNR officials ordered Denali to cease operations on Nov. 29, saying the company was not operating pursuant to guidelines listed in a June letter. The DNR's action came after an October spill of slaughterhouse waste leaked into a ditch and field near Fairview in Newton County. From Nov. 29 forward, DNR said "any unpermitted land application of process wastewater will be cited as intentional violations of the Missouri Clean Water Law."… Liebl said more than 100 Missouri farmers rely on fertilizers from Denali, and dozens of Missouri food manufacturers employing more than 10,000 Missouri workers depend on the company's services to continue their business operations… Heather Peters, water pollution control branch chief of the DNR's Water Protection Program, said the current enforcement status is not "business as usual." "Denali does not have their own authorization to conduct land application," Peters said. "Also, the use of the basins is not permitted, and they have been notified that material cannot be added to the basin.'"

MDC reveals changes to spring and fall turkey seasons

KTTN l No Author Listed

https://www.kttn.com/mdc-reveals-changes-to-spring-and-fall-turkey-seasons/

AMERICAN OVERSIGHT

-"The Missouri Department of Conservation (MDC) has announced changes to turkey hunting regulations for the upcoming spring season and proposed regulation changes for the fall seasons… For the Spring 2024 turkey season, shooting hours on private land will now extend from a half-hour before sunrise until sunset. However, on public land, shooting hours will continue to be from a half-hour before sunrise to 1 p.m. The proposed changes for fall turkey hunting include a requirement for both fall firearms and archery turkey hunters to obtain a specific fall turkey-hunting permit. Consequently, turkeys will no longer be included in the archery-deer permit. Additionally, the bag limit will decrease from four to two birds… MDC's primary objective with these regulation changes is to enhance spring hunting opportunities for youth and day-working hunters and to balance the fall harvest while maximizing hunting opportunities. MDC Turkey Biologist Nick Oakley explains that hunter participation and recruitment have been declining in Missouri due to conflicts with school and work schedules. Extending shooting hours addresses this barrier… Oakley notes that states in the Midwest and Southeast have experienced increases in hunter participation, harvest rates, and satisfaction after extending their hunting hours to all day."

Missouri Lawmaker Does Not Think Four-Day School Week Restrictions Would Get Traction in 2024

MissouriNet l Alisa Nelson

https://www.missourinet.com/2023/12/11/missouri-lawmaker-does-not-think-four-day-school-week-restrictions-would-get-traction-in-2024/

-"Missouri has 168 school districts that have shifted to four-day school weeks this academic year. According to the Missouri Department of Elementary and Secondary Education the state had 143 school districts holding classes four days a week in the 2022-23 school year. Rep. Brad Pollitt, the chairman of the Missouri House's Elementary and Secondary Education Committee, does not think that legislative bills to restrict four-day school weeks would get much traction next year… The schools might have shortened weeks, but they must still fulfill the same number of hours of instruction as schools running five days a week. The four-day model has been a teacher recruitment and retention tool, especially for Missouri's rural districts. After the Independence School District moved to a four-day school week, lawmakers tried unsuccessfully this year to restrict the shortened academic weeks. "I'm not saying that I totally agree with four-day school weeks. I need more data on that, to be honest with you. I know a number of our schools have went to four-day weeks and if it's fit in their community, you know, I really don't have a stomach to go into that and try to disrupt that at this time. I think that we need to be concentrating more on trying to get teacher salaries where they need to be," said Pollitt. According to Pollitt, he plans to file a bill for the upcoming legislative session that would raise Missouri's minimum teacher salary to $40,000. He also wants to raise the salaries of teachers with more experience and degrees. Neighboring Arkansas has a new law that makes that state's minimum teacher pay $50,000 annually."

Commission awards $380 million in tax credits for Missouri low-income housing

Missouri Independent l Rudi Keller

https://missouriindependent.com/2023/12/08/commission-awards-380-million-in-tax-credits-for-missouri-low-income-housing/

-"the Missouri Housing Development Commission on Friday approved 24 low-income housing projects financed by roughly $380 million in state and federal tax credits… Of the projects approved Friday, 19 will be financed with what is called a 9% tax credit, named for the percentage of project costs eligible for the credit. The other five use a 4% credit, set aside for nonprofits that also use financing from tax-exempt bonds. Overall, the commission authorized $173.5 million in federal 9% credits and $121.4 million in state tax credits, with varying maturities stretching over 10 years. Those projects also received $24 million in other funding. The commission authorized $44 million in 4% federal credits and $37 million in matching state credits, plus $81.4 million in bond financing and $7 million in other funding, for the remaining projects. When completed, the projects will provide 1,532 new housing units ranging from studio apartments to four-bedroom family homes in communities across the state. For only the second time in the program's history, the commission released the scores that determined which applications were funded… "We give great weight to the scores but the staff's analysis goes beyond the scoring," Stetzler said… The commission funded three of 11 projects using 9% tax credits proposed for the Kansas City area and five of 21 proposed for the St. Louis region. The rest of the state is divided between sparsely populated rural counties and regions in close proximity to cities like Springfield, Columbia and Cape Girardeau. The commission awarded credits to seven of 26 applications from the purely rural areas and four of 24 applications for the regions near the state's smaller cities…"

Mayor Quinton Lucas hosts fentanyl summit to address growing overdose problem

KCTV l Mark Poulose

https://www.kctv5.com/2023/12/09/mayor-quinton-lucas-hosts-fentanyl-summit-address-growing-overdose-problem/

-"Kansas City Mayor Quinton Lucas says overdose deaths are at epidemic levels locally. On Friday, Lucas hosted a fentanyl summit at the city's health department to hear from a wide variety of perspectives on the issue. Lucas invited local health officials, service providers, law enforcement, and families affected by the overdose crisis… From 2017 to 2021, fentanyl deaths rose nearly 1000% in Kansas City. In 2021 alone, fentanyl overdoses killed nearly 1,500 Missourians and more than 400 people in Kansas… Last month, city council passed an ordinance that required all fatal and non-fatal fentanyl overdoses to be reported to the health department within 24 hours. The city says that data will shed light on a complex problem. "It will keep us from having to look two-to-three years in the rears," said Dr. Marvia Jones, the Health Department's

AMERICAN OVERSIGHT

Director…"

National News:

Supreme Court May Soon Consider EPA's Veto of Huge Alaska Mine

Epoch Times l Matthew Vandum

https://www.theepochtimes.com/us/supreme-court-may-soon-consider-epas-veto-of-huge-alaska-mine-5544608

-"The Supreme Court may soon consider whether to hear Alaska's appeal against the U.S. Environmental Protection Agency's (EPA) decision to veto the proposed $400 billion Pebble Mine project in the southwestern part of the state. The project site on state-owned land in the Bristol Bay area is reportedly home to the planet's second-largest untapped deposit of copper. Demand for copper is expected to more than double by 2050. Copper is essential to industries that make products favored by environmentalists such as electric vehicles and wind turbines. Gold, silver, molybdenum, and rhenium have also been identified at the site. Pebble Limited, which wants to develop the site, said it will generate as many as 2,000 jobs… The court may take up the case next month. Alaska's move comes after the nation's highest court limited the EPA's powers in recent years… The EPA skipped the usual regulatory protocol and decided under Section 404(c) of the Clean Water Act to restrict the use of waters in the Bristol Bay watershed as disposal sites for discharges of dredged or fill material associated with developing the Pebble project site or any other similar project on state-owned lands nearby. The EPA's veto of the project included future mines in a 309-square-mile area. The U.S. Army Corps of Engineers turned down the mine application in 2020 but had agreed to review its decision. Despite the access to environmentalist-favored copper promised by the project, environmentalists still claimed the project would harm fisheries. The Army Corps of Engineers issued a Final Environmental Impact Statement in July 2020 stating that the mine would not adversely affect the Bristol Bay fishery. Earlier this year, Alaska Gov. Mike Dunleavy, a Republican, said the EPA was wrong to intervene in the state's affairs… "Alarmingly, it lays the foundation to stop any development project, mining or non-mining, in any area of Alaska with wetlands and fish-bearing streams. My administration will stand up for the rights of Alaskans, Alaska property owners, and Alaska's future," he said. "The State of Alaska has a responsibility to develop its resources to provide for itself and its people. Alaska does resource development better than any other place on the planet…" The Biden administration countered in a brief (pdf) that the Bristol Bay watershed "is an area of unparalleled ecological value, boasting salmon diversity and productivity unrivaled anywhere in North America."… The Supreme Court is not required to take a case. In the case at hand, Alaska v. United States, Alaska filed a motion for leave to file a bill of complaint (pdf). If at least four of the nine justices vote to grant the motion, the case will move forward to the oral argument stage. In addition to the federal government, Alaska is suing Michael Regan in his official capacity as administrator of the EPA."

ACLU Will Represent NRA In Free Speech Case Before Supreme Court

Epoch Times l Tom Ozimek

https://www.theepochtimes.com/us/aclu-will-represent-nra-in-free-speech-case-before-supreme-court-5544348

-"The National Rifle Association (NRA) has found an unlikely ally in of the left-leaning American Civil Liberties Union (ACLU), which will represent the gun rights advocacy group at the U.S. Supreme Court in a case that centers of the constitutional right of free speech. The NRA in 2018 brought a lawsuit against Maria Vullo, former superintendent of the New York Department of Financial Services (DFS), alleging that she violated the First Amendment by pressuring regulated financial institutions like banks and insurers to stop doing business with the gun rights group. The case made its way through the courts, eventually landing before the Supreme Court, which in November agreed to take it up… NRA President Charles Cotton welcomed the ACLU's announcement. "The NRA is proud to stand with the ACLU and others who recognize this important truth: regulatory authority cannot be used to silence political speech," he said in a post on X. The gun rights group's original lawsuit accused Ms. Vullo and the DFS of having engaged in a "campaign of selective prosecution, backroom exhortations, and public threats" to the detriment of the NRA and the Americans it represents… "While we vigorously oppose the NRA's viewpoint, we cannot give government officials the power to silence those with whom they disagree," the ACLU said, adding that, if the Supreme Court doesn't intervene, "it will create a dangerous playbook for state regulatory agencies across the country to blacklist or punish any viewpoint-based organizations." Jeremy Tedesco, senior counsel for the Alliance Defending Freedom (ADF), told The Epoch Times in an earlier interview that the actions of New York officials with respect to the NRA are the latest in a long line of attempts by the government to control speech by pressuring financial institutions to cut off services to disfavored organizations."

Texas Supreme Court Halts Pro-Abortion Order by Lower Court

Epoch Times l Tom Ozimek

https://www.theepochtimes.com/us/texas-supreme-court-halts-pro-abortion-order-by-lower-court-5544174?ea_src=frontpage&ea_med=most-read-1

-"The Texas Supreme Court on Friday temporarily halted a lower court's decision that granted a pregnant woman the ability to get an emergency court-authorized abortion despite the state's strict rules against getting one. The high court's Dec. 9 decision came after a district court a day earlier granted a request for an emergency abortion in a lawsuit brought by Kate Cox, a woman who is 20 weeks pregnant and whose unborn baby was diagnosed with Trisomy 18, a condition that causes multiple structural abnormalities that doctors said gave it no chance of survival after birth. By an order issued on Dec. 8,

AMERICAN OVERSIGHT

the Texas Supreme Court applied an administrative stay—without ruling on the merits of the case—to the temporary restraining order issued by a judge at the District Court of Travis County, Texas, which paused Texas' strict abortion laws so that Ms. Cox could legally terminate her pregnancy. In its decision, the high court said that it would consider the matter further and issue a more comprehensive ruling at a later time. The Texas Supreme Court ruling came in response to a motion filed late Friday by Texas Attorney General Ken Paxton, who sent a letter to three Texas hospitals, warning them that they faced the prospect of legal action if they allowed the abortion to take place at their facility…"

Appeals Court Affirms, Narrows Trump Gag Order

Epoch Times l Catherine Yang

https://www.theepochtimes.com/us/appeals-court-affirms-trump-gag-order-5543871?ea_src=frontpage&ea_med=most-read-0

-"A three-judge panel of the U.S. Court of Appeals for the District of Columbia affirmed a gag order that U.S. District Court Judge Tanya Chutkan originally issued, prohibiting former President Donald Trump from making statements that target several groups of people involved in a case accusing him of interfering with the 2020 elections. The 68-page opinion and order provided some additional specifics to Judge Chutkan's original order, narrowing the gag order. The former president is prohibited from "making or directing others to make public statements about known or reasonably foreseeable witnesses concerning their potential participation in the investigation or in this criminal proceeding." Previously, the order prohibited President Trump from making any statements that would "target" any potential witness, or the content of their potential testimonies. He is also allowed to make statements about special counsel Jack Smith, whom the appellate court judges had deemed a public figure in an earlier hearing. However, he is prohibited from making statements about his staff, including other federal attorneys, their families, and any court staff and their families "if those statements are made with the intent to materially interfere with, or to cause others to materially interfere with, counsel's or staff's work in this criminal case, or with the knowledge that such interference is highly likely to result."… The appellate panel adopted Judge Chutkan's rationale, writing that "some aspects of Mr. Trump's public statements pose a significant and imminent threat to the fair and orderly adjudication of the ongoing criminal proceeding," and warranted a gag order. "However," they noted, the original gag order "sweeps in more protected speech than is necessary. For that reason, we affirm the district court's order in part and vacate it in part." The opinion had been partially redacted, and the court has given the parties a Dec. 18 deadline to argue on whether the redactions should be unsealed… The Trump Campaign issued a statement on the order, claiming the prosecution has been politically motivated. "Today, the D.C. Circuit Court panel, with each judge appointed by a Democrat President, determined that a huge part of Judge Chutkan's extraordinarily overbroad gag order was unconstitutional," Trump Campaign spokesperson Steven Cheung stated. "President Trump will continue to fight for the First Amendment rights of tens of millions of Americans to hear from the leading Presidential candidate at the height of his campaign. The Biden-led witch hunts against President Trump and the American people will fail.'"

'A Cynical Strategy': Less Than Two Years After Dobbs, Abortion Is Headed To The Supreme Court Again

Daily Caller l Kate Anderson

https://dailycaller.com/2023/12/10/cynical-strategy-two-years-after-dobbs-abortion-headed-supreme-court-again/

-"Supreme Court Justice Elana Kagan will decide any day now on an emergency petition for an abortion case from Idaho, just under two years after the landmark decision to overturn Roe v. Wade, and legal and policy experts who spoke with the Daily Caller News Foundation said that the court will likely have to wrestle with the issue again soon. In August 2022, the Department of Justice filed a lawsuit against Idaho for banning all abortions and the state's Attorney General Raúl Labrador filed a motion with Kagan on Nov. 27, asking that the law be allowed to remain in effect as the lawsuit plays out. The Biden administration is trying to push a "very tortured interpretation" of the Emergency Medical Treatment and Active Labor Act (EMTALA), which prohibits hospitals from turning away patients having a medical emergency, Alliance Defending Freedom Senior Counsel Erin Hawley told the DCNF, and the stage is being set for the nation's highest court to weigh in on the issue again. "This is something that the Supreme Court is likely going to need to consider," Hawley explained to the DCNF… The DOJ argues in its lawsuit that Idaho's law prevents doctors from treating conditions such as ectopic pregnancies and severe preeclampsia. The department claims that EMTALA requires doctors to not turn away patients in need of "emergency stabilizing care," which it also argues includes abortions. "Not until after the Dobbs decision did the Biden administration stage a stand and say that [EMTALA], which was originally about hospital access, was actually about abortion," Marc Wheat, general counsel for Advancing American Freedom, which filed a friend-of-the-court brief with the Supreme Court, told the DCNF. "There's a whole range of efforts across the Biden administration to try to push abortion wherever they can and here, the issue was whether an Idaho law can stand while they are fighting out this case in the courts." In 2023, the Idaho legislature amended its law that originally only provided doctors with the right to an affirmative defense if they performed an emergency abortion and created an exception in the law that allows the procedure for saving the life of the mother and in cases of rape and incest. Daniel told the DCNF that the Idaho law, particularly in light of this change, is perfectly in line with EMTALA… The courts have issued differing opinions on the subject over the past year and a half. In October, the Ninth Circuit Court of Appeals reversed its previous ruling, which had allowed the ban to remain in effect, and said that they planned to re-hear the case after the DOJ's appeal, but gave no further explanation as to what prompted the decision. As a result, Labrador, alongside Alliance Defending Freedom, filed an emergency motion to Kagan in November asking her to allow the law to remain in effect while it is in the court system to protect the lives of unborn children…

AMERICAN OVERSIGHT

Hawley and Wheat further said that there is “’absolutely” a “good possibility” that the case will end up at the Supreme Court again, beyond the emergency motion, and that it will be a pivotal ruling less than two years out from the Dobbs decision… “I think the Biden administration will work to try to knock down protections for unborn children wherever they can find them. … It’s a really cynical strategy and I’m very disappointed with career lawyers who are pushing this, but they’re just doing the bidding of the politicals out of the White House,” Wheat told the DCNF.”

Red state AGs move to block abortion ballot language pro-life group says is 'deceptive,' goes farther than Roe

Fox News l Andrew Mark Miller

https://www.foxnews.com/politics/red-state-ags-move-block-abortion-ballot-language-pro-life-group-says-deceptive-goes-farther-than-roe

-“Attorney generals in red states are making moves to address ambiguities and euphemisms in upcoming abortion measures in their states to avoid deceptive language, an issue that pro-life groups say was critical in the Ohio vote. In Arkansas, Attorney General Tim Griffin recently rejected a proposed abortion ballot that he said had a deceptive title and misleading text. Griffin outlined concerns about "ambiguities in the text", not enough clarity on the meanings of the words "health" and "access," the potentially deceptive name of the ballot measure, and other facts that he says need to be addressed and resubmitted. In Florida, Republican AG Ashley Moody recently called a pro-abortion amendment initiative that made it to her desk "one of the worst I have ever seen." "As any mother knows, ‘viability’ has two meanings when it comes to pregnancy. First, it means whether a pregnancy is expected to continue developing normally through delivery. Doctors can tell during the first trimester, usually around about 12 weeks, whether a pregnancy is viable and would have a much lower risk of miscarriage. For that reason, many women often wait to tell family and friends about their pregnancy until that time." Moody wrote. "Second, viability is sometimes used to mean whether a baby can survive outside of the uterus, which currently is around 21 to 25 weeks of pregnancy. The two time periods, depending on your definition of viability, are starkly different, and the procedures performed to abort a baby’s life at either time period are dissimilar."… South Dakota AG Jackley also took issue with the wording in a recent abortion proposal writing that "any suggestion that your proposed abortion amendment makes abortion legal only for the first trimester is contrary to the language of the proposed amendment."… "Deception is the common theme in every abortion ballot measure," SBA Pro-Life America’s state public affairs director Kelsey Pritchard said in a statement to Fox News Digital. "Abortion activists have repeatedly used unclear language to mislead voters into embedding unlimited abortion in their state constitutions. Because Americans do not support second- and third-trimester abortions, Big Abortion must funnel millions into ads that lie about what these amendments actually do in order to be successful."… "They're taking action early now to fight back against it and to make sure there's clarity for the voters in their states about how radical these amendments are allowing abortion basically without restriction and deteriorating parental rights."

Illegal Immigration Surges Months After Biden, Trudeau Make Deal To Crack Down On Northern Border Influx

Daily Caller l Jennie Taer

https://dailycaller.com/2023/12/10/illegal-immigration-northern-border-biden/

-“As part of the deal, authorities at the U.S.-Canadian border must return migrants who cross illegally to make their asylum claims either to Canada or the U.S. However, Border Patrol encounters of migrants crossing illegally into the U.S. have only increased in recent months, jumping to 1,154 in July and all the way up to 1,521 in October, according to the Customs and Border Protection (CBP) data. For a short time after the deal, Border Patrol encounters of migrants crossing the northern border illegally into the U.S. decreased from 992 in March to 977 in April, 803 in May and 844 in June, according to CBP data. A Border Patrol agent working along the northern border told the DCNF that they’ve seen “record” crossings in recent months… The deal still allows some illegal migrants to be released into the U.S. if they present a “credible fear” of return to their home country, according to a Department of Homeland Security (DHS) memo previously obtained by the Daily Caller News Foundation. If the individual is determined to have a legitimate credible fear, they can be released into the U.S. with a future court date, according to U.S. Citizenship and Immigration Services (USCIS), which granted roughly 58% of credible fear claims referred to the agency in fiscal year 2022… The Swanton Sector has seen 550% increase in illegal crossings compared to 2022, with 6,925 apprehensions from 79 different countries, the agency said in November. The deal set out to deter illegal crossings, but that’s not something Border Patrol and local residents are seeing… “At the current pace the 2024 numbers … will exceed those of 2023,” David Favro, sheriff of Clinton County, New York, told the DCNF… While the northern border sees a surge in illegal immigration, illegal crossings at the southern border remain at record highs, with border officials surpassing two million encounters in both fiscal years 2022 and 2023, according to federal data.”

The Senate Is Considering An AI Bill That Could Radically Alter The Future Of The Internet

Daily Caller l Jason Cohen

https://dailycaller.com/2023/12/10/senate-bill-ai-liability-hawley/

-“Republican Missouri Sen. Josh Hawley and Democratic Connecticut Sen. Richard Blumenthal in June introduced the No Section 230 Immunity for AI Act, which would clarify that liability protections under Section 230 of the Communications Decency Act do not apply to text and visual content created by artificial intelligence. Hawley may attempt to hold a vote on the bill in the coming weeks, his office told the Daily Caller News Foundation. Section 230 of the Communications Decency Act of 1996 states that internet companies cannot be held liable for third-party speech posted on their platforms. The

AMERICAN OVERSIGHT

question of whether these same protections apply to content created by artificial intelligence could have a dramatic impact on online speech, especially as artificial intelligence technology such as ChatGPT come to play a large role online, as major tech companies could face a deluge of lawsuits for AI-generated content. The bill would enable Americans to file lawsuits against AI firms whose advanced technology enables the production of damaging content. The bill would target AI-generated content such as deepfakes, which are false but realistic-looking visual imitations, often of a real person… The legislation defines generative AI as "an artificial intelligence system that is capable of generating novel text, video, images, audio, and other media based on prompts or other forms of data provided by a person.''… However, some tech experts warn that removing Section 230 protections from AI-generated content could have deleterious effects on both internet users and the burgeoning AI industry. When certain sources say content is harmful, AI companies may not want to feed it to their models, Czerniawski told the DCNF, pointing to examples of censorship of conservative news sites at the behest of organizations like the Global Disinformation Index. Section 230 may be the reason that technology companies host controversial speech on their platforms, so limiting liability protections for AI-generated content could lead to AI relying on a narrower subset of information, Cato Institute Technology Policy Research Fellow Jennifer Huddleston told the DCNF… Hawley and Blumenthal argued that extending Section 230 liability protections to AI would shield tech companies from accountability for the perceived harms of their products. "We can't make the same mistakes with generative AI as we did with Big Tech on Section 230," Hawley stated. "When these new technologies harm innocent people, the companies must be held accountable. Victims deserve their day in court and this bipartisan proposal will make that a reality."

I hope everyone has an amazing day and start to their week!

Best,

Bennett Lyday | Operations Specialist
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
O: (573) 751-4390
C: (573) 645-9671
Bennett.Lyday@ago.mo.gov

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Sam Pags[Sam@joepags.com]
From: Monica Wallace[Monica@joepags.com]
Sent: Mon 12/11/2023 3:27:31 PM (UTC-06:00)
Subject: Re: AG Bailey - Media Matters

Hey Maddie!

Yes, we'd definitely love to have AG Bailey join us to discuss this.
Does he have some time on Wednesday at 4 or 430 pm ET for a video Skype hit?

Thank you!

Monica Wallace
Booking Producer | The Joe Pags Show

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Sunday, December 10, 2023 2:09:00 PM
Subject: AG Bailey - Media Matters

Hi,
Attached is the final version of the EMBARGOED letter that AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.
AG Bailey views it as such:

DRAFT DO NOT RELEASE

-Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.
-Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.
-Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.
-Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:

1. Social media platforms
   - We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS
2. President Trump
   - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
   - Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

-The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.

1. We will never back down in the **fight** for free speech.

He is available this week if you have interest in an interview.
Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO

AMERICAN OVERSIGHT

573-690-1205
Madeline.Sieren@ago.mo.gov
This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: Glasgow, Chris[Chris.Glasgow@siriusxm.com]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Mon 12/11/2023 4:38:41 PM (UTC-06:00)
Subject: Re: AG Bailey - Media Matters

Let's do it! Would you mind resending me the call-in number?

Sent from my iPhone

On Dec 11, 2023, at 4:10 PM, Glasgow, Chris <Chris.Glasgow@siriusxm.com> wrote:

Hello, Madeline!

I apologize for the late request. We just had a cancellation. Is there any possibility we could get AG Bailey tonight at 9:20PM (ET), for about 12-15 minutes by phone?

Chris Glasgow|Producer
"*Stacy On The Right*" SiriusXM Patriot
Cell: 202-550-5815
SiriusXM

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Sunday, December 10, 2023 2:09:00 PM
Subject: [EXTERNAL] AG Bailey - Media Matters

Hi,

Attached is the final version of the EMBARGOED letter that AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.

AG Bailey views it as such:

DRAFT DO NOT RELEASE

-Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.

-Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.

-Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.

-Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:

1.Social media platforms

- We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS

2.President Trump

- We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates

3.The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**

- Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

-The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.

1.We will never back down in the **fight** for free speech.

AMERICAN OVERSIGHT

He is available this week if you have interest in an interview.
Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: Glasgow, Chris[Chris.Glasgow@Siriusxm.com]
Sent: Mon 12/11/2023 4:10:30 PM (UTC-06:00)
Subject: Re: AG Bailey - Media Matters

Hello, Madeline!

I apologize for the late request. We just had a cancellation. Is there any possibility we could get AG Bailey tonight at 9:20PM (ET), for about 12-15 minutes by phone?

Chris Glasgow|Producer
"*Stacy On The Right*" SiriusXM Patriot
Cell: 202-550-5815
SiriusXM

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Sunday, December 10, 2023 2:09:00 PM
Subject: [EXTERNAL] AG Bailey - Media Matters

Hi,

Attached is the final version of the EMBARGOED letter that AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.

AG Bailey views it as such:

DRAFT DO NOT RELEASE

-Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.

-Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.

-Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.

-Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:

1. Social media platforms
   - We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS
2. President Trump
   - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
   - Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

-The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.

1. We will never back down in the **fight** for free speech.

He is available this week if you have interest in an interview.

Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo.

Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: Glasgow, Chris[Chris.Glasgow@Siriusxm.com]
Sent: Mon 12/11/2023 4:40:24 PM (UTC-06:00)
Subject: Re: AG Bailey - Media Matters

Wonderful!
Our guest line is 877-612-6328. Please let me know what else you may need from us.

Much appreciated,

Chris Glasgow|Producer
"*Stacy On The Right*" SiriusXM Patriot
Cell: 202-550-5815
SiriusXM

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Monday, December 11, 2023 5:38:41 PM
To: Glasgow, Chris <Chris.Glasgow@Siriusxm.com>
Subject: [EXTERNAL] Re: AG Bailey - Media Matters
Let's do it! Would you mind resending me the call-in number?

Sent from my iPhone

> On Dec 11, 2023, at 4:10 PM, Glasgow, Chris <Chris.Glasgow@siriusxm.com> wrote:
>
> Hello, Madeline!
>
> I apologize for the late request. We just had a cancellation. Is there any possibility we could get AG Bailey tonight at 9:20PM (ET), for about 12-15 minutes by phone?
>
> **Chris Glasgow**|Producer
> "*Stacy On The Right*" SiriusXM Patriot
> Cell: 202-550-5815
> SiriusXM

> **From:** Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
> **Sent:** Sunday, December 10, 2023 2:09:00 PM
> **Subject:** [EXTERNAL] AG Bailey - Media Matters
> Hi,
> Attached is the final version of the EMBARGOED letter that AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.
> AG Bailey views it as such:
>
> DRAFT DO NOT RELEASE
>
> -Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.
> -Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.
> -Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.
> -Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:

AMERICAN OVERSIGHT

1. Social media platforms
    - We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS
2. President Trump
    - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
    - Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

-The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.

1. We will never back down in the **fight** for free speech.

He is available this week if you have interest in an interview.

Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: 'Glasgow, Chris'[Chris.Glasgow@Siriusxm.com]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Mon 12/11/2023 5:41:29 PM (UTC-06:00)
Subject: RE: AG Bailey - Media Matters

We should be good – thank you so much! Looking forward to it.

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

From: Glasgow, Chris <Chris.Glasgow@Siriusxm.com>
Sent: Monday, December 11, 2023 4:40 PM
To: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Subject: Re: AG Bailey - Media Matters

Wonderful!
Our guest line is 877-612-6328. Please let me know what else you may need from us.
Much appreciated,

Chris Glasgow|Producer
"*Stacy On The Right*" SiriusXM Patriot
Cell: 202-550-5815
SiriusXM

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Monday, December 11, 2023 5:38:41 PM
To: Glasgow, Chris <Chris.Glasgow@Siriusxm.com>
Subject: [EXTERNAL] Re: AG Bailey - Media Matters

Let's do it! Would you mind resending me the call-in number?

Sent from my iPhone

On Dec 11, 2023, at 4:10 PM, Glasgow, Chris <Chris.Glasgow@siriusxm.com> wrote:

Hello, Madeline!
I apologize for the late request. We just had a cancellation. Is there any possibility we could get AG Bailey tonight at 9:20PM (ET), for about 12-15 minutes by phone?

Chris Glasgow|Producer
"*Stacy On The Right*" SiriusXM Patriot
Cell: 202-550-5815
SiriusXM

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Sunday, December 10, 2023 2:09:00 PM
Subject: [EXTERNAL] AG Bailey - Media Matters

Hi,
Attached is the final version of the EMBARGOED letter that AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.
AG Bailey views it as such:

DRAFT DO NOT RELEASE

-Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.

-Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.

AMERICAN OVERSIGHT

-Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.

-Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:

1.Social media platforms

- We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS

2.President Trump

- We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates

3.The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**

- Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

-The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.

1.We will never back down in the **fight** for free speech.

He is available this week if you have interest in an interview.

Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
Cc: Jill D Vitale[jillv@newsmax.com]
From: Jackie Anastasakos[jaclyna@newsmax.com]
Sent: Tue 12/12/2023 8:22:56 AM (UTC-06:00)
Subject: RE: AG Bailey - Media Matters

Good Morning,
Is the AG avalible this Saturday Dec 16th?
Best Wishes,
Jaclyn Anastasakos
Cell: (718) 354-7704
Talent Booking Producer
750 Park of Commerce Drive, Suite 100
Boca Raton, FL 33487
NEWSMAX

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Sunday, December 10, 2023 2:09 PM
Subject: AG Bailey - Media Matters
Importance: High

Hi,
Attached is the final version of the EMBARGOED letter that AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.
AG Bailey views it as such:

DRAFT DO NOT RELEASE

- Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.

- Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.

- Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.

- Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:
    1. Social media platforms
        - We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS
    2. President Trump
        - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
    3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
        - Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**
- The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.
    1. We will never back down in the **fight** for free speech.

He is available this week if you have interest in an interview.
Best,
Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO

AMERICAN OVERSIGHT

573-690-1205
Madeline.Sieren@ago.mo.gov
This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: Jackie Anastasakos[jaclyna@newsmax.com]
Cc: Jill D Vitale[jillv@newsmax.com]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Tue 12/12/2023 8:31:49 AM (UTC-06:00)
Subject: Re: AG Bailey - Media Matters

Hi Jackie,
Is there any way we could pre-tape for Saturday? We have some time on Thursday.
Thank you,

From: Jackie Anastasakos <jaclyna@newsmax.com>
Date: Tuesday, December 12, 2023 at 8:22 AM
To: "Sieren, Madeline" <Madeline.Sieren@ago.mo.gov>
Cc: Jill D Vitale <jillv@newsmax.com>
Subject: RE: AG Bailey - Media Matters

Good Morning,
Is the AG avalible this Saturday Dec 16th?
Best Wishes,
Jaclyn Anastasakos
Cell: (718) 354-7704
Talent Booking Producer
750 Park of Commerce Drive, Suite 100
Boca Raton, FL 33487
NEWSMAX

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Sunday, December 10, 2023 2:09 PM
Subject: AG Bailey - Media Matters
Importance: High

Hi,
Attached is the final version of the EMBARGOED letter that AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.
AG Bailey views it as such:

DRAFT DO NOT RELEASE

- Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.

- Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.

- Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.

- Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:
  1. Social media platforms
     - We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS
  2. President Trump
     - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
  3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
     - Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

AMERICAN OVERSIGHT

- The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.
    1. We will never back down in the **fight** for free speech.

He is available this week if you have interest in an interview.
Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Jackie Anastasakos[jaclyna@newsmax.com]
From: Jill D Vitale[jillv@newsmax.com]
Sent: Tue 12/12/2023 8:36:10 AM (UTC-06:00)
Subject: RE: AG Bailey - Media Matters

We have our team calls this afternoon then we can find out if we can pretape Thursday or Friday!

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Tuesday, December 12, 2023 9:32 AM
To: Jackie Anastasakos <jaclyna@newsmax.com>
Cc: Jill D Vitale <jillv@newsmax.com>
Subject: Re: AG Bailey - Media Matters

Hi Jackie,
Is there any way we could pre-tape for Saturday? We have some time on Thursday.
Thank you,

From: Jackie Anastasakos <jaclyna@newsmax.com>
Date: Tuesday, December 12, 2023 at 8:22 AM
To: "Sieren, Madeline" <Madeline.Sieren@ago.mo.gov>
Cc: Jill D Vitale <jillv@newsmax.com>
Subject: RE: AG Bailey - Media Matters

Good Morning,
Is the AG avalible this Saturday Dec 16th?
Best Wishes,
Jaclyn Anastasakos
Cell: (718) 354-7704
Talent Booking Producer
750 Park of Commerce Drive, Suite 100
Boca Raton, FL 33487
NEWSMAX

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Sunday, December 10, 2023 2:09 PM
Subject: AG Bailey - Media Matters
Importance: High

Hi,
Attached is the final version of the EMBARGOED letter that AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.
AG Bailey views it as such:

DRAFT DO NOT RELEASE

- Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.

- Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.

- Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.

- Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:
  1. Social media platforms
     - We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS
  2. President Trump
     - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
  3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the

AMERICAN OVERSIGHT

algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**

- Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

- The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.

1. We will never back down in the **fight** for free speech.

He is available this week if you have interest in an interview.

Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: Jill D Vitale[jillv@newsmax.com]; Jackie Anastasakos[jaclyna@newsmax.com]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Tue 12/12/2023 9:07:47 AM (UTC-06:00)
Subject: Re: AG Bailey - Media Matters

Sounds good – thanks so much!

From: Jill D Vitale <jillv@newsmax.com>
Date: Tuesday, December 12, 2023 at 8:36 AM
To: "Sieren, Madeline" <Madeline.Sieren@ago.mo.gov>, Jackie Anastasakos <jaclyna@newsmax.com>
Subject: RE: AG Bailey - Media Matters

We have our team calls this afternoon then we can find out if we can pretape Thursday or Friday!

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Tuesday, December 12, 2023 9:32 AM
To: Jackie Anastasakos <jaclyna@newsmax.com>
Cc: Jill D Vitale <jillv@newsmax.com>
Subject: Re: AG Bailey - Media Matters

Hi Jackie,
Is there any way we could pre-tape for Saturday? We have some time on Thursday.
Thank you,

From: Jackie Anastasakos <jaclyna@newsmax.com>
Date: Tuesday, December 12, 2023 at 8:22 AM
To: "Sieren, Madeline" <Madeline.Sieren@ago.mo.gov>
Cc: Jill D Vitale <jillv@newsmax.com>
Subject: RE: AG Bailey - Media Matters

Good Morning,
Is the AG avalible this Saturday Dec 16th?
Best Wishes,
Jaclyn Anastasakos
Cell: (718) 354-7704
Talent Booking Producer
750 Park of Commerce Drive, Suite 100
Boca Raton, FL 33487
NEWSMAX

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Sunday, December 10, 2023 2:09 PM
Subject: AG Bailey - Media Matters
Importance: High

Hi,
Attached is the final version of the EMBARGOED letter that AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.
AG Bailey views it as such:

DRAFT DO NOT RELEASE

- Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.

- Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.

- Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.

- Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:

1. Social media platforms

AMERICAN OVERSIGHT

- We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS

2. President Trump
   - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
   - Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

- The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.
  1. We will never back down in the **fight** for free speech.

He is available this week if you have interest in an interview.
Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: Monica Wallace[Monica@joepags.com]; Sam Pags[Sam@joepags.com]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Tue 12/12/2023 11:21:26 AM (UTC-06:00)
Subject: Re: AG Bailey - Media Matters

Hi Monica – can we do 4 PM ET tomorrow, Wednesday 12/13?

From: Monica Wallace <Monica@joepags.com>
Date: Monday, December 11, 2023 at 3:27 PM
To: "Sieren, Madeline" <Madeline.Sieren@ago.mo.gov>, Sam Pags <Sam@joepags.com>
Subject: Re: AG Bailey - Media Matters

Hey Maddie!
Yes, we'd definitely love to have AG Bailey join us to discuss this.
Does he have some time on Wednesday at 4 or 430 pm ET for a video Skype hit?
Thank you!

Monica Wallace
Booking Producer | The Joe Pags Show

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Sunday, December 10, 2023 2:09:00 PM
Subject: AG Bailey - Media Matters

Hi,
Attached is the final version of the EMBARGOED letter that AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.
AG Bailey views it as such:

DRAFT DO NOT RELEASE

-Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.

-Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.

-Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.

-Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:

1.Social media platforms

- We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS

2.President Trump

- We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates

3.The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**

- Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

-The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.

1.We will never back down in the **fight** for free speech.

AMERICAN OVERSIGHT

He is available this week if you have interest in an interview.
Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: Monica Wallace[Monica@joepags.com]; Sam Pags[Sam@joepags.com]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Tue 12/12/2023 11:27:18 AM (UTC-06:00)
Subject: Re: AG Bailey - Media Matters

Perfect – do you still have our Skype information?

From: Monica Wallace <Monica@joepags.com>
Date: Tuesday, December 12, 2023 at 11:23 AM
To: "Sieren, Madeline" <Madeline.Sieren@ago.mo.gov>, Sam Pags <Sam@joepags.com>
Subject: Re: AG Bailey - Media Matters

Hi Maddie-
Yes, tomorrow at 4pm ET is perfect.
We'll call him via video Skype just a few moments prior.
Thank you so much!

Monica Wallace
Booking Producer | The Joe Pags Show

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Tuesday, December 12, 2023 12:21:26 PM
To: Monica Wallace <Monica@joepags.com>; Sam Pags <Sam@joepags.com>
Subject: Re: AG Bailey - Media Matters

Hi Monica – can we do 4 PM ET tomorrow, Wednesday 12/13?

From: Monica Wallace <Monica@joepags.com>
Date: Monday, December 11, 2023 at 3:27 PM
To: "Sieren, Madeline" <Madeline.Sieren@ago.mo.gov>, Sam Pags <Sam@joepags.com>
Subject: Re: AG Bailey - Media Matters

Hey Maddie!
Yes, we'd definitely love to have AG Bailey join us to discuss this.
Does he have some time on Wednesday at 4 or 430 pm ET for a video Skype hit?
Thank you!

Monica Wallace
Booking Producer | The Joe Pags Show

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Sunday, December 10, 2023 2:09:00 PM
Subject: AG Bailey - Media Matters

Hi,
Attached is the final version of the EMBARGOED letter that AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.
AG Bailey views it as such:

DRAFT DO NOT RELEASE

-Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.

-Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.

-Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.

-Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:

AMERICAN OVERSIGHT

1. Social media platforms

    - We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS

2. President Trump

    - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates

3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**

    - Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

-The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.

1. We will never back down in the **fight** for free speech.

He is available this week if you have interest in an interview.

Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Sam Pags[Sam@joepags.com]
From: Monica Wallace[Monica@joepags.com]
Sent: Tue 12/12/2023 11:22:54 AM (UTC-06:00)
Subject: Re: AG Bailey - Media Matters

Hi Maddie-

Yes, tomorrow at 4pm ET is perfect.
We'll call him via video Skype just a few moments prior.

Thank you so much!

Monica Wallace
Booking Producer | The Joe Pags Show

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Tuesday, December 12, 2023 12:21:26 PM
To: Monica Wallace <Monica@joepags.com>; Sam Pags <Sam@joepags.com>
Subject: Re: AG Bailey - Media Matters

Hi Monica – can we do 4 PM ET tomorrow, Wednesday 12/13?

From: Monica Wallace <Monica@joepags.com>
Date: Monday, December 11, 2023 at 3:27 PM
To: "Sieren, Madeline" <Madeline.Sieren@ago.mo.gov>, Sam Pags <Sam@joepags.com>
Subject: Re: AG Bailey - Media Matters

Hey Maddie!
Yes, we'd definitely love to have AG Bailey join us to discuss this.
Does he have some time on Wednesday at 4 or 430 pm ET for a video Skype hit?
Thank you!

Monica Wallace
Booking Producer | The Joe Pags Show

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Sunday, December 10, 2023 2:09:00 PM
Subject: AG Bailey - Media Matters

Hi,
Attached is the final version of the EMBARGOED letter that AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.
AG Bailey views it as such:

DRAFT DO NOT RELEASE

-Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.

-Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.

-Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.

-Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:

AMERICAN OVERSIGHT

1. Social media platforms

    - We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS

2. President Trump

    - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates

3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**

    - Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

-The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.

1. We will never back down in the **fight** for free speech.

He is available this week if you have interest in an interview.

Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Sam Pags[Sam@joepags.com]
From: Monica Wallace[Monica@joepags.com]
Sent: Tue 12/12/2023 11:29:02 AM (UTC-06:00)
Subject: Re: AG Bailey - Media Matters

Yes…is this still correct?

Skype:ac532ef1f3aada33.

Monica Wallace
Booking Producer | The Joe Pags Show

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Tuesday, December 12, 2023 12:27:18 PM
To: Monica Wallace <Monica@joepags.com>; Sam Pags <Sam@joepags.com>
Subject: Re: AG Bailey - Media Matters

Perfect – do you still have our Skype information?

From: Monica Wallace <Monica@joepags.com>
Date: Tuesday, December 12, 2023 at 11:23 AM
To: "Sieren, Madeline" <Madeline.Sieren@ago.mo.gov>, Sam Pags <Sam@joepags.com>
Subject: Re: AG Bailey - Media Matters

Hi Maddie-
Yes, tomorrow at 4pm ET is perfect.
We'll call him via video Skype just a few moments prior.
Thank you so much!

Monica Wallace
Booking Producer | The Joe Pags Show

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Tuesday, December 12, 2023 12:21:26 PM
To: Monica Wallace <Monica@joepags.com>; Sam Pags <Sam@joepags.com>
Subject: Re: AG Bailey - Media Matters

Hi Monica – can we do 4 PM ET tomorrow, Wednesday 12/13?

From: Monica Wallace <Monica@joepags.com>
Date: Monday, December 11, 2023 at 3:27 PM
To: "Sieren, Madeline" <Madeline.Sieren@ago.mo.gov>, Sam Pags <Sam@joepags.com>
Subject: Re: AG Bailey - Media Matters

Hey Maddie!
Yes, we'd definitely love to have AG Bailey join us to discuss this.
Does he have some time on Wednesday at 4 or 430 pm ET for a video Skype hit?
Thank you!

Monica Wallace
Booking Producer | The Joe Pags Show

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Sunday, December 10, 2023 2:09:00 PM
Subject: AG Bailey - Media Matters

Hi,
Attached is the final version of the EMBARGOED letter that AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of

AMERICAN OVERSIGHT

that, he has become a target of the radical left.
AG Bailey views it as such:

DRAFT DO NOT RELEASE

-Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.

-Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.

-Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.

-Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:

1. Social media platforms
    - We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS
2. President Trump
    - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
    - Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

-The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.

1. We will never back down in the **fight** for free speech.

He is available this week if you have interest in an interview.
Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: McCuien, Grace[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3070B53594504B3FB9B45CDE1131FF4D-NOTEBOOM, GRACE]
Sent: Tue 12/12/2023 2:43:29 PM (UTC-06:00)
Subject: Promos

Also in your drive (from Grace)



AMERICAN OVERSIGHT



X Space

moderated by Benny Johnson

FREE SPEECH

ft. Special Guests

AG ANDREW BAILEY, TUCKER CARLSON, & MORE

December 12
7 PM

AMERICAN OVERSIGHT

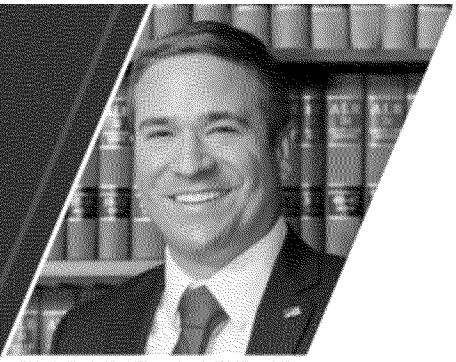
X SPACE
FREE SPEECH

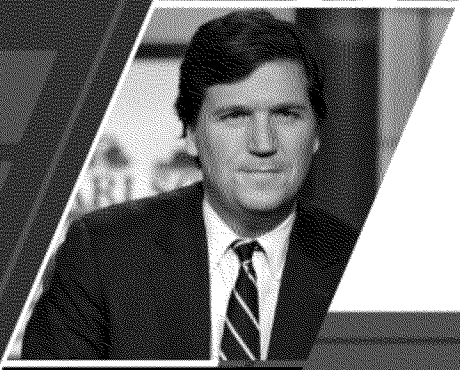
Special Guests

AG ANDREW BAILEY

TUCKER CARLSON

ELON MUSK









MODERATOR

BENNY JOHNSON

December 12

7 PM

AMERICAN OVERSIGHT

X SPACE

FREE SPEECH

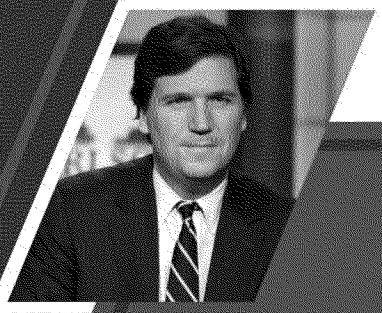
Special Guests

AG ANDREW BAILEY

TUCKER CARLSON

ELON MUSK









MODERATOR

BENNY JOHNSON

December 12

7 PM

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Lewis, Jason[Jason.Lewis@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Wagner, Ray[Ray.Wagner@ago.mo.gov]
From: Lyday, Bennett[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EACD91D740F2406EB8A1385B65BBDDED-LYDAY, BENNETT]
Sent: Tue 12/12/2023 9:25:01 AM (UTC-06:00)
Subject: Daily News/Media Roundup - Tuesday, December 12th, 2023

Good morning all,
Below is the relevant news for today and yesterday relating to the AGO, Missouri, and Nation:

AGO News:

Left-wing group 'defrauding' consumers with 'pro-Nazi' smear of Elon Musk: Republican state AG
Fox News | Brianna Herlihy
https://www.foxnews.com/politics/left-wing-group-defrauding-consumers-pro-nazi-smear-elon-musk-republican-state-ag

-"Missouri Republican Attorney General Andrew Bailey has taken aim at Media Matters for America amid the liberal group's dispute with Elon Musk, owner of X, formerly Twitter. Bailey on Monday sent a letter to the progressive media watchdog group to alert it to his opening of an investigation into the firm for "potentially unlawful business practices." Media Matters in November published a report of sorts that said X would place ads next to "pro-Nazi" content. Elon Musk filed a lawsuit against Media Matters, saying the group falsely and deceptively manipulated the algorithm on X "through coordinated, inauthentic behavior" in an attempt to "defame the organization and cause advertisers to pull their support from the platform, thus harming free speech," Bailey notes in his letter. Bailey said that in addition to what Musk alleges in his lawsuit, Bailey has reason to believe that Media Matters violated Missouri consumer protection laws, including laws that prohibit nonprofit entities from soliciting funds under false pretenses. "I am especially concerned that Media Matters' actions, if proven true, have hampered free speech by targeting an expressly pro-free speech social media platform in an attempt to cause it financial harm while defrauding Missourians in the process," Bailey said. After Media Matters published its report, companies like IBM, Disney, Apple, Sony, Walmart, among others, pulled their advertisements from the social media platform. According to Bailey, Musk's lawsuit alleges that Media Matters "lied to the public, falsely suggesting that fringe, extremist content regularly appears next to content from corporate advertisers when in fact the opposite is true." "At the same time, you appear to have used this coordinated, inauthentic activity to solicit charitable donations from consumers across the country," he said. In light of his probe, Bailey instructed Media Matters to preserve all records that relate to an "alleged effort to engage in coordinated, inauthentic behavior on social media platforms in order to generate false statements that were used to solicit charitable contributions under false pretenses." "Be advised that any failure to preserve documents of probative value to this case, even if inadvertent, will constitute spoliation of evidence and may result in a finding of contempt from the court or in sanctions," Bailey said."

Missouri Attorney General notifies Media Matters of pending investigation
KTTN | NO Author Listed
https://www.kttn.com/missouri-attorney-general-notifies-media-matters-of-pending-investigation/

-"Missouri Attorney General Andrew Bailey put Media Matters for America on notice that his office has launched an investigation into its allegedly fraudulent solicitation of donations from Missourians amidst its efforts to target X, formerly known as Twitter. "We have reason to believe Media Matters used fraud to solicit donations from Missourians in order to trick advertisers into pulling out of X, the last platform dedicated to free speech in America. Radicals are attempting to kill Twitter because they cannot control it, and we are not going to let Missourians get ripped off in the process," said Attorney General Bailey. "I'm fighting to ensure progressive tyrants masquerading as news outlets cannot manipulate the marketplace in order to wipe out free speech." In his letter, Attorney General Bailey puts Media Matters on notice, "This letter serves as a formal document hold notice under federal and Missouri law.The Missouri Attorney General's Office has opened an investigation into Media Matters for America ("Media Matters") regarding your firm's potentially unlawful business practices. "As you are no doubt aware, a federal lawsuit has been filed against Media Matters, raising serious allegations that your firm falsely and deceptively manipulated the algorithm on X (formerly known as Twitter) through coordinated, inauthentic behavior and that you did so in an attempt to defame the organization and cause advertisers to pull their support from the platform, thus harming free speech.The lawsuit alleges that you lied to the public, falsely suggesting that fringe, extremist content regularly appears next to content from corporate advertisers when in fact the opposite is true.At the same time, you appear to have used this coordinated, inauthentic activity to solicit charitable

AMERICAN OVERSIGHT

donations from consumers across the country." He continued, "I have reason to believe that your firm's alleged actions may have violated Missouri consumer protection laws, including laws that prohibit nonprofit entities from soliciting funds under false pretenses. E.g., Mo. Rev. Stat. § 407.020.1.I am especially concerned that Media Matters' actions, if proven true, have hampered free speech by targeting an expressly pro-free speech social media platform in an attempt to cause it financial harm while defrauding Missourians in the process. "You are thus hereby instructed to preserve all records that may relate to your alleged effort to engage in coordinated, inauthentic behavior on social media platforms in order to generate false statements that were used to solicit charitable contributions under false pretenses. "

-"Attorney General Bailey is requesting records related to: Internal communications regarding Media Matters' strategy to target advertisers on X, formerly known as Twitter, and their efforts to manipulate those advertisers into pulling their ads from the platform; Communications with third parties regarding Media Matters' strategy to target advertisers on X, formerly known as Twitter, and their efforts to manipulate those advertisers into pulling their ads from the platform; Communications with IBM, Lions Gate Entertainment, Apple, Disney, Warner Brothers Discovery, Paramount Gold, NBCUniversal, Comcast, Sony, Ubisoft, and Wal-Mart regarding Media Matters' strategy to target advertisers on X, formerly known as Twitter, and their efforts to manipulate those advertisers into pulling their ads from the platform; Internal communications regarding Media Matters' policies, strategies or operations related to generating stories or content intended to "cancel," "deplatform," "demonetize," or otherwise interfere with businesses or organizations located in Missouri, or utilized by Missouri residents; Communications and documents related to soliciting charitable funds from residents of Missouri."

Red State AG Launches Investigation Into Media Matters Over Report On Elon Musk's X

Daily Caller l Jason Cohen

https://dailycaller.com/2023/12/11/missouri-ag-media-matters-musk-x/

-"Media Matters published research in November alleging that X had been placing ads from major brands next to pro-Nazi content; however, X later sued Media Matters over the study, claiming it was manipulated and defamatory. Bailey sent a letter to Media Matters on Monday asserting that the group may have run afoul of Missouri consumer protection laws if X's allegations are true and instructing Media Matters to preserve documents related to group's research on X. "I am especially concerned that Media Matters' actions, if proven true, have hampered free speech by targeting an expressly pro free speech social media platform in an attempt to cause it financial harm while defrauding Missourians in the process," Bailey wrote. Bailey argued that, if Media Matters did indeed publish false and defamatory information about X, then their efforts to fundraise off their research may have violated Missouri laws against fraud. Media Matters must maintain documents, including internal correspondences and correspondence with advertisers about withdrawing ads from X, according to the letter. It also must maintain "internal communications regarding [its] policies, strategies or operations…" Apple, Comcast, IBM, Lionsgate, Paramount Global, Sony and Warner Bros. Discovery all withdrew their advertising from X following Media Matters' report… "Media Matters then exclusively followed a small subset of users consisting entirely of accounts in one of two categories: those known to produce extreme, fringe content, and accounts owned by X's big-name advertisers. The end result was a feed precision-designed by Media Matters for a single purpose: to produce side-by-side ad/content placements that it could screenshot in an effort to alienate advertisers." Media Matters has raised funds from organizations managed by Arabella Advisors, a consultancy that supports a dark money network aligned with left-leaning groups and causes. The Arabella-managed Hopewell Fund contributed $250,000 to Media Matters in 2022 and $150,000 in 2020, while the New Venture Fund has contributed $150,000 to Media Matters since 2018, according to tax documents. Left-wing billionaire George Soros' Open Society Foundations also granted the group $500,000 in 2021, according to its grant database."

Missouri AG Opens Investigation into Media Matters after Left-Wing Watchdog Pushed Advertisers to Leave X

National Review l David Zimmermann

https://www.nationalreview.com/news/missouri-ag-opens-investigation-into-media-matters-after-left-wing-watchdog-pushed-advertisers-to-leave-x/

-"In a letter dated Monday, Bailey notified Media Matters president and CEO Angelo Carusone of his office's pending investigation into the organization's allegedly fraudulent solicitation of donations from Missouri residents amid its efforts to target the social-media platform. The investigation comes three weeks after multibillionaire Elon Musk, who owns X, filed a lawsuit against Media Matters for swaying several corporations into pulling advertising from his company… Last month, Media Matters published a series of reports claiming corporate ads on X were running beside "white nationalist and pro-Nazi content" in an effort to paint Musk and his organization as antisemitic. As a result, IBM, Apple, Disney, Lionsgate Entertainment, Sony, and many more firms began boycotting the platform. Musk, however, fired back at Media Matters with "thermonuclear" litigation, as he described it. "The lawsuit alleges that you lied to the public, falsely suggesting that fringe, extremist content regularly appears next to content from corporate advertisers when in fact the opposite is true," Bailey added… The attorney general specifically accused the media-watchdog group of violating his state's consumer-protection laws, particularly "laws that prohibit nonprofit entities from soliciting funds under false pretenses," in a concerted effort to simultaneously harm X's business model and defraud Missourians. Bailey requested the preservation of all records concerning Media Matters' "potentially unlawful business practices." "We have reason to believe Media Matters

AMERICAN OVERSIGHT

used fraud to solicit donations from Missourians in order to trick advertisers into pulling out of X, the last platform dedicated to free speech in America," Bailey said in a press release… Media Matters is also alleged to have conducted fraud in Texas, prompting Republican attorney general Ken Paxton to launch an investigation into the organization last month. Over a week after filing the lawsuit, Musk publicly called out the brands for boycotting X and blackmailing him to change the platform's free-speech policy. "If somebody's gonna try to blackmail me with advertising, blackmail me with money, go f**k yourself," he told the corporations, specifically naming Disney CEO Bob Iger who, along with Musk, attended the New York Times DealBook Summit in late November…"

Missouri AG Launches Fraud Probe Into Media Matters

NewsMax l Michael Katz

https://www.newsmax.com/politics/andrew-bailey-missouri-media-matters/2023/12/11/id/1145557/

-"Republican Missouri Attorney General Andrew Bailey on Monday accused left-wing media outlet Media Matters for America of fraudulently soliciting donations from Missourians in its efforts to target X, formerly Twitter, and is launching an investigation… "Radicals are attempting to kill Twitter because they cannot control it, and we are not going to let Missourians get ripped off in the process. I'm fighting to ensure progressive tyrants masquerading as news outlets cannot manipulate the marketplace in order to wipe out free speech." Bailey is the second Republican attorney general to launch an investigation into Media Matters after Texas' Ken Paxton announced a similar one Nov. 20. On Nov. 17, Media Matters published an investigation that revealed the advertisements of major companies on X were shown alongside white supremacist content. Companies such as IBM, Lionsgate, Paramount, Apple, and Disney said they were leaving X, and the European Union also said it would halt advertising. Billionaire Elon Musk, the owner of X, Tesla, and SpaceX, threatened a "thermonuclear lawsuit"… The lawsuit claims Media Matters falsely portrayed X "as a risky, unsafe platform for advertisers." "Media Matters has manipulated the algorithms governing the user experience on X," the lawsuit states, "to bypass safeguards and create images of X's largest advertisers' paid posts adjacent to racist, incendiary content, leaving the false impression that these pairings are anything but what they actually are: manufactured, inorganic, and extraordinarily rare." In a letter to Media Matters dated Monday, Bailey ordered the company "to preserve all records that may relate to your alleged effort to engage in coordinated, inauthentic behavior on social media platforms in order to generate false statements that were used to solicit charitable contributions under false pretenses. "I have reason to believe that your firm's alleged actions may have violated Missouri consumer protection laws, including laws that prohibit nonprofit entities from soliciting funds under false pretenses," Bailey wrote. "I am especially concerned that Media Matters' actions, if proven true, have hampered free speech by targeting an expressly pro free speech social media platform in an attempt to cause it financial harm while defrauding Missourians in the process.'"

Missouri AG Andrew Bailey Sues Media Matters for Violating State Consumer Protection Laws and Defrauding Missourians

Gateway Pundit l Jim Hoft

https://www.thegatewaypundit.com/2023/12/missouri-ag-andrew-bailey-sues-media-matters-violating/

-"Missouri Attorney General Andrew Bailey launched an investigation into Media Matters for America on Monday, December 11, 2023. AG Andrew Bailey accused Media Matters of using fraud to solicit donations from Missourians in order to bully advertisers. Attorney General Andrew Bailey made this explosive accusation, "We have reason to believe Media Matters used fraud to solicit donations from Missourians in order to bully advertisers into pulling out of X, the last platform dedicated to free speech in America." The Missouri Attorney General did not hold back in his attacks on Media Matters alleging the enemies of free speech, like Media Matters for America, are attempting to kill Twitter-X because they cannot control it now that Elon Musk took over. Bailey added, "I'm fighting to ensure progressive tyrants masquerading as news outlets cannot manipulate the marketplace in order to wipe out free speech." What's not to love? It's about time Republican officials stood up to the tyrannical leftist groups who are destroying our American way of life. Media Matters is the worst."

Missouri AG Andrew Bailey Announces Investigation into Media Matters' 'Fraud' Attack on X/Twitter

Brietbart l Sean Moran

https://www.breitbart.com/tech/2023/12/11/missouri-ag-andrew-bailey-announces-investigation-into-media-matters-fraud-attack-on-x-twitter/

-"Missouri Attorney General Andrew Bailey announced an investigation into the Show Me State's belief that Media Matters used "fraud" to solicit donations to bully advertisers into pulling out of X, formerly known as Twitter. Bailey wrote to Media Matters President and CEO Angelo Carusone: [Insert Letter]. Media Matters alleged in a report that X/Twitter displayed advertisements from prominent companies next to "white nationalist" hashtags. X owner Elon Musk said that the leftist group misrepresented the situation to mislead advertisers. Nevertheless, this led to a mass exodus of major advertisers such as IBM, Apple, Disney, Lionsgate, and Paramount. Musk has promised his own "thermonuclear" lawsuit against Media Matters. Bailey continued in his letter to Media Matters: "I have reason to believe that your firm's alleged actions may have violated Missouri consumer protection laws, including laws that prohibit nonprofit entities from soliciting funds under false pretenses. E.g., Mo. Rev. Stat. § 407.020.1. I am especially concerned that Media Matters' actions, if proven true, have hampered free speech by targeting an expressly pro free speech social media platform in an attempt to cause it financial harm while defrauding Missourians in the process."…"

AMERICAN OVERSIGHT

Another Investigation Has Been Opened Into Media Matters Over Hit Piece Against X
Townhall l Leah Barkoukis
https://townhall.com/tipsheet/leahbarkoukis/2023/12/12/missouri-joins-texas-in-investigating-media-matters-over-x-hit-piece-n2632285

-"Progressive watchdog group Media Matters is getting hit left and right… The entrepreneur argued Media Matters "completely misrepresented the real user experience on X, in another attempt to undermine freedom of speech and mislead advertisers."… Now, another probe has been opened by Missouri Attorney General Andrew Bailey. "We have reason to believe Media Matters used fraud to solicit donations from Missourians in order to trick advertisers into pulling out of X, the last platform dedicated to free speech in America," he said in a statement. "Radicals are attempting to kill [X] because they cannot control it, and we are not going to let Missourians get ripped off in the process." Bailey, who said he would do what's necessary to protect free speech from "progressive tyrants masquerading as news outlets,"explained in a letter to the left-wing group that he believes they may have violated the state's consumer protection laws. [Letter Inserted]"

Missouri AG Alleges Soros's Media Matters Defrauded Public, Launches Probe.
National Pulse l William Upton
https://thenationalpulse.com/2023/12/11/missouri-ag-alleges-soross-media-matters-defrauded-public-launches-probe/

-"Missouri Attorney General Andrew Bailey has notified the far-left group Media Matters – which works to de-platform conservative voices in media – they are the subject of an investigation by his office for the "fraudulent solicitation of donations from Missourians." According to the Attorney General, Media Matters deceptively manipulated the X (formerly Twitter) algorithm in an effort to exaggerate the presence of extremist and harmful content as part of a campaign urging advertisers to cut ties with the site. The fraudulent results were also used to raise money from Missourians. "We have reason to believe Media Matters used fraud to solicit donations from Missourians in order to trick advertisers into pulling out of X, the last platform dedicated to free speech in America," Bailey said… Media Matters is accused of potentially violating Missouri consumer protection laws and engaging in unlawful business practices. The Attorney General specifically sites Mo. Rev. Stat. § 407.020.1 which bars nonprofit entities from soliciting funds under false pretenses. As part of the investigation, Bailey has ordered Media Matters to "…preserve all records that may relate to your alleged effort to engage in coordinated, inauthentic behavior on social media platforms in order to generate false statements that were used to solicit charitable contributions under false pretenses." The Missouri investigation is just the latest to target the Soros-funded group. Last month, Texas Attorney General Ken Paxton announced his office had opened a fraud probe… Elon Musk, the owner of X (formerly Twitter) has filed a federal lawsuit against Media Matters accusing theSoros-backed group of undermining freedom of speech and deceiving advertisers."

Missouri attorney general threatens to sue group that found antisemitism on X
STL Post-Dispatch l Kurt Erickson
https://www.stltoday.com/news/local/crime-courts/missouri-attorney-general-threatens-to-sue-group-that-found-antisemitism-on-x/article_4fa30ef6-9857-11ee-a7f6-2338164b754f.html

-"Missouri's Republican attorney general appears poised to launch a lawsuit against a liberal advocacy group, arguing it manufactured a report to show advertisers' social media posts alongside neo-Nazi and white nationalist posts. Andrew Bailey… sent a letter to Media Matters requesting records related to its strategies with X, the social media site formerly known as Twitter. "This letter serves as a formal document hold notice under federal and Missouri law. The Missouri Attorney General's Office has opened an investigation into Media Matters for America regarding your firm's potentially unlawful business practices," the letter said. The move wasn't unexpected. Bailey weighed in on a dispute last month between X owner Elon Musk and Media Matters after the billionaire endorsed an antisemitic conspiracy theory. Bailey's actions are similar to allegations laid out in a lawsuit filed by X, which alleges that Media Matters manipulated algorithms on the platform so the paid posts by advertisers were next to racist content. Bailey said the organization may have violated Missouri laws by using fraud to solicit donations from Missourians… Major companies, including IBM, NBCUniversal and its parent company Comcast, announced last month that they stopped advertising on X after the Media Matters report said their ads were appearing alongside material praising Nazis… Bailey's letter calls on Media Matters to preserve all records that relate to their involvement with X, including communications and documents related to fundraising in Missouri…"

Missouri's Republican Attorney General Investigates Media Matters — After Group Reported Antisemitism On Elon Musk's X
Forbes l Brian Bushard
https://www.forbes.com/sites/brianbushard/2023/12/11/missouris-republican-attorney-general-investigates-media-matters---after-group-reported-antisemitism-on-elon-musks-x/?sh=1965dc0d46b6

-"Missouri's Republican attorney general opened an investigation on Monday into left-wing watchdog Media Matters after the firm published a report finding advertisements on X were placed next to pro-Nazi content, a report that helped prompt several company suspending advertising on the platform and prompted a lawsuit from X owner Elon Musk. Missouri Attorney General Andrew Bailey announced the investigation in a post on X, arguing he has "reason to believe" the firm's "alleged actions may have violated Missouri consumer protection laws," and "hampered free speech by targeting an expressly pro free speech social media platform in an attempt to cause it financial harm while defrauding Missourians."…

AMERICAN OVERSIGHT

The investigation comes one month after the watchdog released a report finding advertisements from major companies on X, including IBM and Xfinity, appeared beside posts praising Adolf Hitler and other pro-Nazi content. Major advertisers, including Apple, IBM, Disney and Xfinity, have suspended advertisements on the social media platform formerly known as X following Media Matters' report, and after Musk came under fire for endorsing a post deemed antisemitic… X filed a defamation lawsuit in U.S. District Court in Texas against Media Matters last month, alleging the watchdog manipulated the social media site's algorithms to "bypass safeguards and create images of X's largest advertisers' paid posts adjacent to racist incendiary content." Musk himself fired shots against the watchdog group, arguing its report "completely misrepresented the real experience on X" The investigation also marks Bailey's latest venture into right-wing culture war issues. Following the Supreme Court's 6-3 ruling last year to overturn Roe v. Wade, Bailey warned pharmaceutical giants that "distribution of abortion pills in the mail would violate both federal and state law." A group of 18 state attorneys general joined that directive. Bailey in April also filed an emergency state regulation stating state law "already prohibits performing" gender affirming care, arguing in a statement those procedures are "experimental and have significant side effects"

Here We Go: Missouri Attorney General Investigating Media Matters for Fraud

Twitchy l Amy Curtis

https://twitchy.com/amy-curtis/2023/12/11/missouri-attorney-general-investigating-media-matters-for-fraud-n2390726

-"Hoo boy. This is big news. A couple of weeks ago, we talked about how Media Matters may have fraudulently manipulated Twitter/X's algorithms to undermine advertising on the website. Elon Musk, calling Media Matters 'pure evil' has filled a 'thermonuclear' lawsuit against the outlet. [Announcement Twitter Post] "We have reason to believe Media Matters used fraud to solicit donations from Missourians in order to bully advertisers into pulling out of X, the last platform dedicated to free speech in America. We have launched an investigation." It'll be interesting to see where this goes. The letter reads in part: "Dear Mr. Carusone… [Insert Letter]" Those are some hefty charges. And, unsurprisingly, Elon Musk is happy with this development… So are we. [Insert Retweets from Big Players like Elon, Clay Travis, etc.]"

Missouri AG says newly unearthed info suggests Media Matters committed fraud during X advertiser attack…

Revolver l No Author Listed

https://revolver.news/2023/12/missouri-ag-says-newly-unearthed-info-suggests-media-matters-committed-fraud-during-x-advertiser-attack/

-"Media Matters likes to portray itself as a "watchdog group." It's not. The organization is nothing more than a two-bit group of enforcers working for the regime. If you don't align with the progressive agenda, groups like Media Matters will come after you and make you feel the pain. That's precisely what they've done to Revolver in the past, and it's the same tactic they're using against Elon Musk's X platform. Media Matters likes to use advertisers as a weapon, initiating fake boycotts and stretching the truth like saltwater taffy to coerce companies into withdrawing their ads. And if the companies don't comply, they'll likely find themselves on Media Matters' "naughty list" too. It's a relentless cycle of threats and blackmail, raising questions about how they're allowed to continue these tactics. The good news is that they might finally face consequences, thanks to Elon, who is now suing them. If you'll recall, the ADL—another regime punisher group—attempted a similar tactic against X, but when Elon threatened legal action, they backed off. However, Media Matters has deeper pockets, so they picked up where the ADL left off. Nonetheless, Elon is going after them full-force… Well, now, it appears that Media Matters might have made a significant blunder when challenging Elon. New evidence has emerged suggesting that Media Matters engaged in fraudulent activities while pressuring companies to withdraw their advertising from X. Missouri Attorney General Andrew Bailey is making the claim on behalf of the citizens of his state, and he's prepared to pursue legal action against Media Matters. Here's a closeup of the letter written by AG Bailey: [Insert Letter]. AG Bailey goes on to say the following: "Enemies of free speech are attempting to kill X because they cannot control it, and we are not going to let Missourians be subject to fraud in the process. I'm fighting to ensure progressive tyrants masquerading as news outlets cannot manipulate the marketplace in order to wipe out free speech." Media Matters attempted to coerce Elon into a progressive agenda, but all they managed to do was trigger a series of angry lawsuits. Let's hope more conservative states join in and take legal action against this tyrannical group of liberal enforcers."

BREAKING: Missouri AG launches official investigation into Media Matters over manipulation of X algorithm

The Post Millennial l Hannah Nightingale

https://thepostmillennial.com/breaking-missouri-ag-launches-official-investigation-into-media-matters-over-manipulation-of-x-algorithm

-"On Monday, Missouri Attorney General Andrew Bailey informed the left-wing watchdog organization Media Matters for America that his office has opened an investigation into the group over alleged violations of the state's consumer protection laws. "As you are no doubt aware, a federal lawsuit has been filed against Media Matters, raising serious allegations that your firm falsely and deceptively manipulated the algorithm on X (formerly known as Twitter) through coordinated, inauthentic behavior and that you did so in an attempt to defame the organization and cause advertisers to pull their support from the platform, thus harming free speech," the letter began… Bailey wrote that he has reason to believe Media Matters' alleged actions have violated Missouri consumer protection laws, "including laws that prohibit nonprofit entities from soliciting funds under false pretenses." "I am especially concerned that Media Matters' actions, if

AMERICAN OVERSIGHT

proven true, have hampered free speech by targeting an expressly pro free speech social media platform in an attempt to cause it financial harm while defrauding Missourians in the process." Media Matters has been ordered to preserve all "records that may relate to your alleged effort to engage in coordinated, inauthentic behavior on social media platforms in order to generate false statements that were used to solicit charitable contributions under false pretenses." This includes internal communications regarding the organization's "strategy to target advertisers on X" to get them to pull advertising from the platform, communications with third parties and companies such as IBM, Apple, and Disney regarding this strategy, and "internal communications regarding your policies, strategies or operations related to generating stories or content intended to 'cancel,' 'deplatform,' 'demonetize,' or otherwise interfere with businesses or organizations located in Missouri or utilized by Missouri residents."… The infamous leftist organization has been accused of exaggerating the amount of hate speech on X, actions that caused advertisers to leave the platform en masse."

How the Supreme Court Could Reshape Free Speech Online

Epoch Times l Matthew Vandum

https://www.theepochtimes.com/article/how-the-supreme-court-could-reshape-social-media-freedom-5543004

-"A looming battle at the Supreme Court may determine how social media companies moderate content. The nation's highest court will hear challenges to laws in Florida and Texas that regulate social media content moderation. Observers and activists on the left and right are watching the cases. At stake is the right of individual Americans to freely express themselves online and the right of social media platforms to make editorial decisions about the content they host. Both rights are protected by the First Amendment to the U.S. Constitution. Republicans and conservatives were outraged when platforms acted in concert to ban President Donald Trump in January 2021, blocked a potentially election-altering New York Post article about Hunter Biden's laptop on 2020, and silenced dissenting opinions about the origins of the COVID-19 virus, the treatments for the disease it causes, and the vaccines… Democrats and liberals, on the other hand, claim the platforms don't do enough to weed out so-called hate speech and alleged misinformation, which they consider to be pressing social problems… Ohio, Arizona, Missouri, Texas, and 12 other states argued in a court brief that the internet is the modern-day public square and that social media platforms engaging in censorship "undermine the free exchange of ideas that free speech protections exist to facilitate." Suppression of ideas threatens "the development of important insights and discoveries, many of which begin as fringe views," the brief states… The U.S. Court of Appeals for the 5th Circuit took the opposite tack, finding a Texas anti-deplatforming law constitutional and rejecting the "idea that corporations have a freewheeling First Amendment right to censor what people say."… The Supreme Court will attempt to answer whether the two state laws' content-moderation restrictions and individualized-explanation requirements comply with the First Amendment. Christopher Newman, an associate law professor at Antonin Scalia Law School at George Mason University, predicts Section 230 of the federal Communications Decency Act of 1996 will come into play… The 5th Circuit looked at the section and said it means Congress believed ISPs, when publishing posts, are not speaking in their own right and therefore "don't get to claim the mantle of First Amendment protection," Mr. Newman said. But Section 230 also says "ISPs are immune from liability for their decision to remove certain content, because it's offensive, or obscene, or whatever," Mr. Newman said… People who express views that call into question "progressive dogma" have been kept off social media and many users have been booted from YouTube, Mr. Burling told The Epoch Times. "So a lot of people are legitimately upset about social media companies keeping them off. And the icing on the cake, of course, is what we've learned recently of the United States [government] putting extreme pressure on the social media companies to censor." On Oct. 20, the Supreme Court granted the petition in Murthy v. Missouri. The court will look at whether the Biden administration ran afoul of the Constitution when it pushed tech companies to delete what it deemed false or misleading content about COVID-19 and the disputed 2020 presidential election…"

Supreme Court Rejects Request From Robert F. Kennedy Jr.

Epoch Times l Zachary Stieber

https://www.theepochtimes.com/us/supreme-court-rejects-request-from-robert-f-kennedy-jr-5544886

-"Robert F. Kennedy Jr.'s request to intervene in a major case being considered by the U.S. Supreme Court was turned down by the nation's top court on Dec. 11. One of the justices offered a dissent. A majority of justices declined a motion to intervene from Mr. Kennedy, who's running for president as an independent after beginning his campaign as a Democrat. The Supreme Court in October agreed to hear the case, Missouri v. Biden, which was brought by several state attorneys general and involves the pressure the U.S. government applied to social media companies during and before the COVID-19 pandemic… Mr. Kennedy brought a similar case, which was consolidated at the district court level with the Missouri lawsuit. However, when the courts issued a preliminary injunction in the Missouri case, they declined to rule on a motion for an injunction from Mr. Kennedy and his co-plaintiff. Without the Supreme Court taking action, the plaintiffs are "stranded," Mr. Kennedy's lawyers said in their motion to intervene, presented to the Supreme Court in October. "The Kennedy Plaintiffs remain stranded in the district court, even though their rights will be as fully adjudicated by this court as those of the Missouri v. Biden plaintiffs themselves," the motion reads. "Intervention is warranted for that reason alone."

The argument for intervention was strengthened by the fact that Mr. Kennedy is a presidential candidate who has been targeted by the federal government and, to this day, sees speeches and interviews blocked online, according to his lawyers. Most justices didn't agree and rejected the motion. The justices who rejected the motion didn't explain their reasoning…

AMERICAN OVERSIGHT

Justice Samuel Alito, an appointee of George W. Bush, said in a dissent that intervention in cases before the Supreme Court is unusual but that he would grant Mr. Kennedy's motion. Mr. Kennedy is an alleged victim of what the lower courts described as a "coordinated campaign" between the government and big tech firms to censor, and Mr. Kennedy is also a presidential candidate, according to Justice Alito. "Because Mr. Kennedy's arguments on the merits are essentially the same as respondents', allowing intervention would not significantly affect petitioners' burden with regard to th.at issue," the justice wrote. "But the denial of intervention is likely to prevent Mr. Kennedy from vindicating the rights he claims until the spring of 2024 and perhaps as late as June of that year. And by that time, several months of the presidential campaign will have passed."... Mr. Kennedy's motion states that allowing Mr. Kennedy and his co-plaintiff, Connie Sampognaro, another presidential candidate, would ensure that the plaintiffs in the case have standing. "Unlike the Missouri plaintiffs, the Kennedy plaintiffs need not prove that they, specifically, will be censored in [the] future—because their challenge does not depend on a claim that their specific speech has been (or will be) censored. The right of social media consumers to access an uncensored public square is endangered by the government's campaign to induce social media censorship no matter which particular speakers are targeted or censored in the future," the motion reads. "The Missouri plaintiffs primarily assert speakers' rights. The Kennedy plaintiffs assert the rights of the social media audience, and the standing of an organization like CHD to assert such rights on behalf of consumers is established beyond peradventure." Mr. Alito concluded in his dissent: "Our democratic form of government is undermined if government officials prevent a candidate for high office from communicating with voters, and such efforts are especially dangerous when the officials engaging in such conduct are answerable to a rival candidate. I would allow him to intervene to ensure that we can reach the merits of respondents' claims and to prevent the irreparable loss of his First Amendment rights."

Wentzville schools: Transgender talks were legal, lawsuit should be tossed

STL Post-Dispatch | Ethan Colbert

https://www.stltoday.com/news/local/education/wentzville-schools-transgender-talks-were-legal-lawsuit-should-be-tossed/article_22349526-9847-11ee-b88e-6b1e94b302d4.html

-"The Wentzville School District argued in court on Monday that a judge should toss out Missouri Attorney General Andrew Bailey's lawsuit against it, saying the law allows board members to discuss transgender issues privately. The case isn't about transgender politics, said Melanie Renken, an attorney representing the school district. It's about whether a school board can solicit legal advice from its attorney during closed session... Bailey's suit, filed in September, claims the school board violated the state's open meetings law when members met in closed session over the summer to discuss a policy that could allow transgender students to use a single-stall bathroom or locker room. In both meetings, board members talked among themselves for 10 or 15 minutes, according to lawyers for the district and for the attorney general. Bailey has said his office was first notified of possible open meeting violations by school board members Jennifer Olson and Renee Henke, elected in April, who filed affidavits describing the meetings... At the hearing, Assistant Attorney General Kathryn Monroe said the board's conversations this summer should have been held in open session. Missouri's open meetings law has protections allowing for closed meetings involving district attorneys, pending litigation and ongoing legal issues. But the school board's conversations in June and July didn't need to be protected, Monroe said. Just because discussions are controversial doesn't mean they should be had in private. "We feel those conversations went beyond the scope of the Sunshine Law," she said. Monroe also dismissed concerns that allowing the lawsuit to go forward would have a chilling effect on school board members' ability to discuss legal issues in closed session with their attorneys. "The law does not require that (Brazill's presentations) be made in closed session. They could have been discussed in open session," Monroe said. But St. Charles County Judge Deborah Alessi said it was "unfair and unrealistic" to expect board members not to talk amongst themselves following a legal presentation... "I'm sorry, but how can this situation even get to this point without being fixed?" she asked. "All you have to do is to go into the next open meeting and talk about it." Monroe disagreed. "We encourage those conversations to happen," she said. "But doing it after the fact does not change the fact that there was a violation of the Sunshine Law." Alessi did not rule on the case. She said Monday she would read the court filings and issue a ruling soon. She set a hearing date for Feb. 5."

AGO Interviews:

Missouri AG Bailey: Demonetization is the 'new front in the war' on free speech

Just the News | Real America's Voice

https://justthenews.com/videos/missouri-ag-bailey-demonetization-new-front-war-free-speech

-"Missouri Attorney General Andrew Bailey says the demonetization of conservative media is federal government's latest bid to censor Americans. "They failed to obtain success through government censorship because we put a stop to it in court. So now the war has shifted, and radical progressive advocacy groups are launching market manipulated attacks on platforms like Twitter, or X, in order to silence American voices," says Bailey." Bailey... has moved to create broad restrictions on hormone therapy, puberty blockers and surgeries in Missouri. His office has sued the Southampton Community Health Center, in South St. Louis, over gender care. And it's investigating patient care at Washington University's transgender clinic. The issue in Wentzville arose publicly this fall after the school board met privately twice, on June 14 and July 25, regarding bathroom and locker room access for transgender students.

Missouri AG Bailey: Our Founding Fathers never envisioned a fourth branch of government

AMERICAN OVERSIGHT

Just the News l Real America's Voice
https://justthenews.com/videos/missouri-ag-bailey-our-founding-fathers-never-envisioned-fourth-branch-government

-"Missouri Attorney General Andrew Bailey says the fight against "Deep State" bureaucrats calls for reinvigorating the 10th Amendment, which states that any authority not explicitly given to the federal government is reserved for the states and the people of the states. "You see this alphabet soup of Deep State swamp rats at the federal agencies who are unelected and unaccountable to the electorate, who are making rules that have the full force and effect of law, then applying those laws to us and adjudicating disputes between ourselves and those agencies...Our Founding Fathers never contemplated that there would be this unaccountable fourth branch of government," says Bailey. "It runs afoul of our democratic republic and our system of federalism.'"

Missouri AG Bailey talks about the Biden administration's latest student debt relief plan

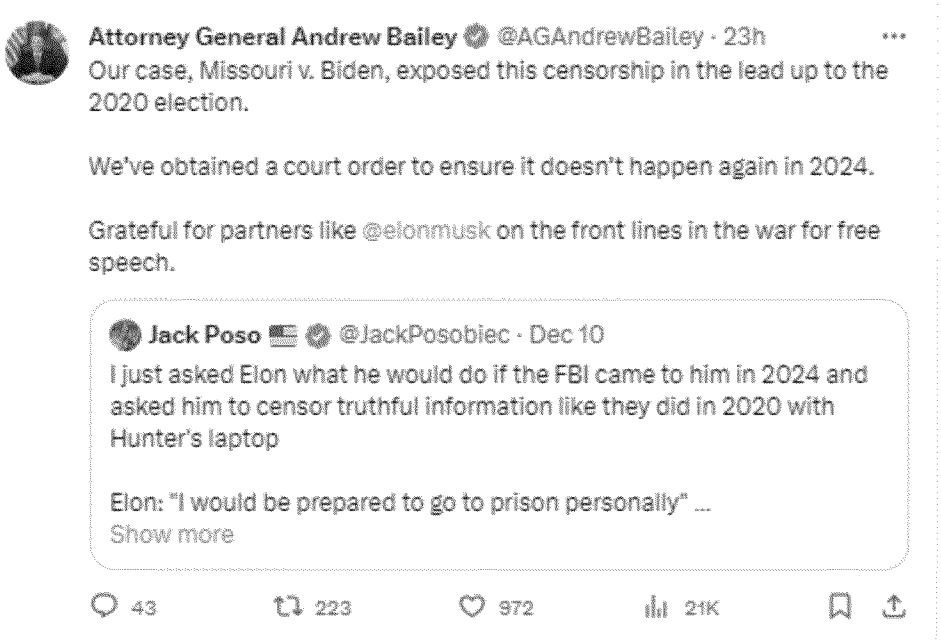
Just the News l Real America's Voice
https://justthenews.com/videos/missouri-ag-bailey-talks-about-biden-administrations-latest-student-debt-relief-plan

-"Missouri Attorney General Andrew Bailey says his office has been keeping an eye on the Biden administration's recent legal attempts to cancel student loan debt. "Certainly we're always looking for opportunities to keep the federal government in its proper and constitutional role and not encroach upon the rights of the states or the people of the states," says Bailey."

Missouri will expose 'lies, fraud' from Media Matters: AG Andrew Bailey

Fox Business l Varney Co
https://www.foxbusiness.com/video/6342778270112

AGO Tweets:

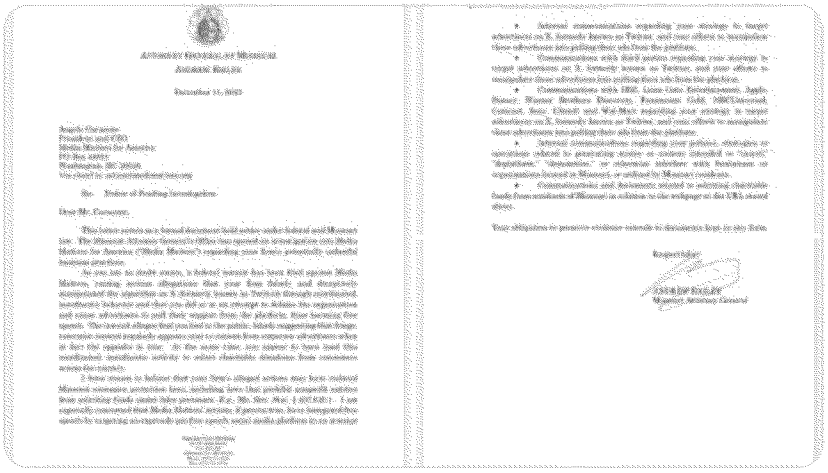


AMERICAN OVERSIGHT

Attorney General Andrew Bailey @AGAndrewBailey · 20h

🚨BREAKING: We have reason to believe Media Matters used fraud to solicit donations from Missourians in order to bully advertisers into pulling out of X, the last platform dedicated to free speech in America.

We have launched an investigation.



1.2K 7K 22K 2.1M

Attorney General Andrew Bailey @AGAndrewBailey · 20h

Enemies of free speech are attempting to kill X because they cannot control it, and we are not going to let Missourians be subject to fraud in the process.

106 349 2.4K 46K

Attorney General Andrew Bailey @AGAndrewBailey · 20h

I'm fighting to ensure progressive tyrants masquerading as news outlets cannot manipulate the marketplace in order to wipe out free speech.

58 268 2.1K 44K

Attorney General Andrew Bailey @AGAndrewBailey · 20h

Read more about our investigation here: ago.mo.gov/wp-content/upl...

53 174 1.2K 28K

AMERICAN OVERSIGHT

Attorney General Andrew Bailey reposted

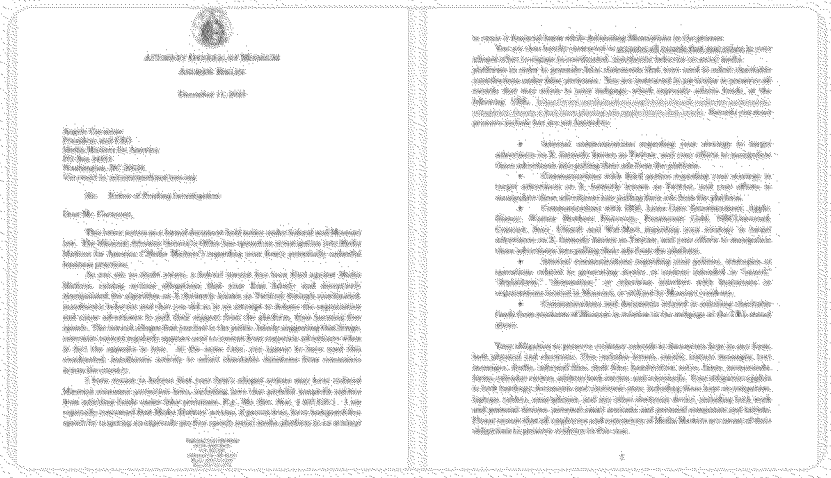
ALX @alx · 20h

BREAKING: Missouri Attorney General @AGAndrewBailey officially notifies Media Matters that they're under investigation.

They have ordered the preservation of:

-Internal communications regarding their strategy to target advertisers on X into pulling their ads from the platform....

Show more

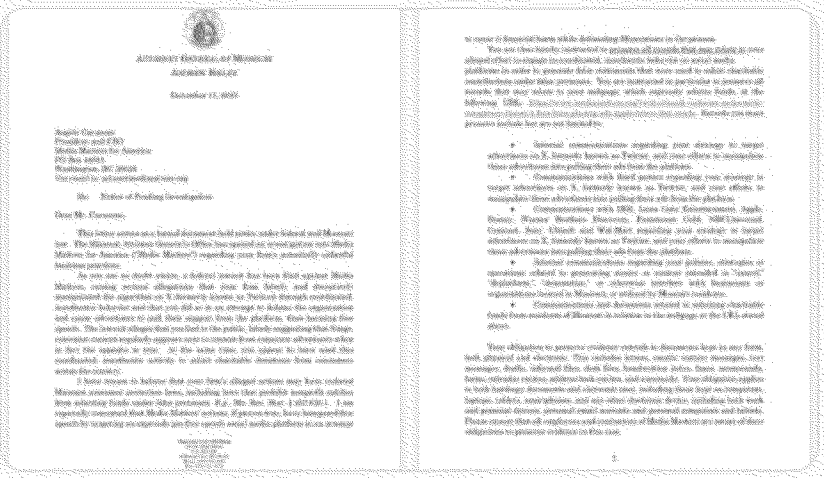


240 2.2K 8.3K 460K

Attorney General Andrew Bailey reposted

Benny Johnson @bennyjohnson · 20h

BREAKING: Missouri Attorney General @AGAndrewBailey announces investigation into Media Matters' attempt to get advertisers to leave X out of their hate for Elon Musk



107 1.4K 6.3K 147K

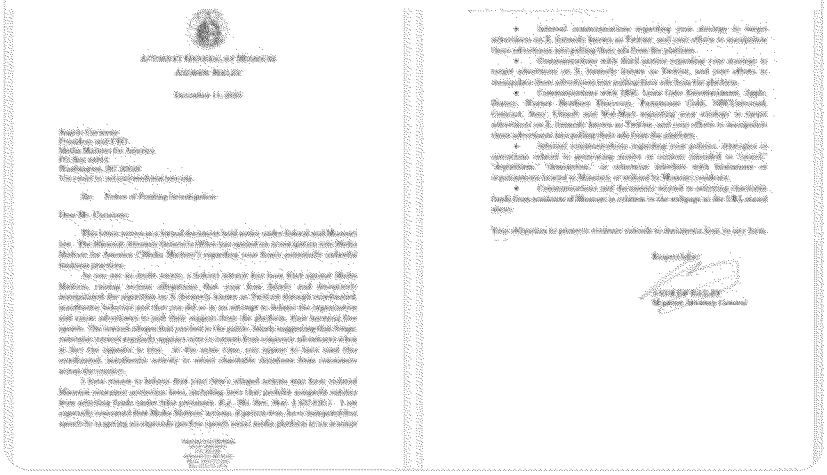
AMERICAN OVERSIGHT

Attorney General Andrew Bailey reposted

Stephen Miller @StephenM · 20h

All Missourians should be proud of the principled leadership from @AGAndrewBailey in defense of freedom and the rule of law.

> **Attorney General Andrew Bailey** @AGAndrewBailey · 20h
>
> BREAKING: We have reason to believe Media Matters used fraud to solicit donations from Missourians in order to bully advertisers into pulling out of X, the last platform dedicated to free speech in America.
>
> We have launched an investigation.



64 277 1K 37K

Attorney General Andrew Bailey reposted

Elon Musk @elonmusk · 19h

Replying to @AGAndrewBailey

Glad to hear this

264 401 4.7K 226K

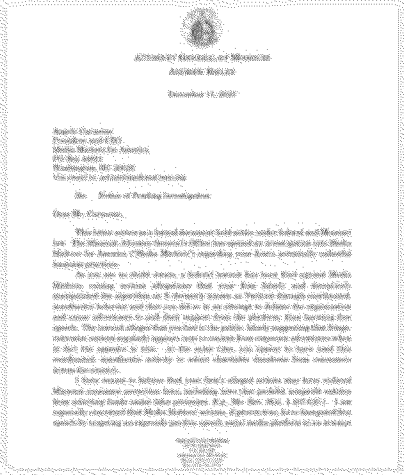
AMERICAN OVERSIGHT

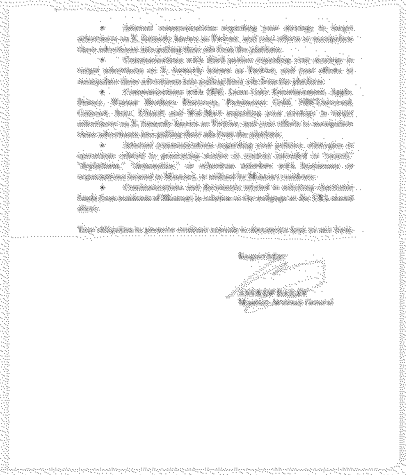
Attorney General Andrew Bailey reposted

Clay Travis @ClayTravis · 20h

Media Matters now under investigation for fraud in Missouri too. Like I said, every red state AG should be opening their own fraud investigations into this company.

> **Attorney General Andrew Bailey** @AGAndrewBailey · 20h
>
> 🚨BREAKING: We have reason to believe Media Matters used fraud to solicit donations from Missourians in order to bully advertisers into pulling out of X, the last platform dedicated to free speech in America.
>
> We have launched an investigation.





31 250 1.7K 209K

AMERICAN OVERSIGHT

Attorney General Andrew Bailey reposted

Real America's Voice (RAV) @RealAmVoice · 18h

Join @JSolomonReports and @AmandaHead tonight on #JustTheNewsNoNoise at 6 PM ET as they break down top trending topics with special guests:

- @AGAndrewBailey
- @seamusbruner
- @AaronWithe
- @MiklosSzantho

Watch LIVE: bit.ly/plutorav



3 8 30 5.6K

AMERICAN OVERSIGHT

Attorney General Andrew Bailey reposted

Real America's Voice (RAV) @RealAmVoice · 15h

Pawns in Media Matters Manipulation

Missouri @AGAndrewBailey says his newly launched investigation into left-wing watchdog group Media Matters hopes to determine how many Missourians were fraudulently solicited of donations by the organization in order to convince advertisers to...
Show more



13 44 110 6K

Attorney General Andrew Bailey @AGAndrewBailey · 14h

All Americans should be concerned that an advocacy group appears to be manipulating the marketplace in an attack on free speech.



31 176 530 17K

Attorney General Andrew Bailey reposted

SiriusXM Patriot @SiriusXMPatriot · 13h

Tonight On
@StacyOnTheRight

9pm-12am ET

9:20pm
@AGAndrewBailey

10:00pm
@NLPC...
Show more

2 4 7 3.5K

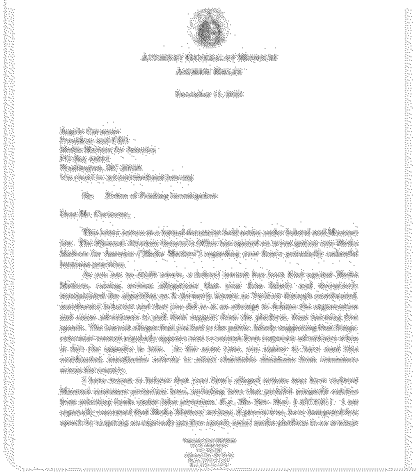
AMERICAN OVERSIGHT

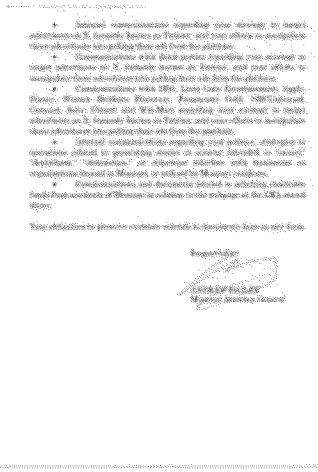
Attorney General Andrew Bailey reposted

Kyle Seraphin @KyleSeraphin · 20h

This is the WAY.

> **Attorney General Andrew Bailey** @AGAndrewBailey · 20h
>
> BREAKING: We have reason to believe Media Matters used fraud to solicit donations from Missourians in order to bully advertisers into pulling out of X, the last platform dedicated to free speech in America.
>
> We have launched an investigation.





14 154 678 15K

Missouri News:

REPORT: St. Louis Police Department Suffers Staff Shortage, Reaches Lowest Level Ever

Daily Caller l Ilan Hulkower

https://dailycaller.com/2023/12/11/st-louis-missouri-police-department-officers-shortage-hiring-budget-nick-dunne-joe-steiger/

-"Missouri's St. Louis Police Department reportedly lost over 17 police officers in a month and has only 912 positions filled out of a city budget set for 1,224 officers. It's the lowest point in the police department's staffing history, the St. Louis Post-Dispatch reported Monday. "I've never heard of anything that low," Joe Steiger, business manager of the St. Louis Police Officers Association, told the outlet. "When I started back in 1995, there were closer to 1,600 officers, and now they're down under 1,000. That's just crazy," Steiger added. Just a few officers being out of commission can create major headaches for the department, according to the report. In September, the department had to scramble to find replacements when two officers called in sick, the outlet reported. Steiger referred to the incident when he told the outlet that it could take just two or three officers not showing up to work for major problems to develop. "They're [districts] so much bigger now, to have two or three people covering them, it's just not enough," Steiger told the outlet. The lack of manpower comes with its costs to public safety and the department is in "crisis" mode, the St. Louis Police Officers' Association told Fox 2 back in July after a scandal broke out over police allegedly taking at least 45 minutes to show up to a crash site. Nick Dunne, a spokesman for the city's mayor, told the St. Louis Post-Dispatch that the mayor "remains steadfast in its efforts to recruit and retain employees across departments."… The city suffers from one of the worst murder per capita rates in the entire country, The Associated Press noted back in January 2022. The mayor once criticized the city for spending too much on policing, but has since increased the police's budget, the St. Louis Post-Dispatch reported."

Ballot initiative process sure to be in GOP's crosshairs during legislature's 2024 session

Springfield News-Leader l Kelly Dereuck

https://www.news-leader.com/story/news/politics/2023/12/11/missouri-republicans-aim-to-change-initiative-petition-process-in-2024/71851409007/

-"Missouri lawmakers will once again consider changes to the initiative petition process in the new year. Several pieces of legislation aimed at altering the process through which voters can approve changes to the Missouri Constitution were among the bills pre-filed for the 2024 legislative session, which starts Jan. 3. Pre-filing started Dec. 1, with 1,028 bills and joint resolutions filed in the Missouri House and Senate combined within the first week through Dec. 7. Of those, there are 10 pieces of legislation in the House and 11 more in the Senate targeting initiative petitions. While many of the pre-filed bills will never be debated during the 2024 legislative session, the volume of bills on this specific topic all but guarantees initiative petition changes in some form will be discussed next year. One piece of legislation — the only proposal filed by a Democrat — aims to make it more difficult for legislators to alter changes enacted through successful initiative petitions. The remaining bills, all filed by Republicans, seek to either raise the bar for approving ballot initiatives, regulate signature

AMERICAN OVERSIGHT

collection and out-of-state funds backing measures or implement other policy changes making it more difficult for citizens to take proposals to a public vote… However, many Republican lawmakers have new goals in mind for changing the requirements for approval. Ten of the pre-filed bills would institute rules requiring a majority of voters statewide and a majority of voters in each of the state's eight congressional districts approve a ballot initiative for it to pass. Two other proposals would require approval from a majority of voters statewide and a majority of voters in the state's 34 Senate districts, with two more requiring affirmative votes from a majority of statewide voters and voters in the state's 163 districts in the Missouri House of Representatives. Another common theme in the proposed legislation is the enactment of requirements stating that voters must be registered to vote in Missouri and citizens of the United States, stipulations already in place for voters to participate in state elections. Additionally, many lawmakers expressed concern about foreign influence and out-of-state money impacting ballot initiatives. So far, at least seven bills propose either restricting donations and sponsorship of petitions by foreign countries or enacting regulations on out-of-state donations or signature gatherers. Any change to the initiative petition process lawmakers might approve would require a public vote before it could take effect, with the existing standard of a simple majority required for success…"

Proposed law would require training on Narcan in Missouri's middle, high schools

KCTV l Joe McLean

https://www.kctv5.com/2023/12/12/proposed-law-would-require-training-narcan-missouris-middle-high-schools/

-"One out of every 45 deaths in the state of Missouri in 2022 was attributed to opioid overdose, according to the Missouri Department of Health and Senior Services. A bill pre-filed in the Missouri House of Representatives would add as a requirement for graduation at least 30 minutes of training on opioid use prevention and how to properly administer naloxone. The same proposed legislation would require schools be equipped with automated external defibrillators, or AEDs, and require districts to train staff on how to properly use the equipment. AEDs are electronic devices used to diagnose and treat sudden abnormal hearth rhythms which can be extremely dangerous and life-threatening. Naloxone, better known under the brand name Narcan, can reverse an opioid overdose after it happens. The bill was originally authored by a group of teens from the St. James area who make up the Opioid Affected Youth Initiative, a federal grant-funded program administered by the Meramec Regional Planning Commission… One of the teens who helped write the bill was Madeline Pankey, who experienced a childhood in which both parents suffered from opioid use disorder. In her sophomore year, Madeline lost her mother to an overdose. The following year, the community was struck with tragedy when a student at a nearby high school died from an overdose. "Those are our friends," Pankey said. "We don't want our generation wiping out. So, why wouldn't we carry something to save lives?"… Many school districts in Missouri already make naloxone products available in their buildings, but few, if any, require students be trained how to use it."

Springfield legislator seeks post as Republican majority floor leader in Jefferson City

Springfield News-Leader l Kelly Dereuck

https://www.news-leader.com/story/news/politics/2023/12/11/rep-alex-riley-seeks-position-as-republican-majority-floor-leader/71879465007/

-"Rep. Alex Riley, R-Springfield, is running for majority floor leader in the Missouri House of Representatives. If elected, Riley would be the first person from Springfield to hold the position in almost 100 years. He is seeking the office for the 103rd General Assembly, which will begin in January 2025. "I am committed to upholding the highest standards of transparency and accountability in our legislative process," Riley said. "By fostering open and honest communication, I aim to ensure we maintain public trust in our government and ensure that our constituents' voices are heard."… The position is decided through an internal election within the Missouri House of Representatives, which would be held following the November 2024 election. This election will determine who will hold offices within the Missouri House during the 103rd General Assembly, which spans 2025 and 2026. Riley feels that progress in the Missouri General Assembly has been stymied during the past few years, but he hopes to foster collaboration between all of the state's elected officials and community stakeholders…"

Judicial system ranking affirms Missouri Chamber's focus on reforms

The Center Square MO l Joe Mueller

https://www.thecentersquare.com/missouri/article_88b8dea6-9874-11ee-a9fd-dfd482f62227.html

-"As the Missouri Chamber of Commerce and Industry prepares for the 2024 legislative session, judicial reform was affirmed as a priority with a national ranking criticizing the state's judicial system for the 10th consecutive year. During the 2023 legislative session, the chamber recommended changes to several legislative policies. The chamber also provided a search mechanism on its website to reveal how much money elected officials received in campaign donations from trial attorneys. When the American Tort Reform Foundation's Judicial Hellholes report ranked St. Louis at No. 8 for the second straight year last week, the chamber reiterated the need to change policy to prevent economic harm. "The facts cited in the ATRF's report are all too familiar to those of us who see the impact of Missouri's unbalanced tort system on our state's job creators," Missouri Chamber President and CEO Dan Mehan said in a statement… During the 2023 legislative session, the organization recommended several legislative policies. Included was an effort to increase transparency in asbestos litigation by requiring the disclosure of asbestos bankruptcy before the trial… The chamber also urged legislators to evaluate whether the statute of limitations in certain civil cases, including personal injury claims, best serves all parties in

AMERICA First OVERSIGHT

potential cases… A media release from the chamber highlighted two Republican senators who accepted campaign contributions from trial lawyers. The American Tort Reform Foundation's information also noted the campaign contribution information…"

Kansas City, Missouri, City Council members introduce hate crime ordinance

KSHB l No Author Listed

https://www.kshb.com/news/local-news/kansas-city-missouri-city-council-members-introduce-hate-crime-ordinance

-"Members of the Kansas City, Missouri, City Council introduced an ordinance that would address hate crimes in the city, the Kansas City LGBTQ Commission announced Monday. Ordinance 231032 would establish a hate offense at the municipal level and create a penalty for certain municipal offenses motivated by hate and/or bias. Prosecutors would have the ability to prove a bias-motivational factor if they believe a hate crime was committed to obtain an enhanced sentence. An additional 60 days would be added on to a sentence and would run consecutive, not concurrently… The legislation will be heard in a committee on Tuesday at the KCMO City Hall at 1 p.m."

National News:

Supreme Court Delays Decision on Challenges to Abortion Pill

Epoch Times l Matthew Vandum

https://www.theepochtimes.com/us/supreme-court-delays-decision-on-challenges-to-abortion-pill-5545266

-"The Supreme Court failed on Dec. 11 to take up or reject a much-anticipated, heavily-litigated challenge to the government's decision in 2000 to approve mifepristone, a pill used for abortions, putting off the court's decision for the time being. Although a lower court had blocked the sale of mifepristone, the Supreme Court countermanded that order in April, allowing sales to continue, at least for the time being. The justices were scheduled to consider petitions in the three related cases at their private conference on Dec. 8, but did not include the cases in a list of orders the court released on Dec. 11. Presumably, the court will again consider the petitions at its next scheduled private conference on Jan. 5, 2024. It is also possible that the justices were not ready to make a decision on the petitions on Dec. 11, but will do so before Jan. 5. Decisions from the nation's highest court can come at any time without notice…"

Texas Supreme Court Overrules 'Medical Emergency' Exception for Woman Seeking Abortion

Epoch Times l Stephen Katte

https://www.theepochtimes.com/us/texas-supreme-court-overrules-medical-emergency-exception-for-woman-seeking-abortion-5545289

-"Kate Cox, a 31-year-old Texan woman, sued the state last week for the right to have an abortion at 20 weeks because her unborn baby was diagnosed with Trisomy 18, a condition that causes multiple structural abnormalities and is usually fatal to the baby before birth or within the first year of life, according to MedlinePlus. In her lawsuit, filed on her behalf by the Center for Reproductive Rights, several doctors also told Ms. Cox that continuing to carry the pregnancy to term could threaten her health and future fertility. A lower-court judge initially granted Ms. Cox's request for access to an emergency abortion; however, the state Supreme Court paused the ruling on Dec. 9, only a day later. The Texas Supreme Court has since overturned the verdict entirely. According to the Dec. 11 ruling, Justice Jimmy Blacklock and Justice John Devine wrote that while the plaintiff makes a case that her doctor, Dr. Damla Karsan, believes she qualifies for a medical exception. "But when she sued seeking a court's pre-authorization, Dr. Karsan did not assert that Ms. Cox has a 'life-threatening physical condition' or that, in Dr. Karsan's reasonable medical judgment, an abortion is necessary because Ms. Cox has the type of condition the exception requires," the Justices wrote…"

NRA torches Biden admin for plan to change rules for gun buyers, sellers

Fox News l Emma Colton

https://www.foxnews.com/us/nra-torches-biden-admin-plan-change-rules-gun-buyers-sellers

-""The Biden ATF's proposed rule, ATF2022R-17, is just another attempt to demolish our Second Amendment rights, with the potential to unjustly criminalize everyday Americans for engaging in lawful firearm transactions," NRA-ILA Executive Director Randy Kozuch exclusively told Fox News Digital in a statement. "This rule blatantly disregards the recent NRA-backed Bruen ruling on the Second Amendment. It also creates serious confusion among lawful gun owners who buy and sell firearms legally for various purposes, from collecting to self-defense." Kozuch was reacting to the ATF proposal ATF2022R-17, otherwise known as "Definition of 'Engaged in the Business' as a Dealer in Firearms," which would amend the agency's regulations and incorporate provisions of the Bipartisan Safer Communities Act, a gun control law signed by President Biden in 2022. The proposal would expand the definition of "dealer" to anyone who "sells or offers for sale firearms, and also represents to potential buyers or otherwise demonstrates a willingness and ability to purchase and sell additional firearms." The proposal would also incorporate the Bipartisan Safer Communities Act's definition of earning a profit from gun sales, meaning a "dealer" would include individuals who sell guns for other forms of profit – such as personal property or services offered – not just cash. The proposal would subsequently spark confusion among gun owners about which firearm transactions would require a federal firearms license, accordant to the NRA… The ATF's proposal was introduced in August this year and was open for a 90-day comment period from Sept. 9 to Dec. 7. The NRA was one of more than 330,000 groups and individuals who posted public comments about the proposed rule, detailing in their response that

AMERICAN OVERSIGHT

the proposal would spread confusion for gun owners, notably collectors and competitive shooters who frequently purchase and sell firearms… Republican Montana Attorney General Austin Knudsen led a coalition of 26 attorneys general on Dec. 7 in a letter to the ATF, slamming the proposal's "shocking and unconstitutional attack" on the Second Amendment… The NRA applauded the Montana Republican and the coalition of AGs for "truly honoring their oath to office." "NRA members appreciate Montana Attorney General Austin Knudsen and the coalition of 26 attorneys general, who, unlike Joe Biden, are truly honoring their oath of office by actively fighting against this rule. The NRA is resolutely committed to fighting this ill-advised rule at every turn, safeguarding our constitutional rights from such blatant federal intrusion," Kozuch said."

Planned Parenthood received $90 million in PPP loans during COVID-19 pandemic

Fox News l Jamie Joseph

https://www.foxnews.com/politics/planned-parenthood-received-90-million-ppp-loans-during-covid-19-pandemic

-"Planned Parenthood affiliates received $90 million in Paycheck Protection Program (PPP) loans meant for small businesses during the COVID-19 pandemic, according to a new report from the Government Accountability office (GAO) released Tuesday morning. The PPP loans were designed to bail out small independent businesses with less than 500 employees. But pro-life advocates raised concerns with the Small Business Administration — an independent government agency that supports entrepreneurs — and argued that Planned Parenthood has more than 16,000 employees across the country, well above the cutoff to be considered a small business. Sen. Marsha Blackburn, R-Tenn., one of the lawmakers who requested the report in January 2022, called the findings "appalling." "While small businesses struggled to make ends meet during the pandemic, Planned Parenthood illegally siphoned over $90 million from the Paycheck Protection Program, specifically designed to help our mom and pop shops keep their doors open," Blackburn said in a statement. She added, "The American people want their tax dollars spent responsibly and in line with our nation's values — not on the Left's abortion-on-demand agenda."… Smith said the PPP loans were "money that could have gone to struggling small businesses, many of which were forced to close."…"

Inflation Refuses To Go Away As Prices Stay Elevated

Daily Caller l Will Kessler

https://dailycaller.com/2023/12/12/inflation-down-eve-rate-decision/

-"Inflation ticked slightly down year-over-year in November but continued to remain well above the Federal Reserve's target, according to the latest Bureau of Labor Statistics (BLS) release on Tuesday. The consumer price index (CPI), a broad measure of the prices of everyday goods, increased 3.1% on an annual basis in November, compared to 3.2% in October, according to the BLS. Core CPI, which excludes the volatile categories of energy and food, remained high, rising 4.0% year-over-year in October, compared to 4.0% in October. "The much smaller year-over-year headline CPI change from October to November (vs. the large decline from September to October) suggests a slowing of disinflation, while the core CPI year-over-year being flat at 4.0% is still substantially elevated at twice the Fed's target range," Peter Earle, economist at the American Institute for Economic Research, told the Daily Caller News Foundation… Shelter continued to be a top contributor to inflation, rising 0.4% in the month of November, totaling 6.5% for the year, according to the BLS. The prices for used cars and trucks increased 1.6% month-to-month, while the cost of transportation increased 1.1% for the month. Overall inflation was brought down by decreases in the price of energy commodities, with the price of gasoline declining 6% in November, totaling an 8.9% drop for the year, according to the BLS. The price of apparel also dropped, declining 1.3% month-to-month. The FOMC is set to announce the last federal funds rate decision of the year on Wednesday, with the current rate in a range of 5.25% and 5.50%, the highest point in 22 years. The rate was set to its high position in an effort to calm inflation, which peaked at 9.1% in June 2022, far higher than the Fed's 2% target… Since Biden took office, costs have risen over 17%, while average hourly wages have only risen 13.6% as of November. The resulting price increases mean that families have to pay more than $11,000 in additional costs to maintain the same standard of living. Americans maintain a negative view of the economy, with 72% of respondents saying the economy is getting worse while 23% say it is getting better, according to a poll from Gallup conducted from Nov. 1 to 21. Inflation was ranked as the most important financial problem facing families in 2023 by 35% of respondents, compared to just 8% of families in 2021…"

Here's How Much Americans' Home Payments Have Increased Under Biden

Daily Caller l Will Kessler

https://dailycaller.com/2023/12/11/americans-home-payments-increased-biden/

-" When President Joe Biden first assumed office in 2021, the average monthly new home payment was $1,915, but it has since ballooned to $3,322 as of the third quarter of 2023, according to an analysis from The Wall Street Journal. Following the increase in costs, housing is now less affordable than at any other time in recent history, with mortgage rates exceeding 7% and median housing prices rising to around $392,000 as of October, according to the WSJ. High inflation and a relative tightening of the supply of housing have resulted in the increasing prices, while the high mortgage rates are in response to the increasing cost of credit. The average for a 30-year fixed-rate mortgage reached an all-time modern low on Jan. 7, 2021, reaching 2.65%, just days before Biden took office, according to the Federal Reserve Bank of St. Louis. Mortgage rates then reached a recent peak of 7.76% on Nov. 2 of this year, receding slightly to 7.03% as of Dec. 7. The rising mortgage rates follow hikes in the federal funds rate by the Federal Reserve, which put the rate in a range of 5.25% and 5.50%, a 22-year high, to combat high inflation that peaked at 9.1% in June 2022. Many economists partially attribute the high inflation to

AMERICAN OVERSIGHT

> Biden's huge government spending, which stems from acts he has signed as president like the American Rescue Plan and the Inflation Reduction Act. Rent payments have not experienced as sharp of an increase as they are less responsive to rising interest rates, increasing from an average of $1,784 per month in the first quarter of 2021 to $2,184 per month in the third quarter of 2023, according to the WSJ… High interest rates add a substantial amount to the cost of a home due to the loan's long duration, with just a 5% rate on a 30-year mortgage for a $320,000 house equating to nearly $300,000 in additional costs over the course of the loan. At 8% interest on the same $320,000 home, homebuyers would pay an additional $525,297. Americans have especially felt the effects of rising inflation under Biden in the shelter sector, with costs rising 17.5% since January 2021, higher than the 17.1% gain in overall costs."

I hope everyone has an amazing day!

Best,

Bennett Lyday | Policy & Operations Specialist
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
O: (573) 751-4390
C: (573) 645-9671
Bennett.Lyday@ago.mo.gov

AMERICAN OVERSIGHT

To: 'Monica Wallace'[Monica@joepags.com]; Sam Pags[Sam@joepags.com]
From: Sieren, Madeline[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=890FCD3152D8495282586A213FC2C407-SIEREN, MADELINE]
Sent: Wed 12/13/2023 2:44:49 PM (UTC-06:00)
Subject: RE: AG Bailey - Media Matters

Here is his info:
Skype number is 573-645-7864
Skype address is: live:cid.1d1c3290f77824d0
Thanks!
Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

From: Monica Wallace <Monica@joepags.com>
Sent: Tuesday, December 12, 2023 11:29 AM
To: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>; Sam Pags <Sam@joepags.com>
Subject: Re: AG Bailey - Media Matters
Yes…is this still correct?
Skype:ac532ef1f3aada33.
Monica Wallace
Booking Producer | The Joe Pags Show

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Tuesday, December 12, 2023 12:27:18 PM
To: Monica Wallace <Monica@joepags.com>; Sam Pags <Sam@joepags.com>
Subject: Re: AG Bailey - Media Matters
Perfect – do you still have our Skype information?

From: Monica Wallace <Monica@joepags.com>
Date: Tuesday, December 12, 2023 at 11:23 AM
To: "Sieren, Madeline" <Madeline.Sieren@ago.mo.gov>, Sam Pags <Sam@joepags.com>
Subject: Re: AG Bailey - Media Matters
Hi Maddie-
Yes, tomorrow at 4pm ET is perfect.
We'll call him via video Skype just a few moments prior.
Thank you so much!
Monica Wallace
Booking Producer | The Joe Pags Show

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Tuesday, December 12, 2023 12:21:26 PM
To: Monica Wallace <Monica@joepags.com>; Sam Pags <Sam@joepags.com>
Subject: Re: AG Bailey - Media Matters
Hi Monica – can we do 4 PM ET tomorrow, Wednesday 12/13?

From: Monica Wallace <Monica@joepags.com>
Date: Monday, December 11, 2023 at 3:27 PM
To: "Sieren, Madeline" <Madeline.Sieren@ago.mo.gov>, Sam Pags <Sam@joepags.com>
Subject: Re: AG Bailey - Media Matters
Hey Maddie!
Yes, we'd definitely love to have AG Bailey join us to discuss this.
Does he have some time on Wednesday at 4 or 430 pm ET for a video Skype hit?
Thank you!
Monica Wallace
Booking Producer | The Joe Pags Show

AMERICAN OVERSIGHT

From: Sieren, Madeline <Madeline.Sieren@ago.mo.gov>
Sent: Sunday, December 10, 2023 2:09:00 PM
Subject: AG Bailey - Media Matters

Hi,

Attached is the final version of the EMBARGOED letter that AG Bailey plans to send to Media Matters tomorrow. We find it especially relevant after Elon Musk let Alex Jones back on Twitter this weekend. Musk is committed to free speech, and because of that, he has become a target of the radical left.

AG Bailey views it as such:

DRAFT DO NOT RELEASE

-Media Matters is **perpetuating** a **fraudulent scheme** to **solicit** donations from **Americans** to **take down/target** the last social media platform committed to free speech, X/Twitter.

-Media Matters **masquerades** as a news organization, but they're actually a progressive activist group committed to silencing opposing voices.

-Missouri was **first out the gate** on this issue. We're going to use the authority given to us by statute to **protect** Missourians from being **ripped off** by this **scheme and to shed light on the subject**. We're encouraged other states, namely Texas, are taking action as well.

-Missouri has been a **champion for free speech at every turn**, willing to take on **the Radical Left in their war against the First Amendment.** They're willing to stoop to any level to silence conservative voices, but we're fighting back. We're seeing that in three prongs:

1. Social media platforms
    - We sued in federal court. The score is Missouri, 3, Biden 0, and we're headed to SCOTUS
2. President Trump
    - We filed a brief to remove the gag order on President Trump because Americans have a right to hear from all presidential candidates
3. The newest **front in the war for free speech** is the nonprofits **masquerading** as news platforms perverting the algorithms to trick advertisers to pull out of the **last platform committed to free speech. Make no mistake: they want to kill Twitter because they can't control it.**
    - Anyone for free speech becomes a target of the radical Left. X seeks to allow free speech, so the Left is trying to destroy it. All Americans should be concerned because if this behavior goes unchecked, **the marketplace for free, fair and open debate will cease to exist.**

-The **First Amendment is the bedrock of our Constitution.** Missouri will continue to **lead** the way in the fight for our most fundamental freedoms.

1. We will never back down in the **fight** for free speech.

He is available this week if you have interest in an interview.

Best,

Madeline Sieren | Communications Director
Missouri Attorney General's Office
Jefferson City, MO
573-690-1205
Madeline.Sieren@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: Sieren, Madeline[Madeline.Sieren@ago.mo.gov]
From: Lyday, Bennett[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EACD91D740F2406EB8A1385B65BBDDED-LYDAY, BENNETT]
Sent: Tue 12/12/2023 8:32:50 PM (UTC-06:00)
Subject: X Space with Tucker/Elon Recording
X Space with Tucker-Elon.m4a

Sent from my iPhone

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Lewis, Jason[Jason.Lewis@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Wagner, Ray[Ray.Wagner@ago.mo.gov]
From: Lyday, Bennett[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EACD91D740F2406EB8A1385B65BBDDED-LYDAY, BENNETT]
Sent: Wed 12/13/2023 9:06:49 AM (UTC-06:00)
Subject: Daily News/Media Roundup - Wednesday, December 13th, 2023

Good morning all,
Below is the relevant news for today and yesterday relating to the AGO, Missouri, and Nation:

AGO News:

Missouri Investigates Media Matters For Fraudulently Fundraising Off Of Efforts To Demonetize Free Speech
The Federalist | Jordan Boyd
https://thefederalist.com/2023/12/12/missouri-investigates-media-matters-for-fraudulently-fundraising-off-of-efforts-to-demonetize-free-speech/

-"In his letter announcing the investigation, Bailey warned that Media Matters' attempt to punish "the last platform dedicated to free speech in America" could constitute a violation of his state's consumer protection laws barring nonprofits from "soliciting funds under false pretenses." "I am especially concerned that Media Matters' actions, if proven true, have hampered free speech by targeting an expressly pro free speech social media platform in an attempt to cause it financial harm while defrauding Missourians in the process," Bailey wrote. Bailey's investigation stems from a Media Matters "report" released in November accusing X of publishing advertisements for big companies like Apple, Bravo, IBM, Oracle, and Xfinity alongside "pro-Nazi content." Media Matters' activism, which relied on a manipulated feed they carefully curated to "alienate advertisers," pushed several of the aforementioned companies to pull their ads from the free speech platform. X owner Elon Musk quickly filed what he called a "thermonuclear" defamation lawsuit against Media Matters for accusing him of backing antisemitism. In legal documents, Musk claimed the left-wing organization "knowingly and maliciously manufactured side-by-side images depicting advertisers' posts on X Corp.'s social media platform beside Neo-Nazi and white-nationalist fringe content and then portrayed these manufactured images as if they were what typical X users experience on the platform."… Bailey said Media Matters' "alleged effort to engage in coordinated, inauthentic behavior on social media platforms in order to generate false statements that were used to solicit charitable contributions under false pretenses" deserves further scrutiny. He demanded the propaganda organization hand over any internal communications and documents and communications with X advertisers related to its plans to distance advertisers from X. Bailey also requested any Media Matters' communications about "strategies or operations related to generating stories or content intended to 'cancel,' 'deplatform,' 'demonetize,' or otherwise interfere with businesses or organizations located in Missouri, or utilized by Missouri residents" and "soliciting charitable funds from residents of Missouri." "Radicals are attempting to kill Twitter because they cannot control it, and we are not going to let Missourians get ripped off in the process," Bailey said in a statement. "I'm fighting to ensure progressive tyrants masquerading as news outlets cannot manipulate the marketplace in order to wipe out free speech.'"

Missouri's Attorney General is requesting records in a formal investigation he has launched.
KZRG | Steve Scott
https://newstalkkzrg.com/2023/12/12/missouris-attorney-general-is-requesting-records-in-a-formal-investigation-he-has-launched/

-"Missouri Attorney General Andrew Bailey is investigating a progressive-leaning nonprofit organization for alleged fraudulent solicitation of donations from Missourians on the social media site X. In a letter to Missouri Matters for America, Bailey accuses the firm of violating Missouri's consumer protection laws, including laws that prevent nonprofits from soliciting funds under false pretenses. A federal lawsuit has been filed against Media Matters for publishing a report that convinced advertisers to pull their ads from the site formerly known as Twitter."

Missouri AG Launches Investigation Into Media Matters Amid Elon Musk Suit
The Messenger | Zachary Leeman
https://www.msn.com/en-us/news/technology/missouri-ag-launches-investigation-into-media-matters-amid-elon-musk-suit/ar-AA1loPa3?ocid=Peregrine

-"GOP Missouri Attorney General Andrew Bailey is launching an investigation into liberal media outlet Media Matters for America. Bailey accused the media company of soliciting donations using "fraud" amid their "efforts to target X," the social

AMERICAN OVERSIGHT

media platform owned by Elon Musk. Musk previously filed suit against Media Matters. "We have reason to believe Media Matters used fraud to solicit donations from Missourians in order to trick advertisers into pulling out of X, the last platform dedicated to free speech in America," Bailey announced this week. "Radicals are attempting to kill Twitter because they cannot control it, and we are not going to let Missourians get ripped off in the process." Bailey previously said he was "looking into" a potential probe of Media Matters. The complaint accuses Media Matters violating Missouri's consumer protection laws with a report claiming advertisements were running on X next to antisemitic posts. The report led to a lawsuit from Musk. The company is claiming they have no proof of what Media Matters wrote and accused the company of manipulation and defamation. The media company, which Musk has called "pure evil," is standing by its report. They filed a complaint seeking declaratory and injunctive relief against an investigation from another attorney general, Texas AG Ken Paxton… For Bailey's investigation, he's requesting a number of records, including "communications regarding Media Matters' strategy to target advertisers on X" and other communications with a number of major companies that pulled their advertising from X after the Media Matters report."

Missouri attorney general investigating Media Matters for America

Metro Voice l Alan Goforth

https://metrovoicenews.com/missouri-attorney-general-investigating-media-matters-for-america/

-"Missouri Attorney General Andrew Bailey announced on Monday that his office is investigating Media Matters for America for allegedly fraudulent solicitation of donations from Missourians during its efforts to target Twitter. "We have reason to believe Media Matters used fraud to solicit donations from Missourians in order to trick advertisers into pulling out of X, the last platform dedicated to free speech in America," he said. "Radicals are attempting to kill Twitter, because they cannot control it, and we are not going to let Missourians get ripped off in the process. I'm fighting to ensure progressive tyrants masquerading as news outlets cannot manipulate the marketplace in order to wipe out free speech."… "As you are no doubt aware, a federal lawsuit has been filed against Media Matters, raising serious allegations that your firm falsely and deceptively manipulated the algorithm on X through coordinated, inauthentic behavior and that you did so in an attempt to defame the organization and cause advertisers to pull their support from the platform, thus harming free speech," the letter said. "The lawsuit alleges that you lied to the public, falsely suggesting that fringe, extremist content regularly appears next to content from corporate advertisers when in fact the opposite is true. "At the same time, you appear to have used this coordinated, inauthentic activity to solicit charitable donations from consumers across the country. I have reason to believe that your firm's alleged actions may have violated Missouri consumer protection laws, including laws that prohibit nonprofit entities from soliciting funds under false pretenses.'"

Missouri AG launches investigation of Media Matters

The Hill l Dominick Mastrangelo

https://thehill.com/homenews/4355644-missouri-ag-launches-investigation-of-media-matters/

-"Missouri Attorney General Andrew Bailey (R) says he has launched an investigation into Media Matters for America, the progressive watchdog, following its report about harmful antisemitic content on X, the platform formerly known as Twitter. In a letter to the media watchdog, Bailey wrote his office has "reason to believe Media Matters used fraud to solicit donations from Missourians in order to trick advertisers into pulling out of X, the last platform dedicated to free speech in America." "Radicals are attempting to kill Twitter because they cannot control it, and we are not going to let Missourians get ripped off in the process," Bailey said. "I'm fighting to ensure progressive tyrants masquerading as news outlets cannot manipulate the marketplace in order to wipe out free speech." Media Matters last month published a report laying out how X, under Elon Musk's leadership, is placing advertising next to antisemitic content… Musk days later sued Media Matters, alleging in court documents the company maliciously misled the public about how the platform operates. Musk's lawsuit was cheered by many Republican politicians and conservative pundits once it was filed."

Child molester gets 295 years

National Cyber Security l No Author Listed

https://nationalcybersecurity.com/child-molester-gets-295-years-local-news-childpredator-kidsaftey-childsaftey/

-"A Union man was sentenced to 295 years in prison Friday for drugging and sexually assaulting an 8-year-old girl in 2018. Brett Pendleton received the maximum sentences allowed for his crimes under state law — 30 years each for six counts of statutory sodomy, one count of statutory rape, one count of child molestation and one count of delivering methamphetamine to a minor; 15 years for delivering marijuana to a minor; and 10 years for child abuse."

Missouri woman's family believes her death in motel, ruled suicide, was murder: 'Most horrible case'

Fox 22 l No Author Listed

https://www.foxbangor.com/news/national/missouri-womans-family-believes-her-death-in-motel-ruled-suicide-was-murder-most-horrible-case/article_e117b9d2-5202-513b-8507-b5e84b0e227d.html

-"The Justice Project at Alliance for HOPE International, a nonprofit combating domestic violence and other forms of abuse, conducted the investigation that concluded, "without question, Libby Caswell was murdered six years ago" in a motel room in Independence, Missouri, on Dec. 11, 2017… Libby, 21, was found dead in a motel bathroom with her body positioned so that her face was turned toward a wall, according to Dr. William "Bill" Smock of the Louisville Metro Police Department, the only police surgeon in the United States and the co-founder of the Training Institute on Strangulation Prevention. He

AMERICAN OVERSIGHT

oversaw the independent investigation into Caswell's death. Her boyfriend at the time called 911 around 8 p.m. that day to report that Caswell had died by suicide after hanging herself with a belt in the bathroom while he was sleeping. When police arrived at the Sports Stadium Motel in Independence, where they were staying, her boyfriend was not present. Police ruled her death a suicide within hours of arriving, according to the Alliance for HOPE. The nonprofit's investigation revealed that a belt had been tied around Caswell's neck twice and she had belt marks on her chest… Smock said he has presented Caswell's case to more than 1,000 prosecutors and law enforcement personnel across the country who believe her death was "homicidal." He also alleged that Independence Police "ignored" evidence at the scene, including blood in the motel room where Caswell died, her broken fingernails and marks on her neck… The Alliance for HOPE also says it identified three men who were in the motel room where Caswell was staying on Dec. 10, 2017… Independence Police said in a statement Monday that authorities held the crime scene at the Sports Stadium Motel on Dec. 11, 2017, "until detectives could interview witnesses and/or persons that may have been in the room at the time." "Once Investigators determined there was no need to hold the scene and no arrests were appropriate at the time, the scene was released, however the investigation continued," police said. "During the course of the investigation, the case was reviewed by multiple detectives within the Criminal Investigations Unit. At one time, the case was reopened at the request of Elizabeth's family and Alliance For HOPE International. The FBI assisted IPD during that investigation." The case was also presented to the Jackson County Prosecutor's Office "to determine if there were any criminal charges to be filed," police said. But the police department maintains that "detectives believe that given the evidence that was available, Elizabeth Caswell's death was most likely a suicide."… Michael Mansur, the Jackson County Prosecutor's Office's director of communications, said the office "reassigned a second veteran prosecutor to review the case a second time but determined that the evidence was insufficient to justify criminal charges for multiple reasons."… The Alliance for HOPE is asking Missouri Attorney General Andrew Bailey and the FBI to pursue independent investigations into Caswell's death."

-**Reposted, but no mention of MOAGO:** Missouri woman's family believes her death in motel, ruled suicide, was murder: 'Most horrible case' **(Fox News)**

Missouri attorney general seeks to block subpoena in abortion amendment lawsuit

Missouri Independent l Jason Hancock

https://missouriindependent.com/briefs/missouri-attorney-general-seeks-to-block-subpoena-in-abortion-amendment-lawsuit/

-"Missouri Attorney General Andrew Bailey wants a Cole County judge to block a subpoena seeking records about how he came up with a $21 million cost estimate for a proposed abortion-rights initiative petition. 'Republican' political operative Jamie Corley filed an initiative petition earlier this year that seeks to amend the state constitution… Bailey argued in October that if the amendment were to be approved by voters next year, he would refuse to defend it and would have to hire outside counsel — which he determined would cost $21 million. Corley filed a lawsuit challenging Bailey's estimate, along with the ballot summary written by Secretary of State Jay Ashcroft. As part of that litigation, Corley's attorneys issued a subpoena seeking records from the attorney general's office explaining the cost estimate and the process for hiring outside counsel. In a filing this week with the court, the attorney general moved to quash the subpoena and asked the judge "for a protective order as to this request."… They would be obtainable through the Missouri Sunshine Law, but Bailey's office has such a massive backlog of requests that it is unlikely any records would be produced until late spring… Bailey's office confirmed earlier this month that it has almost finished work on requests filed to the attorney general's office in 2022… The attorney general's office is not a defendant in Corley's lawsuit. Though Bailey's cost estimate is part of the fiscal note, it was the auditor's office that decided to include it in the summary that could appear on the ballot. In arguing for the $21 million cost estimate, Bailey said in October that if Corley's amendment was approved by voters and resulted in any litigation, his office would likely have to hire conflict counsel to represent the state. That's because, Bailey said, he has "staked out a position strongly in favor of protecting the unborn, creating a positional conflict that is untenable for the Attorney General and would necessarily generate greater legal costs." Bailey seemed to back off that argument last month, when he told reporters he is "committed to enforcing the law as written." "I'm not a lawmaker. I'm in the executive branch," he said. "We've (got a) documented history of defending state statute and state constitutional provisions, and we'll continue to do that."

Season of scamming?

The Marshall Mail l John Jones

https://marshfieldmail.com/stories/season-of-scamming,73821

-"With the holiday season upon us, folks are in the spirit of giving. Sadly, many are taking advantage of that generosity. In a recent press release from Andrew Bailey, the Missouri Attorney General, he asks fellow Missourians to be cautious of scammers, especially this time of year…" (Article locked from here)

Editorial: Bailey's campaign funding sources again raise conflict-of-interest issues

STL Post-Dispatch l Editorial Board

https://www.stltoday.com/opinion/editorial/editorial-baileys-campaign-funding-sources-again-raise-conflict-of-interest-issues/article_0742fb74-9908-11ee-97e6-67ac36b44e12.html

AGO Interviews:

AMERICAN OVERSIGHT

Andrew Bailey, Missouri Attorney General, explains why he launched an investigation into Media Matters for deceptive practices and discusses his lawsuit against Washington University for failing to hand over discovery documents amid his investigation into their pediatric transgender clinic.
Washington Watch with Tony Perkins
https://www.frc.org/wwlivewithtonyperkins/warren-davidson-mike-lee-andrew-bailey

AG Andrew Bailey Dana Loesch explain why he's investigating [Media Matters for America] their market manipulation to destroy free speech.
The Dana Show
https://link.chtbl.com/Daily_Dana_Full_Show?sid=TWITTER

Missouri Attorney General Andrew Bailey joins The Benny Show LIVE after launching investigation into Media Matters
The Benny Show l Benny Johnson
https://www.youtube.com/watch?v=1VkPC3z7KVw

Missouri Attorney General Andrew Bailey appears on "Wake Up Mid-Missouri"
Wake Up Mid-MO
https://939theeagle.com/listen-missouri-attorney-general-andrew-bailey-appears-on-wake-up-mid-missouri-2/

-"Columbia Police and city manager De'Carlon Seewood say nine of Columbia's 11 homicides in 2022 involved domestic violence. Columbia's latest homicide also involved domestic violence. 27-year-old John Williamson III is charged with first degree murder for the weekend killing of his ex-girlfriend Azairah Brownlee, who was shot to death in a street. Missouri Attorney General Andrew Bailey tells 939 the Eagle's "Wake Up Mid-Missouri" that domestic violence victims often end up being killed. General Bailey tells listeners that police must investigate domestic violence cases and that that prosecutors must charge the suspects and keep them behind bars. Another topic that came on during our "Wake Up" interview is the recent call from the Mizzou Democratic Socialists of America for Columbia's city council to approve a sanctuary city ordinance to protect its LGBTQ citizens. Columbia spokeswoman Sydney Olsen tells 939 the Eagle that Columbia's legal department and the city's Commission on Human Rights are currently reviewing that request and a similar one from another Columbia resident. General Bailey says he will not let what he calls progressive city leaders undermine state statute, saying state law preempts local control:

AGO Tweets:



AMERICAN OVERSIGHT

Attorney General Andrew Bailey @AGAndrewBailey · 21h

Excited to be joining this conversation this evening.

> **Benny Johnson** @bennyjohnson · 23h
>
> 🚨 MASSIVE ANNOUNCEMENT:
>
> We will be hosting a 𝕏 Space with @TuckerCarlson TONIGHT at 8pm ET with some special guests
>
> ...
>
> Show more
>
> 
>

27 95 423 45K

AMERICAN OVERSIGHT

Attorney General Andrew Bailey reposted

The Benny Show @TheBennyShowPod · 21h

Missouri Attorney General @AGAndrewBailey joins The Benny Show after launching investigation into Media Matters after they wrote a misleading hit piece in an attack on 𝕏 to drive advertisers away

Tune in LIVE on 𝕏



Benny Johnson @bennyjohnson

PANIC: Biden Impeachment BOMBSHELL | Hunter CHARGED, 17 Years in JAIL, Will Testify THIS WEEK

11 51 178 22K

Attorney General Andrew Bailey @AGAndrewBailey · 18h

Excited to share about my team's efforts in the fight for free speech TONIGHT with @TuckerCarlson, @bennyjohnson, and more at 7 PM CT.



41 79 311 25K

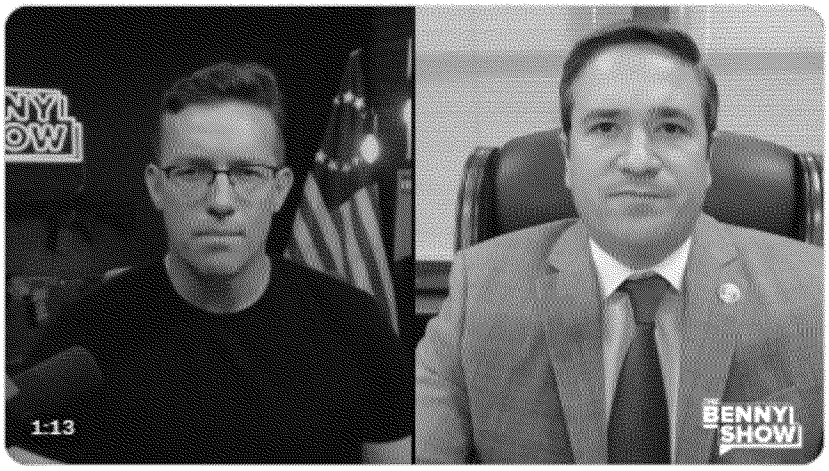
AMERICAN OVERSIGHT

Attorney General Andrew Bailey reposted

Benny Johnson @bennyjohnson · 18h

Attorney General @AGAndrewBailey goes OFF on Media Matters:

"In fact, it wasn't Twitter who was pushing controversial speech; it was Media Matters! Why would they do that? The only explanation would be because they wanted to manipulate the marketplace and drive these...
Show more



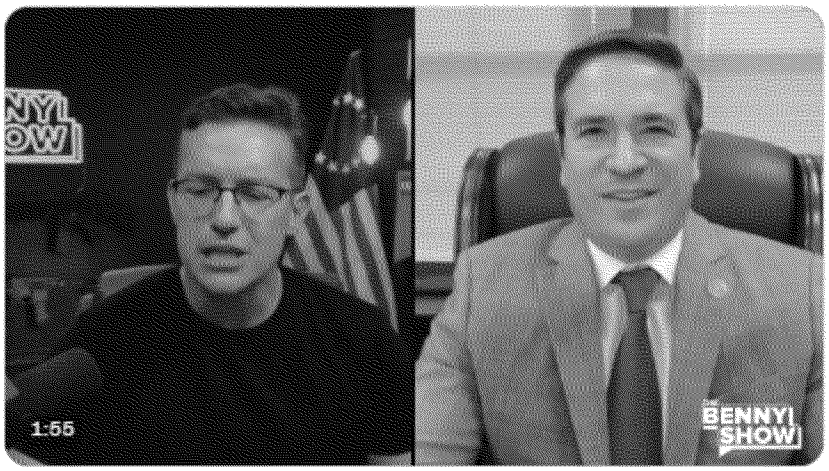
25 130 454 34K

Attorney General Andrew Bailey reposted

Benny Johnson @bennyjohnson · 18h

Attorney General @AGAndrewBailey discusses his announcement against Media Matters:

"Media Matters, a radical-progressive advocacy group, has solicited contributions, donations from Missourians, in a scheme to defraud advertisers on 𝕏."



23 91 475 33K

AMERICAN OVERSIGHT

Attorney General Andrew Bailey reposted

The Dana Show @DanaLoeschRadio · 17h

.@AGAndrewBailey joins @DLoesch to explain why he's investigating @mmfa on their market manipulation to destroy free speech. #DanaRadio

Podcast: link.chtbl.com/Daily_Dana_Ful...



3 17 31 3.7K

Attorney General Andrew Bailey reposted

Tony Perkins @tperkins · 15h

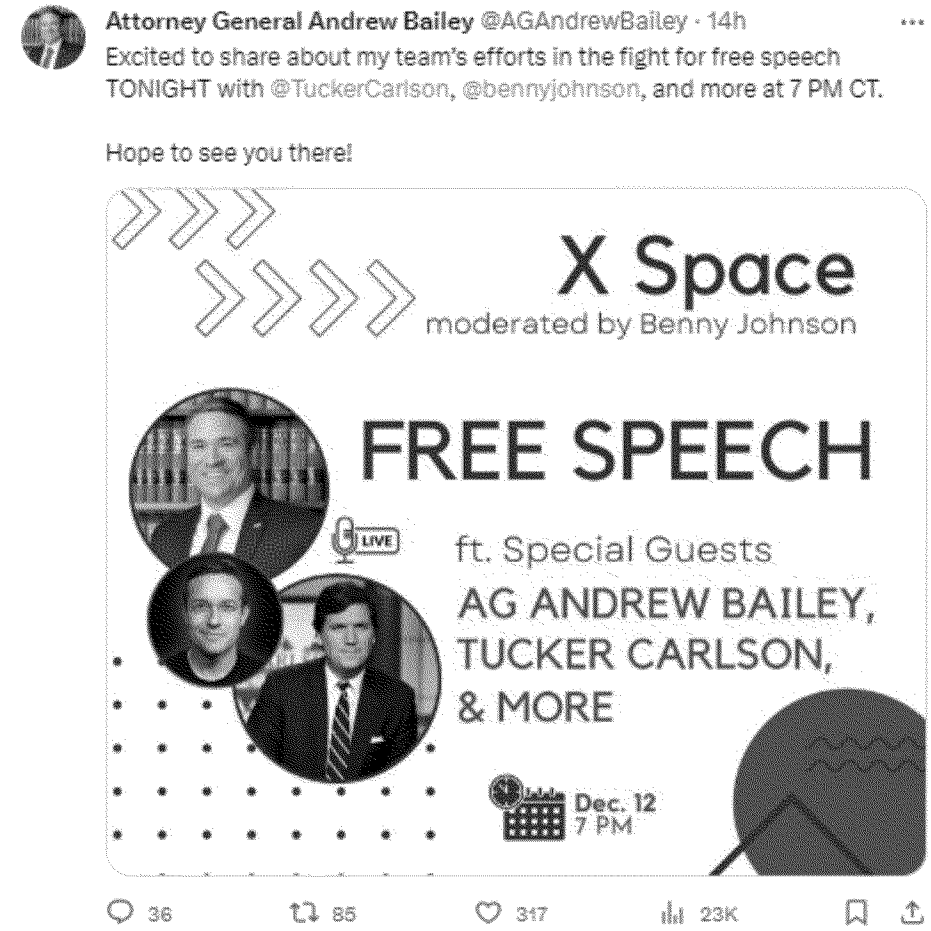
"We have reason to believe that the federal government has whispered in the ears of the clinicians & told them not to comply."

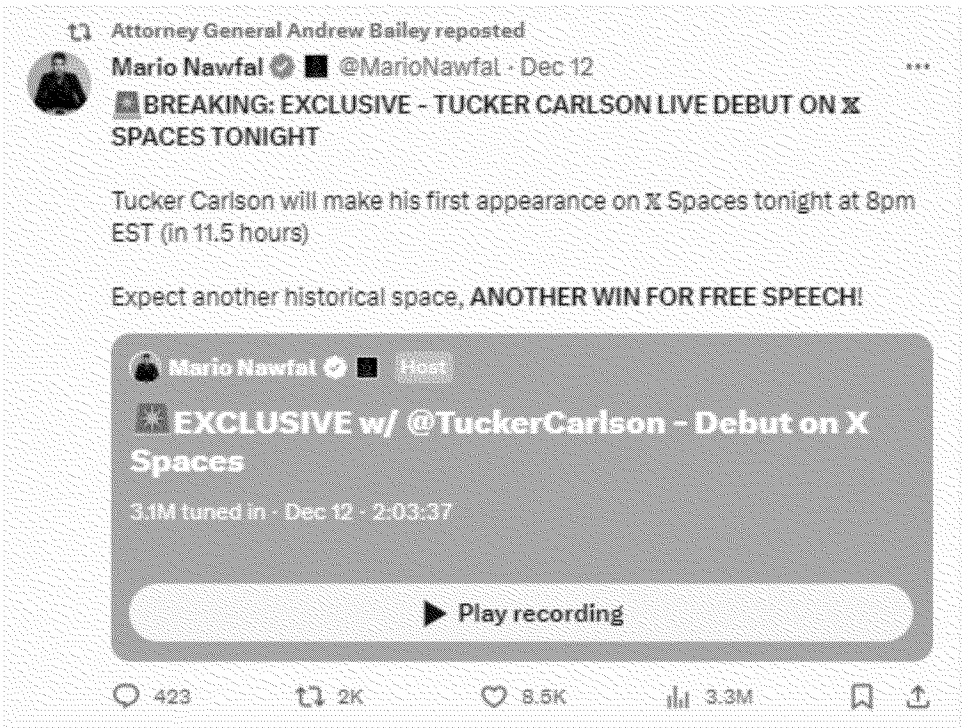
@AGAndrewBailey on his lawsuit against Washington U. for withholding documents during his investigation into their pediatric transgender clinic.



11 17 46 3.6K

AMERICAN OVERSIGHT





Missouri News:

State board votes to divest Missouri pension fund from China

Missouri Independent l Rudi Keller

https://missouriindependent.com/2023/12/12/state-board-votes-to-divest-missouri-pension-fund-from-china/

-"The board overseeing Missouri's largest state employee pension fund voted Tuesday tosell most of its investments in Chinese-owned companies, reversing a decision it made last month. The divestment by the Missouri State Employees Retirement Fund will take place over the next 12 months, with an allowance to stretch that to 36 months to avoid financial losses as investments are sold. In a special meeting called at the urging of Gov. Mike Parson, the 11-member MOSERS Board of Trustees voted 9-2 in favor of the motion by state Treasurer Vivek Malek to sell the stocks and other investments. Only former MOSERS Executive Director Gary Findlay, elected to the board to represent retirees, and state Sen. John Rizzo, one

AMERICAN OVERSIGHT

of four legislators on the board, opposed the motion. Rizzo accused Malek of playing politics with state investments to boost his chances in the 2024 Republican primary for his office… Malek denied that he was opposed to Chinese investments for political reasons… During the meeting, Malek argued that economic problems in China, along with its aggressive posture toward Taiwan and friendship with Russia, are all good reasons for divesting. The board voted in March 2022, just days after the invasion of Ukraine, to sell its assets with Russia ties. At the time, the value of those investments had been reduced to where they were essentially worthless… Asked after the meeting why his motion wasn't as broad as the divestment from South Africa, Malek said they are two very different situations. "South Africa was a moral issue," Malek said. "Now we are dealing with an economic issue."…"

Draft Defense Budget Cuts Federal Aid for People and Places Exposed to Radiation by Nuclear Arsenal

Epoch Times l John Haughey

https://www.theepochtimes.com/us/draft-defense-budget-cuts-federal-aid-for-people-and-places-exposed-to-radiation-by-nuclear-arsenal-5546064?ea_src=frontpage&ea_med=top-news-us-politics-0-large-0

-"Uranium ore was processed into weapons-grade plutonium on an industrial scale for the first time in a Mallinckrodt Chemical Co. plant north of downtown St. Louis, Missouri, in December 1942 as part of a secret project. That first-generation plutonium, which existed on no manifest, was trucked to nearby warehouses along 19-mile Coldwater Creek, loaded onto coal trains bound for Canon City, Colorado, and eventually on to Alamogordo, New Mexico… Nearly 80 years later, senators from Missouri and New Mexico said during Dec. 12 floor proceedings on the draft $886.3 billion defense budget, or National Defense Authorization Act (NDAA), that this shared legacy links the states in ushering in the atomic age, sustaining the nation's Cold War era nuclear weapons arsenal for decades, and in cancer-stricken families and poisoned lands. Sens. Josh Hawley (R-Mo.) and Ben Ray Lujan (D-N.M.) said the price paid by workers who built "the bomb" and their families in sites across the country goes largely ignored by indifferent federal agencies. More infuriating, both senators fumed in often fiery rebukes, is that an ungrateful Congress has failed for decades to adequately mitigate costs imposed to this day on former and present residents of communities sickened and scarred by radiation from nuclear weapons development and testing. And even more shocking, they scolded the chamber, is their amendment to extend the expiring Radiation Exposure Compensation Act to sustain assistance to people and places struggling from nuclear fallout was yanked from the Fiscal Year 2024 NDAA. "This is not right. These are good people who have done nothing wrong. Their government has caused this," Mr. Hawley said… Their amendment, approved by the Senate 61–37 in July, was removed by Senate–House leaders in "a backroom deal," Mr. Hawley said. He chastised Senate Minority Leader Mitch McConnell (R-Ky.) and House Speaker Mike Johnson (R-La.) for allowing it to be cut as a "pay for" expenditure without a dedicated revenue source other than the general fund. Mr. Hawley called that objection callous when considering "the billions of dollars in costs that the government has imposed on these people, taking their health, taking their lives, over decades" of often negligent exposure while building and sustaining the nation's nuclear weapons arsenal. He said while the NDAA is larded with $26 billion in "programs [DOD] doesn't even want," including $15 billion for 636 projects "the Pentagon says it doesn't need," Senate and House leaders "are saying, 'We don't have a dime for these people' who have, let's just tell it like it is, been poisoned by their own government." Mr. Hawley said federal agencies and Congress should demonstrate the faith in their nation these people did and do… Mr. Hawley acknowledged before the vote that fellow senators were "all too eager to move on" in adopting the defense budget, already more than two months late. Shortly after, the Senate agreed in an 85–15 vote to move the NDAA for floor adoption Dec. 13. But rest assured, he said, the Manhattan Project will continue to live on in Missouri, as it has long since Mallinckrodt Chemical Co. closed its St. Louis plant in 1957… "I don't know what to say when I go home and see her because this legislation, which passed with a strong bipartisan vote in the Senate, has been taken out of the NDAA. What do I tell these families?'"

Are Missouri's Scholarship Amounts Keeping Students in the Show Me State?

MissouriNet l Alisa Nelson

https://www.missourinet.com/2023/12/13/are-missouris-scholarship-amounts-keeping-students-in-the-show-me-state/

-"Missouri's college scholarship program that is designed to keep the best and brightest in the Show Me State has a maximum award amount of $3,000 annually per student. State Department of Higher Education and Workforce Development Deputy Commissioner Leroy Wade told a panel of lawmakers Tuesday that the individual Bright Flight scholarship program amount has not changed in about a decade. Rep. Ed Lewis, who chairs the Missouri House Subcommittee on Appropriations – Education, questioned whether the amount is enough. "We're giving them a $3,000 piece of change," said Lewis, R-Moberly. "And yet Illinois wants to give them $10,000, or Kansas wants to give them $6,000, or something for the same thing. We're not helping ourself…" The scholarship award is up to $3,000 annually for those in the top 3% and up to $1,000 for those in the fourth and fifth percentiles. The department is requesting $29 million in the next state budget to fund the Bright Flight scholarship program… The maximum awards granted annually through the Access Missouri scholarship program are $1,300 to community college students and about $2,800 to four-year college students. "A number of college presidents that are expressing concern about their ability to basically compete for some of these students at other states were providing more lucrative, if you will, student financial aid or were waiving out-of-state tuition, those kinds of things, and it was putting them at a competitive disadvantage," Wade said. According to Wade, changing the scholarship award amount would require the Missouri Legislature to change law… Wade said interest in the program peaked around 2015,

AMERICAN OVERSIGHT

when about 50,000 students received a scholarship. Last year, the state awarded nearly 36,000 Access Missouri scholarships. The department is requesting $84 million in the next state budget to fund the program… Missouri's Fast Track Workforce Incentive program covers tuition and fees for adults furthering their education to get a high-demand job. Fast Track is available to eligible Missourians 25 years or older seeking a certificate, degree, apprenticeship, or industry-recognized credential. Wade said the average grant amount is about $3,700… Ben Boggs, the commissioner of the Missouri Department of Higher Education and Workforce Development, told the subcommittee that expanding eligibility for the program could be helpful… The grant must be repaid if the recipient fails to live and work in Missouri for three years after completing their program or apprenticeship. Missouri law requires the state's public colleges and universities to limit the amount of tuition charged to combat veterans to $50 per credit hour. The Missouri Returning Heroes Education Act has helped about 500 veterans go back to school… Under the program, the tuition charged to combat veterans enrolled in graduate programs must be limited to no more than 30% of the cost of tuition and fees."

Lawsuit: St. Louis-area agency bungled student loan forgiveness, cost borrowers millions

STL Post-Dispatch l Katie Kull

https://www.stltoday.com/news/local/education/lawsuit-st-louis-area-agency-bungled-student-loan-forgiveness-cost-borrowers-millions/article_a1c78ba4-990f-11ee-ad49-abbc376af1c4.html#tracking-source=home-top-story

-"People across the U.S. say the Missouri Higher Education Loan Authority, or MOHELA, takes hours to answer phone calls and has failed for over a year to make progress on loan forgiveness applications. The result is that people who took jobs in the public sector 10 years ago with the promise of federal loan forgiveness are still making payments while their loans accrue interest. Borrowers are now demanding MOHELA pay more than $5 million in damages… An unnamed representative for MOHELA said the agency had not yet been served with the lawsuit but noted it does not have the authority to update payments or forgive loans. The filing comes amid an unprecedented surge in loan repayments after a three-year pandemic hiatus that left servicers like MOHELA struggling to keep up with customer service demands. In October, the U.S. Department of Education announced it would penalize MOHELA for failing to send 2.5 million borrowers their billing statements on time… MOHELA, a college loan agency created by Missouri law that has grown to service loans across the country, continued to take on more accounts. In 2022, it became the servicer for the public student loan program and earned $68.7 million in fees, according to the lawsuit. Its operating revenues increased from $114.7 million in fiscal year 2022 to $358.6 million in 2023. But customer service problems persisted. In September, a group of six U.S. senators sent a letter to MOHELA expressing "severe concerns" from borrowers, who reported they hadn't received credit for all of the payments they had made to qualify for the public loan forgiveness and had seen "long wait times" when trying to contact the nonprofit's representatives. Borrowers filed more than 3,200 complaints with the federal Consumer Finance Protection Bureau about MOHELA between Dec. 15, 2022, and Nov. 28 of this year, the lawsuit says. People complained about not being able to get in touch with anyone at the servicer and not being credited for previous payments… On Monday, two borrowers — Jennifer Joy, of Colorado, and Misty Thomas, of Florida — filed a class-action suit in St. Louis federal court on behalf of themselves and potentially scores of others who have been impacted by the problems at MOHELA. They are alleging violations of Colorado and Florida consumer protection laws, as well as breach of contract, negligence, breach of fiduciary duty and violations of federal debt collections laws…"

Court backs worker in fight over discrimination in Missouri House

STL Post-Dispatch l Kurt Erickson

https://www.stltoday.com/news/local/crime-courts/court-backs-worker-in-fight-over-discrimination-in-missouri-house/article_7b9b9806-9925-11ee-bab3-bf461f7d5980.html

-"A state appeals court sided Tuesday with a former Capitol staffer who won a $3.3 million worker discrimination judgment last year. The Missouri Court of Appeals at Kansas City denied an appeal by the House of Representatives but sent the matter back to a lower court to determine the fate of more than $1 million in legal fees awarded in the case. At issue were claims by former House research staff member Eric Qualls, who said he was discriminated against when he was fired in 2017. Qualls alleged that his supervisors failed to accommodate for his medical disability and that he was fired after he said he would report them to the Missouri Human Rights Commission. Court records show that Qualls was diagnosed with several mental health disorders, including anxiety symptoms that could lead to possible panic attacks… In his lawsuit, Qualls identified several ways the House could accommodate his disability but said that officials "seemed indifferent" and they could not see "a process for moving forward." A Cole County jury ruled in Qualls' favor last year, awarding him $2.02 million total in damages for discriminatory practices, disability discrimination and retaliation by the state and Adam Crumbliss, who was at the time chief clerk of the House. In its 23-page decision, the appeals court said Qualls presented "sufficient and substantial evidence" that he had a disability. House officials, the three-judge panel wrote, had the opportunity to provide accommodations to help Qualls fulfill his job duties, but did not provide them. Money for the judgment will come out of the state's Legal Expense Fund, which is paid for by taxpayers."

Missouri House Democrat calls for ouster of Shrewsbury state rep from caucus

STL Post-Dispatch l Jack Suntrup

https://www.stltoday.com/news/local/government-politics/missouri-house-democrat-calls-for-ouster-of-shrewsbury-state-rep-from-caucus/article_8b475036-9945-11ee-b25d-e3f3e17972df.html

MEDICAID OVERSIGHT

-"Rep. Keri Ingle, D-Lee's Summit, said in a news release that state Rep. Sarah Unsicker of Shrewsbury "failed to denounce" antisemitic attacks, as well as accusations that members of their caucus worked for the Israeli government, in a recent livestreamed conversation with conspiracy theorists. Her press release said Democratic caucus leadership should "begin the process" of removing her… Her press release added that Unsicker had helped "propagate hateful, antisemitic, and conspiratorial and racist rhetoric which has hurt people and sparked online harassment campaigns."… Ingle's call Tuesday follows action by House Minority Leader Crystal Quade last week stripping Unsicker of her committee posts after Unsicker posted a picture of herself online with Charles Johnson and Eric Garland… Though Quade removed Unsicker from House committees last week, as of Tuesday Unsicker was still listed as the lone House Democrat serving on the Missouri Statewide Council on Sex Trafficking and Sexual Exploitation of Children, a panel created under a 2022 state law… The committee chairman, state Rep. Ed Lewis, said in a Friday news release that the panel would publish its legislative recommendations on or before Dec. 31."

Missouri education board frees up money to expand childcare

Daily Journal l No Author Listed

https://dailyjournalonline.com/2023/12/13/missouri-education-board-frees-up-money-to-expand-childcare/

-"Missouri's Board of Education changed a rule Dec. 5 that had prevented many childcare providers from accessing the $26 million in grant funding allocated by lawmakers this year. The grant money was set aside for community-based childcare providers to expand access to pre-kindergarten but included certification requirements that shrank the pool of eligible providers. Around $7 million of that fund has so far been awarded or is expected to be awarded from the September and November rounds of applications. The vote to change the requirements was unanimous, effective immediately, to carry out the goal of expanding access to childcare across the state — "a huge priority and a huge need," said Kari Monsees, Missouri's deputy education commissioner… Previously, childcare providers needed to prove they had a traditional teaching certification, which Hanson said is a "much higher threshold than the national standard."… The rule change expands the qualifications that childcare staff can have to be considered eligible for state funds. That includes allowing teachers who have a bachelor's or associate's degree in childhood development to qualify. The education department's spokesperson, Mallory McGowin, said it has begun awarding grants in two rounds since September, totaling just over one-quarter of the total fund."

Ag-ing Up the PSC

MoScout

Ag-ing Up the PSC

Sen. **Mike Bernskoetter** and Rep. **Mike Haffner** have bills which would require the addition of Public Servic who are "actively engaged in production agriculture."

Both would increase the size of the commission from five to seven members and forbid any congressional distri providing more than one commissioner. Bernskoetter's bill would require two commissioners to be active farm Haffner's would require three.

These appear to be a response to PSC approving the Grain Belt Express's route through rural Missouri.

What It Means

Together with Senate Floor Leader **Cindy O'Laughlin**'s SB 758 which would chop PSC terms, we're seeing a against at the commission's independence.

· Supporters of the PSC say it's important that they make decisions brd on the best long-term outcomes for than what's politically easiest.

National News:

After Affirmative Action Win Over Harvard, Group Takes on West Point

Epoch Times l Michael Washburn

https://www.theepochtimes.com/article/after-affirmative-action-win-over-harvard-group-takes-on-west-point-5545073

-"The group that triumphed in a landmark Supreme Court case that struck down affirmative action policies at Harvard University earlier this year hopes to build on the victory with a lawsuit targeting similar policies at the U.S. Military Academy at West Point. Students for Fair Admissions (SFFA) filed the lawsuit on Sept. 19 with high hopes, but the organization has strayed into a legal and political minefield as the academy and the Biden administration try to block the lawsuit on the grounds that an institution training military officers isn't subject to the same rules as private universities and that diversity, equity, and inclusion (DEI) policies help, rather than hinder, effectiveness in combat. Largely as a result of the

AMERICAN OVERSIGHT

perceived disparity between those standards that apply to private colleges and universities and those applicable to entities under federal oversight, the SFFA faces one of the most formidable legal challenges, the outcome of which will have implications for every school and academy in the nation… In December 2022, revisions to the Obama-era Department of Defense (DOD) Instruction 1300.28 altered official DOD vocabulary regarding transgender recruits, made officers more directly liable for perceived offenses against such persons, and gave official approval to cross-dressing on military bases, among other changes. President Biden's general DEI stance makes the SFFA litigation one of the most impactful lawsuits so far undertaken against a military institution in modern history."

Biden DOJ Taps Group Funded By Deep-Pocketed Left-Wing Orgs To Guide Gun Violence Reduction Efforts

Daily Caller l Robert Schmad

https://dailycaller.com/2023/12/12/biden-doj-taps-group-funded-by-deep-pocketed-left-wing-orgs-to-guide-gun-violence-reduction-efforts/

-"The Department of Justice (DOJ) released its Violent Crime Reduction Roadmap Monday, a collection of resources meant to "assist local jurisdictions in developing, implementing, and evaluating the right set of strategies to prevent, intervene in, and respond to acts of community gun violence." The DOJ said the strategies presented in the roadmap are based on a report produced by the "nonpartisan" Council on Criminal Justice (CCJ), a think tank that received around $3 million from left-of-center organizations like the Ford Foundation, Arnold Ventures, The Pew Charitable Trusts, the John D. and Catherine T. MacArthur Foundation, the Just Trust and the David Rockefeller Fund between 2020 and 2022, according to tax filings. The DOJ produced the roadmap in response to what it called "substantial increases in community gun violence" occurring across the country… Homicide rates remained 24% higher in 2023 than they were in 2019 across the 30 cities that reported data to CCJ. Some crimes, like motor vehicle theft and drug use, increased further in 2023 according to the study. The DOJ roadmap is based on actions recommended by the CCJ such as heightened community engagement, targeted investments to reduce crime and implementing diversity initiatives in police forces to improve retention, among other things… Some of the organizations that fund the CCJ promote initiatives to embed racial justice in the criminal justice system, shorten the amount of time criminals spend in jail and reduce the number of people put in jails after committing crimes… One such resource provided by the DOJ was a 2023 report on improving retention for law enforcement agencies. The report recommends that law enforcement "recruit for diversity" and to "address diversity, equity and inclusion" to improve performance. Specifically, the report advises agencies to commit to having 30% of their recruits be female by 2030, to "ensure the skill sets possessed by officers from diverse backgrounds are considered as part of the promotional process" and address policies "that may erect barriers to establishing a culture of equity and inclusion.".. The DOJ also touted the recent availability of grant funding to improve racial equity through prosecutorial reform. Some grants highlighted by the DOJ intended to help prosecutors "reduce crime and increase public safety" by developing tools to increase racial equity in the criminal justice process…"

Seizing Private Land Is Next Step in Fight Against Climate Change

Epoch Times l Kevin Stocklin

https://www.theepochtimes.com/article/seizing-private-land-is-next-step-in-fight-against-climate-change-5544056

-"The dream of net-zero carbon emissions—and its vision of blanketing hundreds of millions of acres of American land with wind turbines and solar panels—is running up against the reality that most of the land in America is still privately owned and many Americans don't want these massive industrial installations near their homes. But that may prove to be a temporary impediment. "There is a major effort under the Biden administration to consolidate power over land and resources, because whoever owns the land and resources of a nation, controls the people," Margaret Byfield, executive director of American Stewards of Liberty, a property rights nonprofit, told The Epoch Times… Today, she sees another land grab coming in the form of the Green New Deal and the renewable energy industry. Analysts speculate that in order to meet net-zero goals and build out a renewable energy infrastructure, enormous swaths of land will have to be converted for industrial use. "With current siting practices, an area the size of Texas is required to accommodate the wind and solar infrastructure we need to reach nationwide net-zero emissions by 2050," said Katharine Hayhoe, chief scientist of The Nature Conservancy (TNC), a renewable energy advocate. Reaching the goal of net-zero carbon dioxide (CO_2) emissions by 2050 would require consuming more than 250,000 square miles, or 160 million acres, of land, according to TNC's May report… For the net-zero industry, however, centralizing land rights may solve this problem. A 2020 report by Vanderbilt Law School faculty J.B. Ruhl and James Salzman states that "the multi-faceted infrastructure goals of the Green New Deal will be impossible to achieve in the desired timeframes if the existing federal, state, and local siting and environmental protection statutory regimes are applied."… The authors advocate for "more streamlined, top-down, preemptive processes, as well as extensive use of eminent domain powers" to speed the development of wind and solar projects… This belief is resonating with government officials, both at the federal level and also within left-leaning states… In addition to government authority, private companies are also seeking the power to take land in the name of net zero. A test case is currently playing out in western states over carbon-capture pipeline projects, in which private companies are attempting to take people's land by eminent domain, insiders say. Two companies, Summit Carbon Solutions and Navigator CO_2 Ventures, have been attempting to construct carbon sequester pipelines through five western states… Navigator, which is 84 percent owned by asset manager behemoth BlackRock, has put its project on hold because of local resistance and

AMERICA OVERSIGHT

reportedly hasn't made attempts to take land by eminent domain… In addition to the land acquisition for net zero, the Biden administration announced its 30x30 program in a January 2021 executive order. The order states that 30 percent of America's land and water should be set aside for "conservation" by 2030…"

Outcry follows Harvard decision to retain Claudine Gay after disastrous hearing

Washington Examiner l Jeremiah Poff

https://www.washingtonexaminer.com/policy/education/outcry-follows-harvards-decision-retain-claudine-gay

-"The corporation, which oversees the Ivy League university, announced the university would retain Gay as president despite a tumultuous two months, during which Gay declined to say if calling for the genocide of Jews violated the university's code of conduct at a congressional hearing. Gay has also faced accusations of plagiarism, which the corporation said did not violate "Harvard's standards for research misconduct" despite having to correct two of Gay's past works for "inadequate citation." The announcement from Harvard was widely criticized by those who had called for Gay's ouster, including Rep. Elise Stefanik (R-NY), who was the lawmaker whose questioning prompted the testimony from Gay that placed her fate as the leader of the school in jeopardy. "This is a moral failure of Harvard's leadership and higher education leadership at the highest levels," Stefanik said Tuesday. "And the only change they have made to their code of conduct, where they failed to condemn calls for genocide of the Jewish people, the only update to the code of conduct is to allow a plagiarist as the president of Harvard." Speaker of the House Mike Johnson (R-LA) likewise called the decision to retain Gay "outrageous" in a post on X, formerly Twitter…"

House GOP impeachment vote tests Biden's support with influential voting bloc

Washington Examiner l Naomi Lim

https://www.washingtonexaminer.com/news/white-house-biden-impeachment-political-risks

-"As much as the White House, the Biden campaign, and Biden push back on the House Republican allegations, with less than a year until the 2024 election, every minute he spends talking about the possibility of impeachment is one less minute he can spend persuading people to vote for him next November. House Republicans voting Wednesday on whether to formalize their impeachment inquiry into Biden raises questions about the president's judgment regarding his family and their business dealings, particularly concerning his son Hunter Biden, according to pollster David Paleologos. That may put pressure on Biden, at the White House or on the campaign trail, to become more partisan, which independent voters may find unappealing, per Paleologos, director of Suffolk University's Political Research Center. Biden outperformed former President Donald Trump among independents in 2020 by 13 percentage points, 54%-41%... After the White House tried to distance Biden from the House GOP's informal impeachment inquiry commenced by former House Speaker Kevin McCarthy (R-CA) amid federal government shutdown negotiations last fall, the administration and Biden's campaign have started providing sharper responses to the investigation. Before that, the White House Office of the General Counsel and Biden's personal lawyers were more prepared to mount more strident defenses. For example, the former has repeatedly underscored a lack of evidence despite having access to witness testimony and documents… Biden did not react to shouted questions about the House Republican impeachment inquiry vote after his joint press conference with Ukrainian President Volodymyr Zelensky on Tuesday."

UN General Assembly Passes Ceasefire Resolution, Israeli Ambassador Says It 'Does Not Mention Hamas'

Epoch Times l Caden Pearson

https://www.theepochtimes.com/world/un-general-assemblys-ceasefire-resolution-does-not-mention-hamas-says-israeli-ambassador-5545909?ea_src=frontpage&ea_med=lead-story-0-large-0

-"Israel's ambassador to the United Nations condemned the General Assembly's passage of a resolution urging an immediate ceasefire in the Israel-Hamas conflict as "hypocritical" and ultimately aiding the terror group's goal to destroy Israel. On Tuesday, the U.N. General Assembly passed a non-binding resolution demanding an immediate humanitarian ceasefire, the release of Israeli hostages captured by Hamas, and compliance with international humanitarian law for the protection of civilians. The resolution, which does not mention Hamas after the assembly rejected two proposed amendments, garnered substantial support, with 153 countries in favor, 10 against, and 23 abstentions. The United States and Israel were among the ten countries opposing the resolution. Israeli U.N. Ambassador Gilad Erdan, who highlighted the "heinous acts of sexual violence" Hamas terrorists committed in their Oct. 7 rampage in southern Israel, decried the General Assembly's move as "another hypocritical resolution." The General Assembly's resolution comes after a binding U.N. Security Council ceasefire resolution was vetoed by the United States on Friday… "Not only does this resolution fail to condemn Hamas for crimes against humanity, it does not mention Hamas at all," said Mr. Erdan. "This will only prolong the death and destruction in the region; that is precisely what a ceasefire means."… During his speech, he held up a poster displaying the phone number of Hamas' office in Gaza, urging U.N. members to call it if they want a "real ceasefire."… Last week, U.N. Secretary-General Antonio Guterres invoked Article 99 of the U.N. Charter to force the Security Council to address the Israel-Hamas conflict. Article 99, invoked for the first time since Mr. Guterres assumed office in 2017, is reserved for crises that threaten international peace and security… "Hamas raped women, committed heinous acts of sexual violence, took women and girls hostage, and is not only refusing to release them, but is also refusing the Red Cross's access to them," Mr. Erdan said. "There are no war crimes more heinous than the atrocities Hamas committed, and those that support this resolution are giving the terrorists a free pass," he added."

AMERICAN OVERSIGHT

I hope everyone has an amazing day!
Best,
Bennett Lyday | Policy & Operations Specialist
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
O: (573) 751-4390
C: (573) 645-9671
Bennett.Lyday@ago.mo.gov

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Lewis, Jason[Jason.Lewis@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Wagner, Ray[Ray.Wagner@ago.mo.gov]
From: Lyday, Bennett[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EACD91D740F2406EB8A1385B65BBDDED-LYDAY, BENNETT]
Sent: Thur 12/14/2023 9:37:52 AM (UTC-06:00)
Subject: Daily News/Media Roundup - Thursday, December 14th, 2023

Good morning all,
Below is the relevant news for today and yesterday relating to the AGO, Missouri, and Nation:

AGO News:

Shouting out the men and women of integrity who stood up for freedom in 2023
New York Post l Miranda Devine
https://www.msn.com/en-us/news/us/shouting-out-the-men-and-women-of-integrity-who-stood-up-for-freedom-in-2023/ar-AA1ltjoB?ocid=Peregrine

-"In the spirit of Christmas cheer, here is a shout out to some of the men and women of integrity who stood up this year to advance the cause of freedom with honor. When the world gets back on its moral axis again, as I am certain it will, they will be feted by history as the heroes who saved us from ruin:… IRS whistleblowers Gary Shapley and Joseph Ziegler… FBI whistleblowers Steve Friend, Kyle Seraphin, Garrett O'Boyle, Marcus Allen, and nameless colleagues still serving… Missouri Attorney-General turned-US Senator Eric Schmitt, his successor Andrew Bailey, and Louisiana Attorney General Jeff Landry (now governor-elect), who launched the landmark free speech case, Missouri v Biden, that exposed how the federal government has been pressuring social media companies to censor Americans who hold dissident views on everything from the efficacy of masks and lockdowns to the Ukraine war and true stories about Hunter Biden's laptop. It's heading for the Supreme Court, but it has put a crimp in the plans of government censors ahead of next year's election. A special shoutout to lawyer Jenin Younes, who represented plaintiffs in the case. Elon Musk… Riley Gaines and Chloe Cole and those who stood up against a vicious transgender ideology that drives the erasure of women and the genital mutilation of children. Drs Jay Bhattacharya, Martin Kulldorff, and their Great Barrington Declaration compatriots who opposed lockdowns and mandates and all the fake statistics and lies about COVID-19. Independent journalists (formerly lefties) Matt Taibbi, Michael Shellenberger and Bari Weiss and others who have seen the light – or stood their ground – and now use their gifts for good…"

Callaway County killer gets execution date
ABC 17 l Matthew Sanders
https://abc17news.com/news/crime/2023/12/13/callaway-county-killer-gets-execution-date/

-"A man convicted in 2008 of the murders of a New Bloomfield couple is set to be executed in April. Missouri Attorney General Andrew Bailey asked the Missouri Supreme Court in February to set an execution date for Brian Dorsey. Dorsey was convicted of two counts of first-degree murder in the killing of his cousin, Sarah Bonnie, and her husband, Ben, on Dec. 23, 2006. He was convicted on a change of venue in Boone County. Dorsey has unsuccessfully appealed his sentence and the court ordered that he be executed on April 9. The U.S. Supreme Court rejected Dorsey's request to overturn his death sentence in February. Dorsey claimed his lawyers did not properly investigate factors that might have convinced a jury to give him a life sentence in prison. Dorsey's previous appeals argued that his ongoing drug addiction and depression would have made it impossible for him to have deliberately killed the Bonnies."

UPDATE: Convicted double killer from mid-Missouri's New Bloomfield to be put to death in 2024
KFAL l No Author Listed
https://kfalthebig900.com/2023/12/update-convicted-double-killer-from-mid-missouris-new-bloomfield-to-be-put-to-death-in-2024/

-"The state Supreme Court has scheduled an April 9 execution date for a convicted double killer from mid-Missouri's New Bloomfield. The Supreme Court issued a two-page order this morning. The 51-year-old Dorsey is under two death sentences for the gruesome Christmas Eve 2006 deaths of his cousin Sarah Bonnie and her husband Ben Bonnie. Both victims were shot in the head with a shotgun at their Callaway County home. Missouri Attorney General Andrew Bailey says Dorsey also sexually assaulted Sarah and that he stole a car, firearms, medical supplies, a social security card and the couple's daughter's copy of Bambi II after the murders. Barring intervention from a federal judge or the U.S. Supreme Court or clemency from Missouri Governor Mike Parson, Dorsey will be executed by lethal injection in April at the maximum-

AMERICAN OVERSIGHT

security prison in southeast Missouri's Bonne Terre."

Execution date set for Missouri man who killed his cousin and her husband in 2006

Columbia Missourian l Jim Salter (AP)

https://www.columbiamissourian.com/news/state_news/execution-date-set-for-missouri-man-who-killed-his-cousin-and-her-husband-in-2006/article_b1ea3ea0-a346-5ec1-87bc-9e501bf684d1.html

-"The Missouri Supreme Court on Wednesday set an April execution date for Brian Dorsey, a central Missouri man convicted of killing his cousin and her husband in 2006. The execution is scheduled for 6 p.m. April 9 at the state prison in Bonne Terre. It would be the first in 2024 in Missouri. Four of the 24 executions in the U.S. this year were in Missouri. Dorsey, formerly of Jefferson City, was convicted of killing his cousin, Sarah Bonnie, and her husband, Ben, on Dec. 23, 2006, at their home near New Bloomfield. Prosecutors said that earlier that day, Dorsey had called Sarah Bonnie seeking to borrow money to pay two drug dealers who were at his apartment. Dorsey went to the Bonnies' home that night. After they went to bed, Dorsey took a shotgun from the garage and killed both of them before sexually assaulting Sarah Bonnie's body, prosecutors said. Sarah Bonnie's parents found the bodies the next day. The couple's 4-year-old daughter was unhurt. Dorsey pleaded guilty in 2008 but later appealed the death sentence, claiming he should have instead been sentenced to life in prison without parole. The Missouri Supreme Court upheld the death sentence in 2010. Another appeal filed on behalf of Dorsey alleged that he was suffering from mental illness at the time of the killings and that his lawyer was ineffective. The state Supreme Court again upheld the death sentence in 2014. Missouri was among just five states to perform executions this year. The others were Texas, Oklahoma, Alabama and Florida."

Missouri set to continue executions in 2024 with date set for man convicted in double murder

The KC Star l Katie Moore

https://ca.news.yahoo.com/missouri-set-continue-executions-2024-172343326.html

-"A man's execution date has been set for April 2024, the Missouri Supreme Court announced on Wednesday. It is the only execution scheduled next year in Missouri so far. Brian J. Dorsey, 51, was charged in the 2006 killing of his cousin Sarah Bonnie and her husband Ben Bonnie. Their bodies were found in their home in New Bloomfield, in central Missouri, the Associated Press reported at the time. According to a motion, the couple had taken Dorsey into their home to help him escape drug dealers who were seeking to collect a debt he owed them. In 2008, he was convicted on the two counts of first-degree murder in Boone County. His appeals, including with the U.S. Supreme Court, have been denied. In February, Missouri Attorney General Andrew Bailey requested Dorsey's execution date be set. The warrant of execution goes into effect at 6 p.m. on Tuesday, April 9. Missouri Gov. Mike Parson has not granted clemency in a death penalty case. Missouri was one of five states that carried out executions in 2023, according to a report published earlier this month by the Death Penalty Information Center… Missouri executed four people this year, including two men who were granted temporary stays. No new capital sentences were handed down this year in the state. Twelve people remain on death row in Missouri, including Marcellus "Khaliifah" Williams, who says DNA evidence proves he was wrongfully convicted. The Missouri Attorney General's Office has requested an execution date be set in that case. Williams filed a lawsuit in August contending that going forward with his execution would violate his constitutional rights to due process…"

'Progressive Tyrants': Missouri AG Launches Investigation Into Media Matters

Daily Wire l Leif Le Mahieu

https://www.dailywire.com/news/progressive-tyrants-missouri-ag-launches-investigation-into-media-matters

-"Missouri Attorney General Andrew Bailey announced this week an investigation into Media Matters for America over accusations that the outlet intentionally misled readers about X to pressure advertisers to pull support from the social media platform. Last month, Bailey indicated that he would be looking at Media Matters after it published an article claiming X was placing ads for major corporations alongside Nazi-related content. Musk responded to the article by filing a lawsuit and saying it was "contrived" and a "fraudulent attack." After the report, several major corporations like Apple and IBM announced they would pull advertising from X. "We have reason to believe Media Matters used fraud to solicit donations from Missourians in order to trick advertisers into pulling out of X, the last platform dedicated to free speech in America. Radicals are attempting to kill Twitter because they cannot control it, and we are not going to let Missourians get ripped off in the process," Bailey said in a statement. "I'm fighting to ensure progressive tyrants masquerading as news outlets cannot manipulate the marketplace in order to wipe out free speech." In a letter on Monday to Media Matters President Angelo Carusone, Bailey said that he believed the outlet might have violated Missouri consumer protection laws, "including laws that prohibit nonprofit entities from soliciting funds under false pretenses." Bailey told Carusone to preserve any communication regarding the outlet's story on X and any communications on their "efforts to manipulate those advertisers into pulling their ads from the platform." Missouri's investigation follows an announcement from Texas Attorney General Ken Paxton that he would be probing the outlet… Media Matters has responded to Paxton's investigation by filing a lawsuit, arguing that he had violated the First Amendment… Musk has claimed Media Matters was trying to undermine free speech on X because "they perceive it as a threat to their ideological narrative and those of their financial supporters.'"

Second tax prep firm settles Missouri case

STL Post-Dispatch l Kurt Erickson

AMERICAN OVERSIGHT

https://www.stltoday.com/news/local/crime-courts/second-tax-prep-firm-settles-missouri-case/article_99e5f252-99fc-11ee-bf3c-67b96f5a00a5.html

-"A second tax preparation company sued for allegedly sharing Missourians' financial data has settled its case with the state. Georgia-based Tax Slayer agreed to pay $55,000 to the state and upgrade its personal information notification practices in an order issued Monday by St. Louis Circuit Judge Michael Stelzer. The move follows a similar settlement last month with Iowa-based TaxAct, which agreed to pay $195,000 and tighten its data-sharing capabilities. TaxSlayer was among three companies sued by Republican Attorney General Andrew Bailey in July just a day after a group of Democrats in Congress reported that the companies sent "extraordinarily sensitive" information on tens of millions of taxpayers to Facebook parent company Meta over the course of at least two years… The initial lawsuit alleges that H&R Block, TaxSlayer and TaxAct violated state consumer protection laws by sharing the information. The allegations claimed the tax preparation firms made information available to Meta and other companies "despite explicitly promising not to share such information with third parties in their privacy policies." The lawsuit said the companies gave Meta access to information such as names and financial information such as savings account contributions. Before reaching a settlement, attorneys for TaxSlayer argued that Bailey's case was flawed… Money from the settlement will be used to recoup attorney fees, the settlement noted. Any amount left over will go to help defend the state's Merchandising Practices Act, which prohibits misrepresentation, omission, deception and unfair business practices. H&R Block, which is based in Kansas City, earlier won change of venue in the case from the city court system to Jackson County."

Chief Deputy responds to accusations

Maries County Advocate l No Author Listed

https://mariescountyadvocate.com/stories/chief-deputy-responds-to-accusations,105831

-"The following letter was posted around 6 a.m. on Dec. 11 on Scott John For Maries County Sheriff Facebook page. Maries County Chief Deputy John is responding to individual accusations against his department surrounding the investigation and subsequent civil complaints brought against Belle Police Officer Erican Sugg on Oct. 20. Sugg is named as the respondent in the ongoing case brought by the Department of Public Safety (DPS), prosecuted by the Missouri Attorney General's Office and heard by the Administrative Hearing Commission… On July 14, 2022, I took a complaint of an inappropriate and unwelcomed contact between Erican Sugg (a Sheriff's Corporal at the time) and a female coworker at the Sheriff's Office, who was filing the complaint. While looking into the details of the reported incident, I discovered a second female coworker who reported receiving unsolicited and inappropriate messages from Erican Sugg. I found the first incident had a credible witness who confirmed witnessing the complaint as it was reported, and the second complaint was substantiated by viewing the messages still on the dispatcher's personal phone… Once completed, I reviewed these findings with Sheriff Heitman, and he agreed with my assessment that Erican Sugg should be terminated. He was terminated on July 20, 2022, at the beginning of his shift. He was not suspended during the investigation, which would normally occur, as he was out of the office on vacation during this time. July 20th was his first day back on duty after the complaint was filed. In the State of Missouri, it is required of all law enforcement agencies to report any change in employment status of a police officer associated with their POST roster. Upon termination, a summary of details leading up to the termination is required. This is accomplished by logging onto the Department of Public Safety website and submitting an online form. I included a summary of details in my online report as required. I was later contacted by an investigator from the Peace Officer Standards & Training (POST) requesting to speak with me for further details and to request contact information from the victim and witness. I was contacted again by POST late in 2022 for an audio recording they knew I possessed and informed me they intended to involve the Attorney General. In the spring of 2023, I was contacted by Gabriela M Gonzalez Perez, an Assistant Prosecutor for the Attorney General's Office, and the Attorney who filed the complaint with the Missouri AHC. Ms. Perez reviewed my report with me asking only a few questions, mainly about the timeline of the agency issued laptop being returned by Erican Sugg. She did inform me they anticipated filing a complaint, which they have now done. In July of this year, on the Facebook page of the Belle Police Department, Belle Sgt. Mark Morgan accused Sheriff Heitman of allowing me to "conduct a so-called investigation" into a complaint… After knowing everything, Mayor White stated in last week's paper that since hiring Erican Sugg, "…he has been a model police officer and employee for Belle." Mayor White then proceeded to act as if he has no knowledge of any wrongdoing by Sugg and proceeded to go into politician mode… Mayor White knows there is no way we can influence the timing of a complaint filing by the Missouri Attorney General… Even if I hadn't received confirmation from a witness who was present (and is related to Erican Sugg and not the victim), I know who I would believe and who I think is not fit to wear the badge of a peace officer."

Missouri attorney general seeks to block subpoena in abortion amendment lawsuit

KTTN l Jason Hancock

https://www.kttn.com/missouri-attorney-general-seeks-to-block-subpoena-in-abortion-amendment-lawsuit/

-"Missouri Attorney General Andrew Bailey wants a Cole County judge to block a subpoena seeking records about how he came up with a $21 million cost estimate for a proposed abortion-rights initiative petition. 'Republican' political operative Jamie Corley filed an initiative petition earlier this year that seeks to amend the state constitution… Bailey argued in October that if the amendment were to be approved by voters next year, he would refuse to defend it and would have to hire outside counsel — which he determined would cost $21 million. Corley filed a lawsuit challenging Bailey's estimate, along with the

AMERICA OVERSIGHT

ballot summary written by Secretary of State Jay Ashcroft. As part of that litigation, Corley's attorneys issued a subpoena seeking records from the attorney general's office explaining the cost estimate and the process for hiring outside counsel. In a filing this week with the court, the attorney general moved to quash the subpoena and asked the judge "for a protective order as to this request."… They would be obtainable through the Missouri Sunshine Law, but Bailey's office has such a massive backlog of requests that it is unlikely any records would be produced until late spring… Bailey's office confirmed earlier this month that it has almost finished work on requests filed to the attorney general's office in 2022… The attorney general's office is not a defendant in Corley's lawsuit. Though Bailey's cost estimate is part of the fiscal note, it was the auditor's office that decided to include it in the summary that could appear on the ballot. In arguing for the $21 million cost estimate, Bailey said in October that if Corley's amendment was approved by voters and resulted in any litigation, his office would likely have to hire conflict counsel to represent the state. That's because, Bailey said, he has "staked out a position strongly in favor of protecting the unborn, creating a positional conflict that is untenable for the Attorney General and would necessarily generate greater legal costs." Bailey seemed to back off that argument last month, when he told reporters he is "committed to enforcing the law as written." "I'm not a lawmaker. I'm in the executive branch," he said. "We've (got a) documented history of defending state statute and state constitutional provisions, and we'll continue to do that."

-**Reposted:** The Salem News; KFEQ;

AGO Interviews:

Missouri AG Andrew Bailey on Hunter Biden - Missouri v Biden and More!
Joe Pags Show
https://rumble.com/v416q1u-missouri-ag-andrew-bailey-on-hunter-biden-missouri-v-biden-and-more.html

America First - Sebastian Gorka Hour 3: December 13, 2023
America First with Sebastian Gorka
https://salemnewschannel.com/watch/america-first-sebastian-gorka-hour-3-december-13-2023-6578b4e987811c00012947ce

AGO Tweets:



AMERICAN OVERSIGHT



Missouri News:

BJC again enforces masks for staff, citing higher flu and COVID numbers

STL NPR l Sarah Fentem

https://www.stlpr.org/coronavirus/2023-12-14/bjc-again-enforces-masks-for-staff-citing-higher-flu-and-covid-numbers

-"BJC Healthcare is requiring workers Barnes-Jewish Hospital and its other hospitals throughout the St. Louis region to wear masks when interacting directly with patients, citing the need to prevent the spread of the coronavirus and other respiratory illnesses… Starting Wednesday, system employees will need to wear masks when in "patient care settings," a spokeswoman said. BJC encourages patients and visitors to also wear masks but will not require them…"

New 'vetting manual' by Missouri GOP activists sparks conflict among state Republicans

STL Post-Dispatch l Jack Suntrup

https://www.stltoday.com/news/local/government-politics/new-vetting-manual-by-missouri-gop-activists-sparks-conflict-among-state-republicans/article_0006fb3a-99c6-11ee-a689-b34e2196d437.html#tracking-source=home-top-story

-"A "vetting manual" being floated in GOP circles has sparked conflict, in part because it seeks to block certain candidates from running as Republicans. The state party has warned the document would invite litigation. Efforts to institute the vetting plan are still playing out, and only a handful of county parties have adopted the system, according to a state party official… Ties exist between Cyndia Haggard, chair of the Vernon County Republican Central Committee who recently formed a group focused on candidate vetting, and state Sen. Bill Eigel, a contender for governor… In Missouri, while legislative Democrats have largely remained unified in the minority, the super-majority Republicans have fractured along ideological lines. The divisions are especially deep in the state Senate, where hard-line members have antagonized main-line Republicans… Eigel said Wednesday that Republican officials should vet both county and state candidates. He dismissed the notion that Haggard's support for him in the primary presented a conflict of interest… Miles Ross, executive director of the Missouri GOP, said the state party opposes adoption of the vetting process at the state level. County parties may only bar county-level candidates from running as Republicans, but potential rejection of legislative and statewide candidates would require approval by the state Republican Party. The party "at this time has no plans to adopt this — this scheme," Ross said… The debate locally has been laid at the feet of county-level Republican officials, who have been forced to tread cautiously amid tensions. Bob Eno, chairman of the St. Charles County Republican Central Committee, said the county central committee — representing one of Missouri's largest countywide banks of Republican voters — would vote on the vetting manual at its Jan. 11 meeting. Eno emphasized that the county party already conducts vetting of candidates — a process that hasn't involved blocking prospective officeholders from running as Republicans… Eno said he would be open to a new vetting process if enough members of the party's central committee convince one another to go along with the change. Franklin County, also home to a large number of Republicans near St. Louis, is among counties that have so far adopted the new vetting procedures. But Franklin County Clerk Tim Baker, a Republican who is running for lieutenant governor, said that if a candidate declares in paperwork that they are a Republican, state law requires him to list them on the ballot as one. He said he has long acted as a "pass through" for filing fee checks headed to the county central committee… He told an official in Ashcroft's secretary of state's office that his attorney had instructed him to accept a candidate's affidavit "and let the party go to court on the matter" even if the party had not vetted the candidate. He asked if the state agreed. Trish Vincent, executive deputy secretary of state/chief of staff for Ashcroft, told Baker in a Dec. 4 email that "The SOS will not give legal advice."…"

AMERICAN OVERSIGHT

Missouri Activates Database to Monitor Prescription Drug Use

MissoruiNet | Alisa Nelson

https://www.missourinet.com/2023/12/13/missouri-activates-database-to-monitor-prescription-drug-use/

-"After about two years of work, Missouri's prescription drug monitoring program has officially been activated. The database is designed to crack down on the misuse of addictive painkillers, such as opioids. Pharmacies are now required to submit information to the program when they distribute certain drugs to Missouri patients. It makes dispensation information available to prescribers, pharmacists, and health care providers. Missouri was the last state in the nation to adopt the online database. Sen. Holly Thompson Rehder, R-Sikeston, worked for about ten years to get a bill passed to create the statewide system. After the passage of Senate Bill 63, the Missouri Joint Oversight Task Force for Prescription Drug Monitoring was created to oversee the collection and use of patient dispensation information submitted to Missouri's program. Previously, 75 jurisdictions within Missouri opted to provide controlled substance information to the system operated within the St. Louis County Department of Public Health. With the transition to the state's database, the St. Louis County program will dissolve operations."

Rep. Sarah Unsicker reports allegations of Missouri election interference

Fox 2 | Reggie Lee

https://fox2now.com/news/missouri/rep-sarah-unsicker-reports-allegations-of-missouri-election-interference/

-"Missouri State Representative Sarah Unsicker of Shrewsbury says she has received allegations of foreign interference in the Missouri elections. She calls the allegations "credible" and is sending the information to the Secretary of State's Office and the feds. Just last week, House Minority Leader Crystal Quade kicked Unsicker off of all house committees, claiming she was promoting people with false conspiracy theories and racist and antisemitic ideas…"

Missouri to explore 'better model' for educating students with severe disabilities

Springfield News-Leader | Claudette Riley

https://www.news-leader.com/story/news/education/2023/12/14/missouri-explores-options-educating-students-severe-disabilities/71838545007/

-"Missouri is home to a network of 34 state-operated schools serving students, ages 5-21, with severe developmental and learning disabilities. One of the largest is in Springfield. The state authorized the creation of the Missouri Schools for the Severely Disabled in 1957 — years before a landmark federal law ensuring that students with disabilities have access to a free and appropriate education tailored to their individual needs within the least-restrictive environment — and the result was a set-up in Missouri unlike anywhere else in the U.S. Now, more than six decades later, the state is trying to figure out if that system is working as intended or if changes ought to be made. The Missouri Department of Elementary and Secondary Education, which operates MSSD, has spent the better part of the past year examining the network of schools: How they operate, where they are located, who they serve, and the quality of the education that is delivered… The state contracted with the Public Consulting Group, which delivered its first substantial report Dec. 5 to the state Board of Education. No decisions were made at that meeting. Since Missouri appeared to be an anomaly in how services were provided, several board members asked if the state should be looking at a different way of serving the students… Overarching concerns noted in the report included declining enrollment, limited funding, inequitable facilities, and chronic shortages of teachers and staff. Only 76% of the 500 staff positions needed across the network of schools are filled, leaving nearly one out of every four vacant… The report included a range of recommendations — some with hefty price tags — to address concerns related to the conditions of schools, the safety of students and staff, and the adequacy of the educational environment… Consultants estimate there are $8.5 million in pressing facility needs such as new boilers and roofs and $10 million to add secure vestibules to entrances — an added security measure that many public districts including Springfield have prioritized… The amount of technology, adaptive equipment, Wi-Fi access, designated nursing spaces, and protocol for location of changing tables — for students who cannot use the restroom independently — were inconsistent… The report looked at how such services are provided in other states but did not point to a recommended option. A board member said more details about alternatives are needed… Shields said any big changes would require the state board working closely with the Missouri General Assembly and the solution will likely be complex… He called the report the start of an important discussion. He said any proposed change will have to have strong support and a sustainable funding stream…"

Missouri legislation would allow doctor-assisted suicide for terminal patients

KY3 | Joe McLean

https://www.ky3.com/2023/12/13/proposed-legislation-missouri-would-allow-doctor-assisted-suicide-terminal-patients/

-"A bill that's been pre-filed in the Missouri House of Representatives would open the door to medically-assisted suicide for patients who have been diagnosed with terminal diseases. The legislation nicknamed the 'Marilyn Teitelbaum Death with Dignity' Act, was named after a St. Louis-area woman who traveled with family members to Denver as she suffered from amyotrophic lateral sclerosis, or ALS, and was seeking to end her life… The bill's sponsor, Rep. Ian Mackey, D-Clayton, said his legislation is aimed at providing Missourians the freedom to seek the medical care they believe is best for them and their family. "Why should the law force anyone in our state to live in immeasurable and incurable pain?" Mackey said. "Missourians like Marylin and their families should be able to seek the care they need and deserve within the borders of

AMERICA First OVERSIGHT

our state, and that includes the right to seek end-of-life care when they and their health care providers feel it's the best and oftentimes only option." Missouri Right To Life, a group that mainly focuses on lobbying against abortion rights, has stated that it does not oppose medically assisted suicide when the patient involved is "already dying." "Every human being is unique and possessed of inherent dignity, regardless of age or condition. Missouri Right to Life upholds this basic right of every innocent human being from inception to natural death," the organization's website states. "Missouri Right to Life does not oppose allowing people to die when they are actually dying. We do, however, oppose causing the death of non-dying people." The U.S. Supreme Court decided in 1990 that the family of a 25-year-old woman from Carthage, Missouri, could remove the medical equipment keeping her alive…"

Missouri lawmakers revisit open enrollment: What it means for parents

KSN 16 l Gretchen Bolander

https://www.fourstateshomepage.com/local-news/jasper-county-news/missouri-lawmakers-revisit-open-enrollment-what-it-means-for-parents/

-"Open enrollment, a potential game-changer for Missouri students' school choices, is back on the legislative agenda for the coming year. Scott Cook, Superintendent of Mt. Vernon R-5, expressed his thoughts, "So open enrollment, I think will come up again, the idea of being able to move from one public school to another without physically moving." State Representative Cody Smith (R) highlights the concept of open enrollment, emphasizing transfers from one publicly funded school to another. Smith sees it as a valuable tool to provide parents with more options for their children's education… While the proposed open enrollment system aims to offer choices to parents, the debate on this issue has raised concerns among area school superintendents. They stress that a large number of out-of-district transfers could strain district resources, making it challenging to align them with enrollment totals. Smith addresses these concerns by mentioning potential limitations on the number of transfers allowed each year. This could prevent overwhelming shifts between districts and maintain a balanced educational landscape. As the 2024 Missouri legislative session approaches, the debate on open enrollment is poised to continue, with the session kicking off on January 3."

Missouri Senator Introduces Bill Amidst Concerns Over Agricultural Byproduct Disposal

KSN 16 l Jeremiah Cook

https://www.fourstateshomepage.com/local-news/newton-county-news/missouri-senator-introduces-bill-amidst-concerns-over-agricultural-byproduct-disposal/

-"Newton County residents say they feel misled after a letter from the Missouri Department of Natural Resources doesn't stop the land application of agricultural byproducts. They say along with that frustration, comes hope as a Missouri senator files a bill for the next legislative session… Newton County resident Taryn Tyler says that was her reaction to a letter sent by the Missouri Department of Natural Resources to Denali Water Solutions late last month. Tyler says that feeling didn't last for long. "It was very upsetting to find out that Denali was still able to gather these waste products and land-apply them because of the loopholes created," said Tyler. Tyler says that loophole amounts to very little in the way of change… Tyler is a member of the "Stop Land Use Damaging Our Ground and Environment," or "SLUDGE" committee, and says the group did get a morale boost with the pre-filing of Senate Bill 908 by Missouri Senator Jill Carter. "The bill clarifies that the waste that can be used as fertilizer would only be agricultural waste, things like manure, and not from the industrial or commercial processing plants," said Tyler… In reference to Senate Bill 908, Carter says, it "is about safeguarding the very essence of what we love about Southwest Mo. This will help encourage the use of new technology in the processing of the sludge and result in safer utilization." With the 2024 Missouri legislative session not slated to begin until next month, Tyler says now they have to do the hardest thing, wait."

National News:

US Supreme Court Won't Intervene in Key Voting Rights Act Challenge

Epoch Times l Jack Phillips

https://www.theepochtimes.com/us/us-supreme-court-wont-intervene-in-key-voting-rights-act-challenge-5546317

-"The U.S. Supreme Court on Dec. 12 declined to intervene in a Voting Rights Act-related ruling issued by a lower court that had invalidated a Republican-drawn commissioners map in a Texas county. However, the high court's order means that the Galveston County Commissioners Court map that was drafted by Republicans can remain intact. It came after a federal judge ruled that the map had violated Section 2 of the Voting Rights Act and ordered Galveston County to draw a new one. The order was left unsigned, although two liberal justices—Sonia Sotomayor and Ketanji Brown Jackson—joined a dissent written by liberal Justice Elena Kagan. Earlier this year, U.S. District Judge Jeffrey Brown, an appointee of former President Donald Trump, ruled that newly drawn county election districts in Galveston illegally weaken the voting power of black and Latino residents and must be redone… The Biden Department of Justice also joined in the lawsuit, which was filed by black Democratic voters in the county, underscoring the opposition to the maps that Galveston County redrew in 2021. The challenge and ruling only applied to the local county precincts and not legislative or congressional districts. The high court's not taking the case means that the county can use the map for the 2024 election because the 5th U.S. Circuit Court of Appeals this past week placed a pause on the lower district court's ruling…"

Supreme Court to Hear Challenge to Abortion Pill

Epoch Times l Matthew Vandum

AMERICAN OVERSIGHT

https://www.theepochtimes.com/us/supreme-court-to-hear-challenge-to-abortion-pill-5546228

-"The Supreme Court agreed on Dec. 13 to hear the Biden administration's defense of regulatory moves related to mifepristone, a pill used for abortions. The court's decision in the heavily litigated case could affect the availability of the drug. In 2016, prescription rules were loosened, and in 2021, the government allowed prescriptions to be sent by mail. Opponents of the abortion pill argue that these decisions put women at risk. Although a lower court had blocked the sale of mifepristone after finding that the process involved in approving the drug was legally flawed, the Supreme Court countermanded that order in April, allowing sales to continue. A medication abortion generally involves the use of mifepristone, which blocks progesterone, a hormone, and misoprostol, which induces contractions. Misoprostol isn't an issue in the current litigation… The decision came in unsigned orders released by the court. No justices dissented. The court didn't explain its decision. At least four of the nine justices have to vote to grant a petition for it to move forward to the oral argument stage. The court agreed to hear the cases of Food and Drug Administration (FDA) v. Alliance for Hippocratic Medicine (AHM) and Danco Laboratories LLC v. AHM, but turned down another petition in AHM v. FDA… The attorney for the Alliance for Hippocratic Medicine shared her thoughts after the Supreme Court unveiled its new decision. "Every court so far has agreed that the FDA acted unlawfully in removing common-sense safeguards for women and authorizing dangerous mail-order abortions," Erin Hawley, senior counsel at the Alliance Defending Freedom, told The Epoch Times by email. "We urge the Supreme Court to do the same. The FDA has harmed the health of women and undermined the rule of law by illegally removing every meaningful safeguard from the chemical abortion drug regimen. Like any federal agency, the FDA must rationally explain its decisions. Yet its removal of common-sense safeguards—like a doctor's visit before women are prescribed chemical abortion drugs—does not reflect scientific judgment but rather a politically driven decision to push a dangerous drug regimen.'"

Appeals Court to Fast Track Trump Immunity Case

Epoch Times l Caden Pearson

https://www.theepochtimes.com/us/appeals-court-to-fast-track-trump-immunity-case-5546653?ea_src=frontpage&ea_med=lead-special-judiciary-medium-0

-"A federal appeals court on Wednesday agreed to special prosecutor Jack Smith's request to expedite former President Donald Trump's appeal to dismiss his Washington, D.C., election case based on presidential immunity. The U.S. Court of Appeals for the District of Columbia issued an order outlining a streamlined briefing schedule and calling for oral arguments, with the date to be set later. According to the order, President Trump's opening brief is due by Dec. 23. The order emphasized that issues and arguments should be raised in the opening brief, discouraging new points in the reply brief for consideration… This decision follows statements by the attorneys representing President Trump accusing the special counsel's office of election interference in a recent appeals court filing after Mr. Smith requested to expedite the appeal so that the case can go to trial on March 4, 2024. March 4 is one day before Super Tuesday, the U.S. presidential primary election day… In response, prosecutors swiftly filed a court document asserting that President Trump's legal team failed to present any valid reasons for the appeals court not to proceed on an expedited schedule. They argued that further delays in the case would "entail serious costs to the judicial system."… Earlier, U.S. District Judge Tanya Chutkan paused court proceedings on Wednesday in the case pending President Trump's appeal… Judge Chutkan clarified that this would pause the pretrial deadlines, not vacate them. Attorneys for President Trump have sought to push the trial date back, citing the 13 million pages of discovery material they intend to review… In a major shake-up in the case last week, President Trump appealed Judge Chutkan's denial of his motion to dismiss based on presidential immunity. The same day, defense attorneys filed a notice of appeal and a motion to stay proceedings in the district court because an appeals court decision could throw out the case. Regardless of a favorable appeals court ruling for the defense, this would have thrown off the district court schedule, preventing the prosecution from securing their desired trial date. Prosecutors have also asked the U.S. Supreme Court to review President Trump's presidential immunity defense so that it may inform the appeals court decision in a timely manner and allow for a March 4, 2024, trial date. It is unclear how the pause in the district court pretrial schedule and the appeals court's schedule will impact a potential March 4, 2024, trial date."

Senate Passes $886 Billion Defense Bill

Daily Caller l Micaela Burrow

https://dailycaller.com/2023/12/13/senate-passes-886-billion-defense-bill/

-"The Senate approved an $886 billion defense bill for fiscal year 2024 by a vote of 87 to 13 Wednesday night. Ahead of the vote on the National Defense Authorization Act (NDAA)itself, the chamber waived GOP Kentucky Sen. Rand Paul's attempt to remove a four-month extension to the Foreign Intelligence Surveillance Act (FISA) from the bill before taking up the conference report. FISA's Section 702 allows U.S. intelligence agencies to gather incidental data on Americans while surveying foreign targets operating within the United States, generating concern over illegal spying on American citizens. Social issues became a flash point in the bill, with the final version capping salaries for Diversity, Equity and Inclusion (DEI) employees and prohibiting the Pentagon from endorsing Critical Race Theory. It omitted two major provisions from the House version, one of which would ban the military's insurance program from covering transgender hormone treatments and sex change surgeries. Earlier on Wednesday the Senate also voted down, 47 to 53, a symbolic vote to integrate a provision from the House version of the bill into the final report overturning the Pentagon's abortion travel policy, teed up

AMERICAN OVERSIGHT

by Republican Sen. Joni Ernst, according to the Senate Press Gallery. Overall, the NDAA authorizes a 5.2% pay raise for troops — less that what Republicans had hoped for — and an array of provisions related to service member benefits, health care and quality of life, according to a summary. It also creates an independent inspector general for U.S. military assistance to Ukraine. The bill is an increase of $28 billion for the Department of Defense (DOD) and Department of Energy over the fiscal year 2023 bill, according to CNN… The House is expected to vote on final passage of the NDAA Thursday, Fox News reported. The House Freedom Caucus criticized the bill, saying the Democrat-controlled Senate shoved it through the reconciliation process and stripped a number of "anti-woke" amendments… Separately, Congress is embroiled in tense discussions around a supplemental security assistance package for Ukraine and Israel that were not included in the NDAA. Republicans insist that foreign funding be paired with money to reinforce the U.S. southern border, but Democrats have not accommodated GOP demands."

Senate report sounds alarm on surge in fentanyl deaths among older Americans: 'Silent epidemic'

Fox News l Adam Shaw

https://www.foxnews.com/politics/senate-report-sounds-alarm-surge-fentanyl-deaths-older-americans-silent-epidemic

-"A new Senate report is sounding the alarm about a surge in deaths from synthetic opioids such as fentanyl among older Americans – as the U.S. continues to grapple with the danger of the drug, which is primarily smuggled in across the southern border. The report, "The Silent Epidemic: Fentanyl and Older Americans," is authored by Sen. Mike Braun, R-Ind., the ranking member on the U.S. Senate Committee on Aging, and looks at the increase in overdose deaths among older Americans. "Among Americans 65 and older, overdose deaths quadrupled across the last two decades, and there's increasing evidence that synthetic drugs like fentanyl are adding to these fatalities," the report says. The report cites statistics showing that overdose deaths from synthetic opioids increased by 53% in a single year. Over 79,000 Americans 55 and older died from an opioid overdose between 1999 and 2019, with the rate of overdose deaths increasing from 3 per 100,000 in 2002 to 12 per 100,000 in 2021. Fentanyl deaths have been plaguing the U.S. for years, with tens of thousands of deaths a year. Of the over 107,000 overdose deaths in 2021, 75% involved an opioid, according to the Centers for Disease Control (CDC.)… Overdose deaths come primarily from Americans unknowingly taking pills or drugs laced with fentanyl, which can be fatal in tiny doses and is 50 times stronger than heroin… The report recommends encouraging greater awareness among seniors, including making them aware that synthetics are extremely lethal and increasingly found in drugs like Oxycodone, Xanax and Adderall. It also says there should be more research and data to understand the scale of the impact on older Americans, including greater coordination between state and federal governments."

Shadow of doubt: FBI 'keenly focused' on 'elevated' risk of outside influence in 2024 election

Washington Examiner l Mike Brest

https://www.washingtonexaminer.com/policy/defense-national-security/fbi-elevated-risk-outside-influence-2024-election-wray

-"The national security community is "keenly focused" on the threat of possible election interference in the 2024 elections, according to FBI Director Christopher Wray. "It is not seriously disputed that our foreign adversaries have tried and are continuing to try to interfere in our elections," Wray, who has run the FBI since 2017, told Senate lawmakers last week, though he added, "We're keenly focused on the risk that foreign adversaries, whether it's Russia, whether it's China, whether it's Iran or others, would seek to interfere in our elections." The leader of the FBI acknowledged that the threats of external influence on the 2024 presidential election are "elevated." "I think it's fair to say that they are elevated from where they were before," Wray explained. "And to elaborate just slightly on that point, obviously we saw, and it's not disputed, that the Russians tried to interfere in the 2016 election and then continued. But what we've seen since then is other adversaries attempting to take a page out of the Russians' playbook."… The left-leaning group Free Speech for People, a nonprofit advocacy group focused on election and campaign finance reforms, wrote a letter earlier this month expressing concern about previous efforts to access voting system software to Wray, Attorney General Merrick Garland, special counsel Jack Smith, and Cybersecurity and Infrastructure Security Agency Director Jen Easterly. The group of roughly two dozen computer scientists, election security experts, and voter advocacy organizations who signed the letter requested a federal investigation into what it alleged was a "multi-state conspiracy to obtain voting machine software, carried out through cooperation of a network of Trump allies."…"

Biden administration announces medications for Medicare rebate program

Washington Examiner l Gabrielle M. Etzel

https://www.washingtonexaminer.com/policy/healthcare/biden-administration-announces-medications-medicare-rebate-program

-"The Biden administration on Thursday announced the list of 48 prescription drugs that will be subject to a mandatory Medicare rebate program, lowering out-of-pocket costs for seniors on some of the most expensive lifesaving pharmaceuticals… The Medicare Prescription Drug Inflation Rebate program, part of the Inflation Reduction Act, requires pharmaceutical companies to pay a rebate to the Centers for Medicare and Medicaid Services if they raise their prices beyond the rate of inflation. The drugs announced on Thursday fall under Medicare Part B, which covers drugs administered by a healthcare professional in a facility. Many of the drugs include expensive infusion cancer treatments and antivirals. Patients treated with the selected drugs can directly receive a rebate, lowering beneficiary coinsurance by 20% of the inflation-adjusted payment amount… The Congressional Budget Office estimated that by 2031, repealing the

AMERICAN OVERSIGHT

Medicare rebate program would cost seniors $5 billion per year and increase the federal deficit by $7 billion per year. Repealing the law would also "give away over $10 billion per year to pharmaceutical companies," according to senior administration officials…"

I hope everyone has a great day!

Best,

Bennett Lyday | Policy & Operations Specialist
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
O: (573) 751-4390
C: (573) 645-9671
Bennett.Lyday@ago.mo.gov

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Lewis, Jason[Jason.Lewis@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Wagner, Ray[Ray.Wagner@ago.mo.gov]
From: Lyday, Bennett[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EACD91D740F2406EB8A1385B65BBDDED-LYDAY, BENNETT]
Sent: Fri 12/15/2023 9:30:35 AM (UTC-06:00)
Subject: Daily News/Media Roundup - Friday, December 15th, 2023

Happy Friday all,
Below is the relevant news for today and yesterday relating to the AGO, Missouri, and Nation:

AGO News:

Republican attorney general exposes DOJ funding to Soros-backed group that trains left-wing prosecutors
Fox News l Brianna Herlihy
https://www.foxnews.com/politics/gop-ag-exposes-doj-funding-soros-backed-group-that-trains-left-wing-prosecutors

-"A Republican state attorney general is asking members of Congress to probe a Justice Department grant that he says benefits a "radically progressive" George Soros-linked group responsible for training prosecutors in ways to implement a soft-on-crime approach to their work. Missouri's Attorney General Andrew Bailey sent letters to congress Wednesday to urge both Republican and Democrat lawmakers "to further investigate and eliminate funding for programs that are counter-productive to public safety" and that "aid or encourage prosecutors to abuse discretion by refusing to bring criminals to justice." Bailey's letters follow what he describes as a "galvanizing moment" in Missouri when disgraced St. Louis circuit attorney Kim Gardner – "a progressive soft-on-crime prosecutor" – let a repeat criminal out on bail who then drove his speeding car into a young girl, leaving her with injures that required the amputation of both of her legs… "As states like Missouri are leading the fight to uphold justice and put criminals behind bars, organizations and their partners in the federal government are doing just the opposite," Bailey wrote. "The fact is, the U.S. Department of Justice (DOJ), in lock-step with radicals like George Soros, is actively funding organizations like the Vera Institute that are turning our streets into war zones," he said. Bailey names the Vera Institute — a Brooklyn-based advocacy group that says it wants to "transform the criminal and legal justice systems" with ties to Washington, D.C., Democrats — as a "deeply embedded" key partner in Gardner's former office, "turning it into a catastrophic social experiment more concerned with lowering prosecution rates than convicting violent criminals." Soros' Open Society Foundations donated nearly $11 million to the Vera Institute in previous years. Bailey says Gardner "bragged" that her office "partnered with the Vera Institute of Justice's Reshaping Prosecution program to shrink the system and instigate transformational change in St. Louis" as it implemented a "new approach centered on ... racial equity." "Ms. Gardner's partnership with George Soros and the Vera Institute, with the aim of 'actively shrinking the criminal legal system's footprint,' was a disastrous experiment, and it unmoored the office from sound law enforcement practices. The Vera Institute is a far-left advocacy organization dedicated to broad and nebulous goals such as moving away from 'case-by-case' prosecutorial discretion (deemed to be a 'narrow view of justice'), choosing instead to focus on 'systemic impact of case decisions.'" In a statement to Fox News Digital, Vera said the group "entered into a partnership with then-Circuit Attorney for the City (CAC) of St. Louis Kim Gardner on a project to analyze her office data, measure racial disparities and identify areas for reform, and increase transparency with her community. The partnership helped the CAC implement policy reforms such as increased diversion programs that promote safety by addressing underlying drivers of crime and reducing recidivism." "Vera's role was to collect and analyze data and work with CAC staff to conceive policy solutions, which CAC leadership then decided whether to implement," the group described… According to publicly available information provided on the DOJ's Office of Justice Programs (OJP) website, the Vera Institute has been awarded hundreds of millions of dollars since at least 2009. In that same year, then-President Obama's attorney general, Eric Holder, gave the keynote address at Vera's third annual Justice Address in New York City in which he thanked Vera for being an "extraordinary partner to the government in the administration of justice." The OJP each year chooses law enforcement-related groups working to prevent and control crime to which to provide federal funding. The OJP's budget is appropriated by Congress. In 2023, OJP's requested budget was $6.2 billion. According to publicly available documents, Vera was awarded at least $4.5 million in grand money. "As long as state leaders are forced to fight not only progressive prosecutors and radical billionaires, but also our own DOJ using tax dollars to undermine the rule of law in our communities, the battle becomes far more difficult to wage," Bailey wrote in his letter. Bailey sent letters to House and Senate Judiciary Committee leadership and House and Senate Appropriations Committee leadership."

-**Reposted:** New York Times Post;

AMERICAN OVERSIGHT

Thursday: Below the Fold
Patriot Post l Douglas Andrews, Thomas Gallatin, and Jordon Cadler
https://patriotpost.us/articles/102857-thursday-below-the-fold-2023-12-14

-"…Media Matters sues Texas: Leftmedia propaganda outfit Media Matters filed a lawsuit against Texas Attorney General Ken Paxton after he launched an investigation into the organization over "potential fraudulent activity" following its dubious claims that Elon Musk's X platform was running major corporate advertising alongside anti-Semitic and white supremacist content. Following Media Matters's reporting, several companies including Disney and Apple pulled their adds from X. In its lawsuit against Paxton, Media Matters is ironically alleging that the Texas AG is violating the organization's free speech rights, arguing that the investigation has imposed a "chill" on its "ability to investigate and publish news stories and further chills their ability to participate in a robust public discussion around political extremism on the X platform." Talk about a classic case of "rules for thee but not for me." The folks at Media Matters have no qualms over conducting a disingenuous "investigation" into X, but they object when an investigation is raised against their own questionable "journalistic" methods. Meanwhile, Media Matters was hit with another investigation on Monday, as Missouri Attorney General Andrew Bailey announced that he is looking into whether the media organization engaged in fraudulent solicitation for donations from Missourians…"

State asks judge to reverse decision on Missouri highways commission pay raise plan
Missouri Independent l Rudi Keller
https://missouriindependent.com/2023/12/14/state-asks-judge-to-reverse-decision-on-missouri-highways-commission-pay-raise-plan/

-"The Missouri Highways and Transportation Commission has authority to add workers, increase pay and ignore appropriation bill limits if no changes are made to a court ruling issued in October, Department of Transportation director Patrick McKenna told lawmakers on Wednesday. Facingpointed questioning during a hearing of a House appropriations subcommittee, McKenna said the commission would listen to lawmakers but not necessarily abide by their directives… The legislature controls pay rates for state government employees, and since it hadn't approved the plan the Office of Administration refused to reflect the increases on transportation employee paychecks, leading the commission to file a lawsuit. On Oct. 31, Cole County Circuit Judge Cotton Walker ruled the Office of Administration must approve the paychecks, citing a provision of the Missouri Constitution that says money in the state road fund shall "stand appropriated without legislative action." On Monday, Walker will hear arguments on a motion to reconsider that decision. No MoDOT employees have received the increased paychecks because the request to amend the judgment, filed on Nov. 30, means the ruling is not final. It also delayed the date when a decision must be made on whether to appeal the judgment. In the motion asking Walker to reconsider, Assistant Attorney General Emily Dodge argued that the judgment did not follow the precedent set in a 1975 Missouri Supreme Court ruling that determined only the legislature can set spending amounts for state agencies. "It also misreads the plain language of the Missouri Constitution," Dodge wrote. The "stands appropriated" language applies to only two things – current payments on bond debt and holding enough cash to make payments due within 12 months, Dodge wrote. She also wrote that "no funds automatically 'stand appropriated' for the purpose of paying workers, so the commission can do so only through an actual appropriation." Any appeal after Walker rules on the motion to amend his judgment will push a final decision in the case well into next year, with the possibility that it won't be resolved before lawmakers must finish work on budget bills in May. McKenna weathered an initial storm of legislative anger, including calls for him to be fired, after the lawsuit was filed. A bill to revise the "stand appropriated" language passed the House last year but stalled in the Senate. Two bills have been filed for the upcoming session to give lawmakers veto power over MoDOT spending plans. During his Wednesday testimony, McKenna said the department has started rebuilding its workforce, hiring more new employees than departed in the past year. There are still 500 full-time slots open in its workforce authorized to employ about 5,600… The department wants to add 350 more full-time slots to its authorized strength, 250 to improve daily road maintenance and 100 to supervise an expanding construction program, McKenna said… After questioning whether MoDOT could fill all those open jobs, state Rep. Don Mayhew, R-Crocker, asked McKenna about the Oct. 31 ruling. He wanted to know if the commission would authorize hiring employees the legislature doesn't include in the budget. "The ruling isn't final at this point," McKenna said. "And so we assume we're running it through the normal process."… "In your opinion, the commission has the ability to do it without legislative approval, anyway, because I think that's what the judge was telling us, right?" Mayhew asked finally. "Potentially, yes," McKenna answered."

Missouri AG Bailey tries to block court order asking him to explain abortion cost estimate
Springfield News-Leader l Jason Hancock (MO-Indy Repost)
https://www.news-leader.com/story/news/politics/2023/12/14/missouri-ag-andrew-bailey-tries-block-subpoena-abortion-amendment-case/71920568007/

-"Missouri Attorney General Andrew Bailey wants a Cole County judge to block a subpoena seeking records about how he came up with a $21 million cost estimate for a proposed abortion-rights initiative petition. 'Republican' political operative Jamie Corley filed an initiative petition earlier this year that seeks to amend the state constitution… Bailey argued in October that if the amendment were to be approved by voters next year, he would refuse to defend it and would have to hire outside counsel — which he determined would cost $21 million. Corley filed a lawsuit challenging Bailey's estimate, along with the

AMERICA OVERSIGHT

ballot summary written by Secretary of State Jay Ashcroft. As part of that litigation, Corley's attorneys issued a subpoena seeking records from the attorney general's office explaining the cost estimate and the process for hiring outside counsel. In a filing this week with the court, the attorney general moved to quash the subpoena and asked the judge "for a protective order as to this request."… They would be obtainable through the Missouri Sunshine Law, but Bailey's office has such a massive backlog of requests that it is unlikely any records would be produced until late spring… Bailey's office confirmed earlier this month that it has almost finished work on requests filed to the attorney general's office in 2022… The attorney general's office is not a defendant in Corley's lawsuit. Though Bailey's cost estimate is part of the fiscal note, it was the auditor's office that decided to include it in the summary that could appear on the ballot. In arguing for the $21 million cost estimate, Bailey said in October that if Corley's amendment was approved by voters and resulted in any litigation, his office would likely have to hire conflict counsel to represent the state. That's because, Bailey said, he has "staked out a position strongly in favor of protecting the unborn, creating a positional conflict that is untenable for the Attorney General and would necessarily generate greater legal costs." Bailey seemed to back off that argument last month, when he told reporters he is "committed to enforcing the law as written." "I'm not a lawmaker. I'm in the executive branch," he said. "We've (got a) documented history of defending state statute and state constitutional provisions, and we'll continue to do that."

-**Reposted:** Columbia Daily Tribune;

AGO Interviews:

Missouri Attorney General Andrew Bailey investigates Media Matters for fraud

KMOX l Wilson Truong

https://www.audacy.com/kmox/news/local/missouri-ag-investigates-media-matters-for-fraud

-"Missouri Attorney General Andrew Bailey announced Monday he was launching a investigation into Media Matters for America. Bailey wrote in his letter to them he believed the progressive website "used fraud to solicit donations from Missourians in order to trick advertisers into pulling out of X, the last platform dedicated to free speech in America." In November, Media Matter released a report about harmful anti-Semitic content on X, formerly known as Twitter. They said that X, under Elon Musk's leadership, is placing advertising next to anti-Semitic content. The report also put attention to several controversial posts Musk has made on the platform over the last few weeks, leading to companies like Disney, Paramount, Lionsgate, Sony Pictures, and Universal, to stop advertising on the platform."

-"Bailey joined Total Information A.M. Thursday to discuss Monday news he was investigating Media Matters for possible fraud."

AGO Tweets:



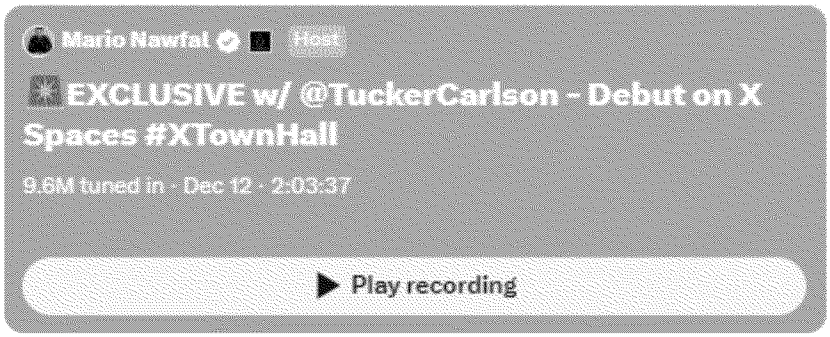
AMERICAN OVERSIGHT

Attorney General Andrew Bailey reposted

ALX @alx · Dec 13

Replying to @alx

Listen to the full conversation with Tucker hosted by @MarioNawfal, @bennyjohnson joined by guests @charliekirk11, @RealCandaceO, @TateTheTalisman, @AGAndrewBailey, @patrickbetdavid, @realannapaulina, @DavidSacks & more



35 84 316 75K

Attorney General Andrew Bailey reposted

Sebastian Gorka DrG @SebGorka · 21h

I'm joined by @AGAndrewBailey to discuss Attorney General Bailey's fight against members of the censorship-industrial complex like @mmfa.

FULL INTERVIEW HERE: bit.ly/41lz7L4



5 20 105 12K

AMERICAN OVERSIGHT



Missouri News:

Missouri Supreme Court weighs whether crimes against children should sever parental rights

Missouri Independent | Clara Bates

https://missouriindependent.com/2023/12/15/missouri-supreme-court-weighs-whether-crimes-against-children-should-sever-parental-rights/

-"Missouri's highest court this week heard arguments over the constitutionality of a two-year-old state law terminating parental rights following a conviction for certain crimes against children. The case, heard Wednesday by the state Supreme Court, involves a Jefferson County father whose parental rights were terminated after he pled guilty to child molestation and sexual misconduct in 2022. Both the father and the child are unnamed in legal filings… Before the law was amended by the legislature in 2021, there was a requirement the child victim be familially related to the parent in order for the state to have grounds to prove parental unfitness. In this case, the victims were unrelated to the father and the crimes to which he pled guilty occurred before the child was born. The father's attorney, David Crosby, argued Wednesday that not all felony offenses "involving a child under 18 warrant a termination of parental rights," including in his legal brief the hypothetical of an 18-year-old assistant coach having a sexual relationship with a 17-year-old student, which is a class E felony. "The question is, where do you draw the line?" Crosby said. "Well, the legislature needs to draw the line or this court needs to draw the line because the judges need to understand what's required."… Jason Sapp, an attorney representing the juvenile office, which files petitions for courts to terminate parental rights, emphasized on Wednesday that the government has a "duty to protect children." The criminal acts that could lead to termination of parental rights under the law include criminal sexual offenses, prostitution offenses, criminal offenses against the family and criminal pornography and related offenses… To terminate parental rights, the state is required to first prove parental unfitness — designed to be a steep hurdle to protect parents' liberties. Itrequires clear, cogent and convincing evidence. Only then comes an evaluation of what is in the child's best interests, which requires a lower standard of evidence. Crosby argues the law is unconstitutional because it makes felony convictions involving children proof of unfitness — providing automatic grounds for termination of parental rights rather than case-by-case evaluation of fitness and depriving people of the chance to contest the conclusion of unfitness. The state counters that a conviction itself "speaks to the conduct of the parent that goes to parental unfitness," and the parent's chance to rebut that finding came earlier, in the criminal proceeding… The judges' questions Wednesday surrounded the trial court's discretion to choose to enter a judgment terminating rights after the juvenile office filed for it. Crosby said that although the court does have some discretion, that is not a sufficient check guaranteeing a parents' constitutional rights… Crosby argued there should be a specific case-by-case judicial finding that the parent is unfit, which could include factors such as the parent's treatment and rehabilitation, age and frequency of the crime."

Former Missouri First Lady Betty Cooper Hearnes passes away

KY3 | Marsha Heller

https://www.ky3.com/2023/12/15/former-missouri-first-lady-betty-cooper-hearnes-passes-away/

-"According to Mississippi County Coroner Terry Parker, Hearnes died Thursday, December 14 at her home in Charleston, surrounded by her children and grandchildren. She was 96. Hearnes served as a Missouri state representative from 1979 to 1989, and lost to John Ashcroft in a bid to become governor in 1988. Her husband, Warren Hearnes, served as Missouri's 46th Governor from 1965 to 1973… Funeral arrangements are pending at McMickle Funeral Home in Charleston."

Missouri lawmakers prep for annual session amid election-year posturing

STL Post-Dispatch | Kurt Erickson

https://www.stltoday.com/news/local/government-politics/missouri-lawmakers-prep-for-annual-session-amid-election-year-posturing/article_5085b722-99df-11ee-81e6-f7ec32bfc539.html

-"All signs point to plenty of political posturing by those who want to lead the state, while Gov. Mike Parson, who is in his final year in office, seeks to shape his legacy as Missouri's 57th governor. Senate President Caleb Rowden, R-Columbia, who is

AMERICAN OVERSIGHT

running for Secretary of State, is predicting an amped-up Senate, where at least five of the 34 members are seeking statewide posts. Competition for floor time could be hot and it could lead to gridlock… Support for the idea that the Senate could become a legislative logjam can be seen in the early round of bills that have been filed for the upcoming session. Sen. Bill Eigel, R-Weldon Spring, who is running for governor, introduced politically popular legislation to eliminate the state's personal property tax. But, in a sign that it could again bog down in the upper chamber, he has not specified how local governments will make up for hundreds of millions of dollars in lost revenue if the tax is ended… "I don't disagree with what he's trying to do," Rowden said. "But, you just can't rip the Band-Aid off." Rowden said other types of tax cuts implemented by Republicans have been phased in over time or include triggers to avoid creating a funding cliff for governments providing services to taxpayers. "You've got to do it the right way," he said. In an early November appearance on a Columbia talk radio show, Senate Majority Leader Cindy O'Laughlin, R-Shelbina, predicted the 2024 version of the often mercurial Senate would be productive at times, but also chaotic, primarily because of the conservative faction in the chamber typically led by Eigel… Eigel, who faces Secretary of State Jay Ashcroft and Lt. Gov. Mike Kehoe in the GOP gubernatorial primary, is showing no signs of tempering his firebrand approach, which he has used to block action in the Senate during his seven years in the chamber. In November, Eigel pilloried Parson on social media after the governor met with Kansas Gov. Laura Kelly, a Democrat, to discuss civility in politics… Lawmakers currently are filing bills they hope to see cross the finish line in May, showing Missourians what they can expect to hear about from the Legislature this year… Members of both parties have filed legislation aimed at banning the foreign ownership of Missouri farmland as views on China switch from trade partner to alleged threat. Another estimated 8% of the more than 1,000 new bills filed thus far are focused on making it harder for residents to change the state Constitution through the use of the initiative petition process. Abortion opponents, a powerful force in Missouri politics, are worried voters will restore some level of reproductive rights by a vote of the people if the law isn't altered. Legislation changing state crime laws, a perennial campaign issue, also features as a common theme on both sides of the aisle. An estimated 20% of the new bills are focused on crime, including calls for more gun control by Democrats and tougher sentencing laws from Republicans. Legalizing sports betting will again receive an airing, despite numerous false starts on the matter in recent years. Rep. Dan Houx, R-Warrensburg, has been point man on the effort and he's running for a Senate seat. Houx would like to score a win in 2024. Parson wants to boost the availability of child care across the state to help businesses. Add that to the list of items he'll be lobbying for in his State of the State speech on Jan. 24. And, expect fights to erupt over the $50 billion state budget, which must be approved in early May. Revenues are flattening after a post-pandemic surge… Pressure points include the state Board of Education, which is calling for a boost in per pupil spending at a time when Republicans are pushing for school vouchers, additional charter schools and other changes in how public schools operate… O'Laughlin, the No. 2 leader in the Senate, has already raised questions about the added money. In launching his campaign for lieutenant governor, House Speaker Dean Plocher, R-Des Peres, provided a road map of what he will be pushing for in the coming session in his GOP-majority chamber. "We must protect our farmland from China, our classrooms from liberal indoctrination, our families from Biden's failed economy and our communities from the progressive crime wave," Plocher said. Plocher also has pushed for the elimination of the earnings tax, as well as changes to the state's personal property tax system.

New report highlights Missouri's rural healthcare Issues

KTTN l No Author Listed

https://www.kttn.com/new-report-highlights-missouris-rural-healthcare-issues/

-"About one-third of Missouri is considered rural, and residents there often face health challenges. Recent research highlights the significant consequences of neglecting rural areas. The Missouri Rural Health Association's latest report emphasizes the need for ongoing investment in rural Missouri. Katie Reichard, Director of Government Affairs for the Missouri Primary Care Association, noted that several factors lead to poorer health outcomes in rural areas, with access to care being a primary concern. Community health centers bridge this gap by treating patients regardless of their ability to pay and providing care for conditions that might otherwise lead to unnecessary hospital visits… The report revealed that, for the first time, Missouri recorded more deaths than births during the pandemic, leading to a 19% increase in deaths statewide and a reduction in overall life expectancy by more than two years. Heidi Lucas, Executive Director of the Missouri Rural Health Association, emphasized the crucial importance of investing in rural areas for both Missouri and the nation… Missouri boasts over 95,000 farms, ranking second in the U.S. in number. It's also a leading producer of hay and ranks second in beef production, with more than 2 million cattle. Lucas mentioned that while the report identifies challenges, it also presents various solutions. "Enhancing broadband for telehealth services, easing restrictions on providers, supporting nurses and physicians with finding preceptors, and improving transportation are all viable solutions," Lucas explained. The report also notes that the lack of affordable healthcare impacts more than just personal health for farmers; it creates financial burdens and hinders farm investments."

Here's how much unemployment claims in Missouri declined last week

Springfield News-Leader l No Author Listed

https://www.news-leader.com/story/news/2023/12/15/missouri-unemployment-numbers/71922156007/

-"Initial filings for unemployment benefits in Missouri dropped last week compared with the week prior, the U.S. Department of Labor said Thursday. New jobless claims, a proxy for layoffs, fell to 2,759 in the week ending Dec. 9, down from 3,695 the

AMERICAN OVERSIGHT

week before, the Labor Department said. U.S. unemployment claims dropped to 202,000 last week, down 19,000 claims from 221,000 the week prior on a seasonally adjusted basis…"

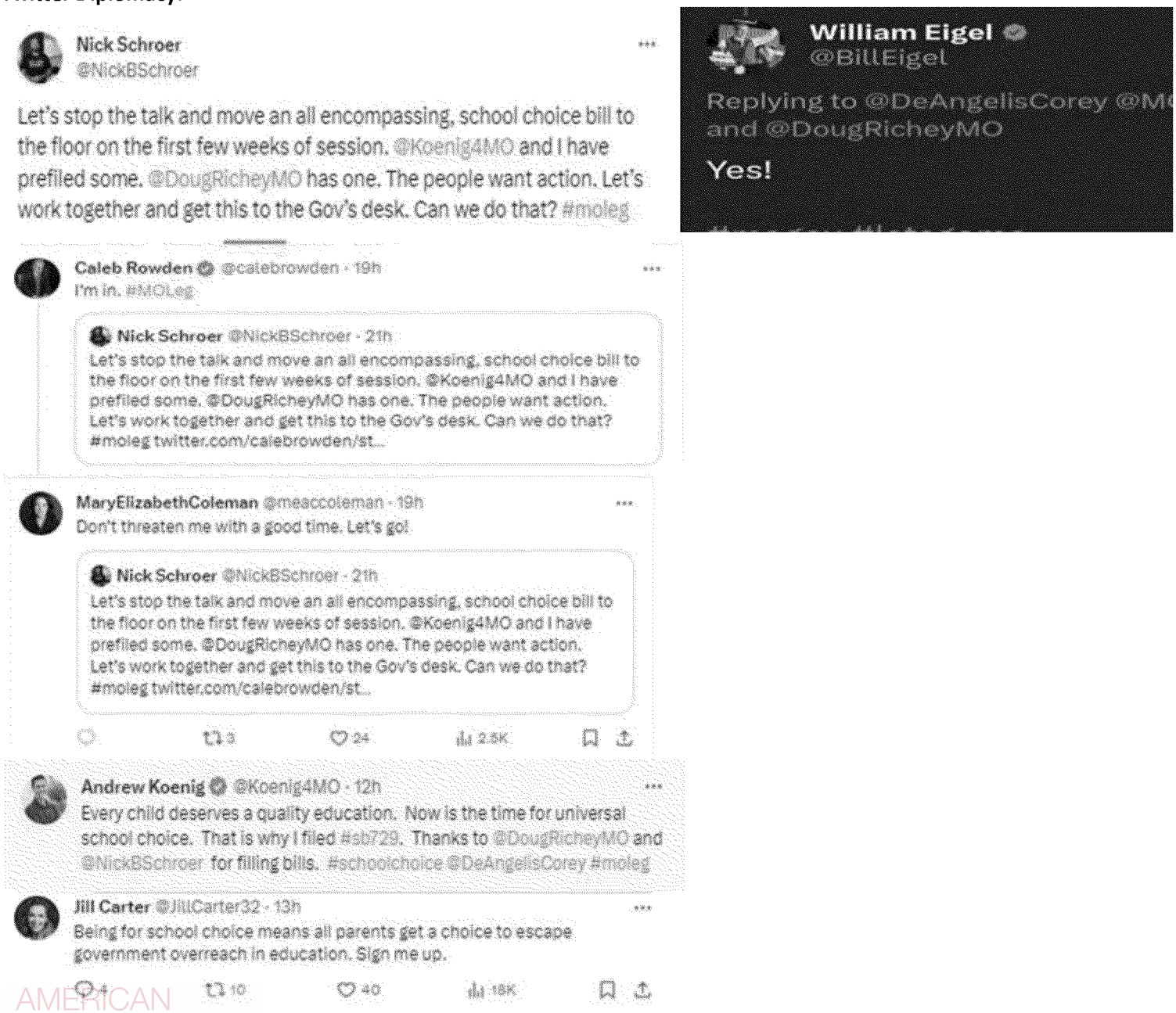
Parson: Flood Control Progress Being Made Along Missouri River

MissouriNet l Alisa Nelson

https://www.missourinet.com/2023/12/14/parson-flood-control-progress-being-made-along-missouri-river/

-"The work continues by the governors of Missouri, Iowa, Nebraska, and Kansas to ensure that the Missouri River is on track for the future. They met Thursday and have been meeting occasionally since 2019, when Missouri River flooding ravaged some of their communities. Gov. Mike Parson said progress has been made along the river. After Thursday's meeting in Omaha, the governor said they cannot let up on flood control efforts, even though the region is dealing with drought… Parson said the river is not just a "one-disaster item." "We have a tendency to think of the river when we talked about it on floods. But the drought is just as important," says Parson. "And if you look at every one of our states, on the on the rivers, what they do for each of us, you know the economy number one, we haven't even talked about what we do. That's why these meetings to me are so important, too, because we've got to keep the navigations of the river open. When that river level goes down and all of a sudden you've got to start worrying about freeze or you've got to start worrying about power plants." The governors have been working alongside the Army Corps of Engineers to reduce some of the government bureaucracy and speed up the process of rebuilding levees. Iowa Gov. Kim Reynolds said the conversation at their Thursday meeting was much different than their first one in 2019, when they expressed a lot of frustration to the Army Corps of Engineers… At least 1.2 million acres of Missouri farmland fell victim to flooding in 2019, sparking Parson to convene a statewide flood advisory working group."

Twitter Diplomacy:



AMERICAN OVERSIGHT

National News:

Supreme Court Declines to Block Illinois 'Assault Weapons' Ban

Epoch Times l Tom Ozimek
https://www.theepochtimes.com/us/supreme-court-declines-to-block-illinois-assault-weapons-ban-5547295

-"The U.S. Supreme Court on Thursday declined to block a Democrat-backed "assault weapon" ban, leaving the restrictions in place—at least for now. In a Dec. 14 order, the Supreme Court denied an emergency application for a writ of injunction that would have frozen the Illinois prohibition on certain types of semiautomatic rifles and magazines, with no justices dissenting. The decision leaves in place the law—called the Protect Illinois Communities Act—making it illegal for the general public to own weapons like the AR-15 and ammunition magazines with a capacity greater than 10 rounds. The National Association for Gun Rights, along with gun store owner Robert Bevis, filed the emergency petition at the end of November, after a lower court denied their bid for a preliminary injunction against the statewide ban. "We won't stop fighting for our members," the National Association for Gun Rights said in a post on X, reacting to the news… A district court rejected the plaintiffs' request, and a divided three-judge panel on the U.S. Court of Appeals for the 7th Circuit also refused to halt the ban. U.S. Circuit Judge Diane Wood, an appointee of former President Bill Clinton, wrote for the 2–1 majority in the ruling that the plaintiffs needed to prove that the weapons banned under the Illinois law "are arms that ordinary people would keep at home for purposes of self-defense, not weapons that are exclusively or predominantly useful in military service, or weapons that are not possessed for lawful purposes."… The appeals court judges then considered whether the firearms that were banned by the Illinois law are covered by the Second Amendment, with Judge Wood pointing to a 2008 U.S. Supreme Court decision that determined the Second Amendment only applies weapons "typically possessed by law-abiding citizens for lawful purposes."

Federal Judge Permanently Blocks Illinois Law Targeting Pro-Life Pregnancy Counseling

Epoch Times l Matthew Vandum
https://www.theepochtimes.com/us/federal-judge-permanently-blocks-illinois-law-targeting-pro-life-pregnancy-counseling-5545343

-"A federal judge permanently blocked an Illinois law on Dec. 14 that he previously called "stupid" that targets maternal health care centers and sidewalk counselors for expressing their pro-life message. The state of Illinois consented to the injunction and the dismissal of the underlying lawsuit filed against it. Plaintiffs who sued to stop the law objected to it because it declared that the pro-life speech engaged in by pregnancy help ministries was a "deceptive business practice." They litigated to protect the right of pro-life pregnancy help centers and sidewalk counselors across the state to continue their work reaching out to women across the Land of Lincoln facing unplanned pregnancies… The law barred "so-called 'crisis pregnancy centers' from using misinformation, deceptive practices, or misrepresentation in order to interfere with access to abortion services or emergency contraception," according to the governor's office… Judge Iain D. Johnston of the Western Division of the U.S. District Court for the Northern District of Illinois issued the document titled "agreed permanent injunction order" (pdf) in National Institute of Family and Life Advocates (NILFA) v. Raoul. Judge Johnston was appointed in 2020 by President Trump. The defendant, Mr. Raoul, was sued in his official capacity. Founded in 1993, NILFA "provides pro-life pregnancy centers and medical clinics with legal counsel, education, and training," according to the group's website. The judge dismissed the lawsuit "with prejudice," meaning the case cannot be litigated again. The court "shall retain jurisdiction over this action to enforce the final judgment," the order states. The order also states that NILFA "may file a motion seeking the costs of litigation, including reasonable attorneys' fees and expenses[.]"On Aug. 4, Judge Johnston called SB1909, the Illinois Consumer Fraud and Deceptive Businesses Practices Act, "both stupid and very likely unconstitutional," when he signed a preliminary injunction halting its enforcement… SB 1909 "is stupid because its own supporter admitted it was unneeded and was unsupported by evidence when challenged." "It is likely unconstitutional because it is a blatant example of government taking the side of whose speech is sanctionable and whose speech is immunized … SB 1909 is likely classic content and viewpoint discrimination prohibited by the First Amendment." The kind of speech regulated by the law "is extremely controversial," and the law itself"is not a constitutional regulation of professional speech." "Plaintiffs have established by undisputed evidence that they will be irreparably harmed absent a preliminary injunction. Their First Amendment rights will more than likely be violated, which is an irreparable harm," the judge wrote at the time… Mr. Breen hailed the victory as a big win for pro-life ministries and free speech in Illinois that would send a message to those who would enact laws that discriminate against pro-life ministries… "The federal court was spot on in holding that SB 1909 is 'both stupid and very likely unconstitutional,'" he said. "SB 1909 exempts abortion facilities and their speech, while exclusively regulating pro-life organizations and their speech, in flagrant violation of the First Amendment…"

Supreme Court Will Consider If Police Can Be Sued for Fabricating Evidence

Epoch Times l Matthew Vandum
https://www.theepochtimes.com/us/supreme-court-will-consider-if-police-can-be-sued-for-fabricating-evidence-5547151

-"The Supreme Court will consider whether an Ohio jeweler can bring civil rights claims against police for malicious prosecution after criminal charges brought against him were dropped. The case comes after the Supreme Court loosened the legal standard for bringing such lawsuits against police in federal courts in 2022, finding that plaintiffs may proceed if they can demonstrate that their criminal cases ended without a conviction. The court announced in an unsigned order on Dec. 13 that it granted the petition for certiorari, or review in Chiaverini v. City of Napoleon, Ohio. No justices dissented. The court

AMERICAN OVERSIGHT

did not explain why it made the decision. At least four of the nine justices must vote for the petition for the case to proceed to the oral argument stage. The U.S. Court of Appeals for the 6th Circuit ruled against jewelry store owner Jascha Chiaverini when he sued police after he was charged with, but not convicted of, felony money laundering, as well as a misdemeanor charge of possessing stolen property, and a charge of violating his precious metals dealer's license. Mr. Chiaverini claims in his petition (pdf) that the police "fabricated evidence" to justify the money laundering charge and that their actions were sufficient to justify a claim under the Fourth Amendment, which requires that the legal process began in the absence of probable cause… In the 2nd, 3rd, and 11th Circuits, the misconduct identified would sustain a Fourth Amendment malicious prosecution claim because those circuits use a charge-specific rule under which a plaintiff is allowed to proceed with a malicious prosecution claim as to a baseless charge, regardless of what other charges have been brought, according to the petition. But the 6th Circuit applies the "any-crime" rule, under which probable cause for any single charge "insulates every other charge from a malicious prosecution claim." Because the 6th Circuit found probable cause for the two other charges, it threw out the malicious prosecution claim related to the money laundering charge without even assessing probable cause as to that charge… The jeweler and his company sued the police and the city, seeking more than $3 million in damages, but the police moved to dismiss, arguing they were immune to the lawsuit. The federal district court ruled against the jeweler, finding there was probable cause for the "arrest and continuation of legal proceedings." The 6th Circuit also rejected Mr. Chiaverini's claims, holding that probable cause justified the search of his store, as well as his arrest and prosecution, but did not rule on whether probable cause justified the money-laundering charge, the city's brief said. The case comes a year and a half after the Supreme Court relaxed the legal standard for bringing such lawsuits in federal courts, overturning the tougher prevailing standard…"

Kentucky GOP gets win as state Supreme Court upholds new congressional boundaries

Washington Examiner l Eden Villalovas

https://www.washingtonexaminer.com/policy/courts/kentucky-supreme-court-upholds-congressional-boundaries-gop

-"The Kentucky Supreme Court on Thursday ruled a map of the state House of Representatives and congressional districts, passed by the GOP-led legislature in 2022, was constitutional, delivering a blow to Democrats. "An expectation that apportionment will be free of partisan considerations would thus not only be unrealistic, but also inconsistent with our Constitution's assignment of responsibility for that process to an elected political body," the majority opinion said, written by Justice Angela McCormick Bisig in the 78-page ruling with multiple dissents. Democrats filed a lawsuit to redraw the Kentucky House and the state's six congressional districts enacted by the Republican-led legislature last year, alleging numerous counties were improperly split and constituted constitutional violations. Before the Democratic Party's lawsuit, Gov. Andy Beshear (D-KY) vetoed the redistricting plan, but that was overruled by state Republicans, which prompted Democrats to file a challenge. The judges agreed with a lower court's ruling that both sets of maps are partisan gerrymanders, but neither violates the state's constitution…"

The economic indicator screaming that inflation is not vanquished

Washington Examiner l Joseph Lawler

https://www.washingtonexaminer.com/policy/economy/economic-indicator-screaming-inflation-not-vanquished

-"One economic indicator is signaling inflation is not at all conquered and that the Federal Reserve's monetary policy is still far too loose. The statistic in question is nominal gross domestic product, or NGDP, growth — that is, the growth of economic output before adjusting for inflation. It stands in contrast to a range of other signs inflation is receding: The inflation rate is falling, inflation expectations are dropping, wage growth is moderating, job openings are declining, and investors now expect that the Fed's next move will be to cut its interest rate target. In the third quarter, NGDP surged, growing at nearly a 9% annualized rate — the fastest growth in 20 years, setting aside the massive numbers posted during the reopening from the pandemic. NGDP has been identified as an important signal of how hot the economy is running by many monetary policy experts, including former Fed Chairman Ben Bernanke. It's favored because it is a measure of total spending across the economy. Rapid growth suggests that people are spending freely. In the absence of a sudden massive surge in productivity and/or labor force growth, some of that excess spending is going to show up as inflation. As an example, if inflation were running at the Fed's target of 2% and NGDP were growing at 9%, that would mean that real economic growth was 7%, an explosive number that strains credibility. More likely, all that spending is translating into higher inflation… Carson told the Washington Examiner that the fast growth of NGDP should lead the Fed to pursue more monetary policy tightening, a massive course correction given that investors now expect the Fed to start cutting rates as soon as March…"

Congress Votes To Extend FBI Warrantless Surveillance Tool Without Reforming It

Daily Caller l Jason Cohen

https://dailycaller.com/2023/12/14/congress-votes-extend-fbi-warrantless-surveillance-tool-reform/

-"Congress voted Thursday to reauthorize Section 702 of the Foreign Intelligence Surveillance Act (FISA) with no reforms as part of the National Defense Authorization Act, or NDAA. Section 702 of FISA is a tool that intelligence officials have allegedly abused as it enables them to surveil Americans without obtaining a warrant. After the Senate passed FISA through the NDAA on Wednesday and failed to get sufficient support to eliminate the four-month extension, the House of Representatives finalized it in a vote on Thursday… If six more senators had opposed a point of order against the NDAA on Wednesday, then FISA would not have passed, potentially expiring at the end of December. FISA's Section 702 allows

AMERICAN OVERSIGHT

intelligence agencies to gather incidental data on Americans while targeting foreign individuals, generating concern over improper spying on U.S. citizens. The provision will now be extended through April. Having cleared Congress, the NDAA's last step will be to President Joe Biden's desk for his signature. "It is imperative that we strengthen our Fourth Amendment and stop the corrupt upper echelon of the federal government from spying on everyday Americans," Republican Texas Rep. Randy Weber said in a statement after voting against the NDAA. "Unfortunately, today, Congress reauthorized the status quo." Two bills to reform FISA had been anticipated to come to the House floor for a competing vote on Tuesday, but Republicans fought over it, causing a cancellation late on Monday, The New York Times reported. As a result, FISA is passing with no reform and the bills probably will not receive a vote until 2024. The House Judiciary Committee introduced one of them — Republican Arizona Rep. Andy Biggs' Protect Liberty and End Warrantless Surveillance Act (PLEWSA) — that would limit the government's power under Section 702 by mandating a warrant for almost all searches of Americans, according to its text. Conversely, the House Intelligence Committee has put forward a bill dubbed the FISA Reform and Reauthorization Act of 2023, that would change the definition of "electronic service communications provider" to contain ''equipment that is being or may be used to transmit or store such communications.'' This would consist of any entity or business that provides an internet connection, thereby massively increasing domestic surveillance authorities under FISA, according to experts."

Red State Legislature Sends Bill Banning Sex Change Procedures For Minors To Governor's Desk

Daily Caller l Kate Anderson

https://dailycaller.com/2023/12/14/ohio-bill-banning-sex-change-procedures-minors-governors-desk/

-"The Ohio legislature sent a bill to Republican Gov. Mike DeWine's desk on Wednesday that would bar minors from getting sex change procedures, according to the Ohio Capital Journal. House Bill 68 prohibits doctors from performing sex change medical procedures, including cross-sex hormones and surgeries, on children, as well as bans male athletes from competing in female divisions. The state Senate approved the bill in a 24-8 vote, and the state House approved the bill afterward in a 61-27 vote, according to the Ohio Capital Journal. The bill is now headed to DeWine's desk and he has 10 business days to give his signature or veto the legislation. DeWine's press secretary, Dan Tierney, told the Ohio Capital Journal that they are waiting for "a final bill to review before offering formal comment."… DeWine's office did not immediately respond to the Daily Caller News Foundation's request for comment."

I hope everyone has a great Friday and weekend!

Best,

Bennett Lyday | Policy & Operations Specialist
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
O: (573) 751-4390
C: (573) 645-9671
Bennett.Lyday@ago.mo.gov

AMERICAN OVERSIGHT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

STATE OF MISSOURI, ET AL.	**CASE NO. 3:22-CV-01213**
VERSUS	**JUDGE TERRY A. DOUGHTY**
JOSEPH R. BIDEN JR., ET AL.	**MAG. JUDGE KAYLA D. MCCLUSKY**

MEMORANDUM RULING ON REQUEST FOR PRELIMINARY INJUNCTION

At issue before the Court is a Motion for Preliminary Injunction [Doc. No. 10] filed by Plaintiffs.[1] The Defendants[2] oppose the Motion [Doc. No. 266]. Plaintiffs 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,[3] the Buckeye Institute,[4] and Children's Health Defense.[5]

---

[1] 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").

[2] 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. 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").

[3] [Doc. No. 252]

[4] [Doc. No. 256]

[5] [Doc. No. 262]

AMERICAN OVERSIGHT

response, Twitter stated that at least some of the examples had been "reviewed and actioned."[295] Crawford understood that she was flagging posts for Twitter for possible censorship.[296]

Twitter additionally offered to enroll CDC officials in its "Partner Support Portal" to provide expedited review of content flagged for censorship.[297] 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.[298] Census Bureau contractor Christopher Lewitzke ("Lewitzke") also requested to enroll in the Partner Support Portal.[299]

Crawford also sent Twitter a BOLO for the alleged misinterpretation of a CDC lab report.[300]

(18) Crawford testified in her deposition that the CDC has a strong interest in tracking what its constituents are saying on social media.[301] Crawford also expressed concern that if content were censored and removed from social-media platforms, government communicators would not know what the citizen's "true concerns" were.[302]

D. NIAID Defendants[303]

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.[304]

---

[295] [Id.]
[296] [Doc. No. 205-1 at 211]
[297] [Id. at 211–12]
[298] [Id. at 211–18]
[299] [Doc. No. 201-34 at 2]
[300] [Doc. No. 201-35]
[301] [Doc. No. 201-1 at 57–58]
[302] [Id. at 75]
[303] The NIAD Defendants consist of the National Institute of Allergy and Infectious Disease and Dr. Hugh Auchincloss ("Dr. Auchincloss").
[304] [Doc. No. 206]

AMERICAN OVERSIGHT

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.[305] Dr. Fauci retired December 31, 2022.

1. Lab-Leak Theory

Plaintiffs set forth arguments that because NIAID had funded "gain-of-function"[306] 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.[307]

(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 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.[308] 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."[309] 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

[305] [Doc. No. 206-1 at 10 (Deposition of Dr. Anthony S. Fauci)]
[306] "Gain-of-function" research involves creating a potentially dangerous virus in a laboratory.
[307] [Doc. No. 212-3 at 151–85]
[308] [Id. at 165]
[309] [Doc. No. 206-9 at 2]

AMERICAN OVERSIGHT

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."[310] 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.[311]

(2) On February 9, 2020, in a joint podcast with Dr. Peter Daszak of the Eco Health Alliance,[312] both Drs. Fauci and Daszak discredited the lab-leak theory, calling it a "conspiracy theory."[313]

(3) Three authors of "The Proximal Origins of SARS-CoV2," Robert Garry, Kristian Anderson, and Ian Lipkin, received grants from NIH in recent years.[314]

(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."[315]

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

---

[310] [Doc. No. 206-9 at 1]
[311] [Doc. No. 206-13 at 1, 7-8; 206-11 at 2–3; and 206–20]
[312] [Doc. No. 206-16 at 1]
[313] [Doc. No. 206-16 at 1; 206-17 at 1]
[314] [Doc. No. 214-30]
[315] [Doc. No. 206-27 at 3–4]

AMERICAN OVERSIGHT

with jump of a species from animal to a human."[316] "The Proximal Origin of SARS-CoV2" has since become one of the most widely read papers in the history of science.[317]

(5) Twitter and Facebook censored the lab-leak theory of COVID-19.[318] 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.[319]

(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."[320]

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.[321]

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."[322] The article purported to analyze 96,032 patients to compare persons who did and did not receive this treatment. The study concluded that hydroxychloroquine

---

[316] (Video of April 17, 2020, White House Coronavirus Task Force Briefing, at https://www.youtube.com/watch?v=brbArPX8=6I)
[317] [Doc. No. 214-30]
[318] [Doc. No. 206-32 at 1–2; Doc. No. 206-33 at 3]
[319] [Doc. No. 206-1 at 210]
[320] [Doc. No. 206-24 at 3]
[321] [Doc. No. 201-1 at 177]
[322] [Doc. No. 206-36 at 1]

AMERICAN OVERSIGHT

and chloroquine were associated with decreased in-hospital survival and an increased frequency of ventricular arrhythmias when used for treatment of COVID-19.[323]

Dr. Fauci publicly cited this study to claim that "hydroxychloroquine is not effective against coronavirus."[324] 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.[325]

(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,[326] Dr. Fauci made statements on Good Morning America[327] and on Andrea Mitchell Reports[328] 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.[329] Dr. Fauci does not deny that he or his staff at NIAID may have communicated with social-media platforms, but he does not specifically recall it.[330]

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

---

[323] [Id.]
[324] [Doc. No. 206-35 at 1]
[325] https://www.youtube.com/watch?v=RUNCSOQD2UE
[326] [Doc. No. 207-2 at 5]
[327] [Doc. No. 207-1 at 2]
[328] [Doc. No. 207-1 at 2–3]
[329] [Doc. No. 207-2 at 6]
[330] [Doc. No. 206-1 at 238]

AMERICAN OVERSIGHT

Oxford. The GBD is a one-page treatise opposing reliance on lockdowns and advocating for an approach to COVID-19 called "focused protection."[331] 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.[332]

(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.[333]

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."[334]

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."[335] Dr. Fauci consulted with Dr. Collins before he talked to the Washington Post.[336] Dr. Fauci also endorsed these comments in an email to Dr. Collins, stating "what you said was entirely correct."[337]

On October 15, 2020, Dr. Fauci called the GBD "nonsense" and "dangerous."[338] Dr. Fauci specifically stated, "Quite frankly that is nonsense, and anybody who knows anything about

---

[331] [Doc. No. 207-5 at 3]
[332] [Id.]
[333] [Doc. No. 207-6]
[334] [Doc. No. 207-7]
[335] [Doc. No. 207-9]
[336] [Doc. No. 206-1 at 272]
[337] [Doc. No. 207-10]
[338] [Doc. No. 207-11 at 1]

AMERICAN OVERSIGHT

epidemiology will tell you that is nonsense and very dangerous."[339] Dr. Fauci testified "it's possible that" he coordinated with Dr. Collins on his public statements attacking the GBD.[340]

(3) Social-media platforms began censoring the GBD shortly thereafter. In October 2020, Google de-boosted 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.[341] Reddit removed links to the GBD.[342] YouTube updated its terms of service regarding medical "misinformation," to prohibit content about vaccines that contradicted consensus from health authorities.[343] 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.[344] Dr. Fauci testified that he could not recall anything about his involvement in seeking to squelch the GBD.[345]

(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,"[346] Scott Prince of NIH responded, "Fake/Imposter handle. PLEASE REMOVE!!!"[347] 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

[339] [Id. at 3]
[340] [Doc. No. 206-1 at 279]
[341] [Doc. No. 207-12 at 4]
[342] [Id. at 4–5]
[343] [Doc. No. 207-13 at 4–5]
[344] [Doc. No. 207-15]
[345] [Doc. No. 206-1 at 251–52, 255–58]
[346] [Doc. No. 207-17 at 2]
[347] [Id.]

AMERICAN OVERSIGHT

occur again?"[348] Twitter replied, "We'll freeze this @handle and some other variations so no one can hop on them."[349]

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."[350] Both Lavelle and Routh are members of Dr. Fauci's communications staff.[351] Six of the eight accounts listed were removed by Facebook on the same day.[352]

(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.'"[353] 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.[354] Twitter disclosed that Dina Perry ("Perry"), a Public Affairs Specialist for NIAID, communicates or has communicated with Twitter about misinformation and censorship.[355]

(6) Dr. Fauci testified that he has never contacted a social-media company and asked them to remove misinformation from one of their platforms.[356]

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

---

[348] [Id. at 1]
[349] [Id.]
[350] [Doc. No. 207-19 at 3]
[351] [Doc. No. 206-1 at 308]
[352] [Doc. No. 207-19 at 3]
[353] [Doc. No. 207-20 at 1]
[354] [Id.]
[355] [Doc. No. 214-8 at 1]
[356] [Doc. No. 206-1 at 151]

AMERICAN OVERSIGHT

contribute to people refusing the vaccine or self-medicating."[357] The CDC responded the next day and advised Facebook that the claim that Ivermectin is effective in treating COVID is "NOT ACCURATE."[358] The CDC cited the NIH's treatment guidelines for authority that the claims were not accurate.[359]

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."[360] Dr. Fauci stated that, at that time, there were "no studies" on the efficacy of masking to stop the spread.[361] On March 31, 2020, Dr. Fauci forwarded studies showing that masking is ineffective.[362]

Plaintiffs allege that Dr. Fauci's position on masking changed dramatically on April 3, 2020, when he became an advocate for universal mask mandates.[363] Dr. Fauci testified his position changed in part because "evidence began accumulating that masks actually work in preventing acquisition and transmission,"[364] although Dr. Fauci could not identify those studies.[365]

---

[357] [Doc. No. 207-22 at 2]
[358] [Id. at 1]
[359] [Id.]
[360] [Doc. No. 206-1 at 314]
[361] [Id. at 316]
[362] [Id. at 318]
[363] [Id. at 317]
[364] [Id.]
[365] [Id. at 318]

AMERICAN OVERSIGHT

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.[366]

Dr. Fauci had previously sought to discredit Berenson publicly during an interview with CNN.[367] 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.[368]

E. FBI Defendants[369]

(1) The deposition of Elvis Chan ("Chan") was taken on November 29, 2021.[370] Chan is the Assistant Special Agent in charge of the Cyber Branch for the San Francisco Division of the FBI.[371] 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 squads, along with the FBI's private sector engagement squad, who relay information to social-media platforms.[372]

Chan graduated from the Naval Postgraduate School in 2020 with a M.A. in Homeland Security Studies.[373] 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."[374] His thesis focuses on information sharing between the FBI, Facebook,

---

[366] [Doc. No. 207-23 at 4]
[367] [Doc. No. 207-24 at 1–2]
[368] [Doc. No. 206-1 at 341–43]
[369] FBI Defendants include Elvis Chan ("Chan"), the Federal Bureau of Investigation ("FBI"), Lauren Dehmlow ("Dehmlow"), and the U.S. Department of Justice ("DOJ").
[370] [Doc. No. 204-1]
[371] [Id. at 8]
[372] [Id. at 105]
[373] [Id. at 10]
[374] [Doc. No. 204-2 at 1]

AMERICAN OVERSIGHT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

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 AND 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;

No. 3:22-cv-01213-TAD-KDM

AMERICAN OVERSIGHT

'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,

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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).

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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*

AMERICAN OVERSIGHT

To: Scott, Todd[Todd.Scott@ago.mo.gov]
From: Scott, Todd[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1DAF1E35615D4B2E8DBB3F318306291A-SCOTT, TODD]
Sent: Sat 12/16/2023 12:09:53 PM (UTC-06:00)
Subject: Documents - A Fauci
Doc. 293 - Memorandum Ruling on Request for PI - handout.pdf
Doc. 268 - Third Amended Complaint - handout.pdf

Todd Scott | Senior Counsel
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8366
Todd.Scott@ago.mo.gov

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Lewis, Jason[Jason.Lewis@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Wagner, Ray[Ray.Wagner@ago.mo.gov]
From: Lyday, Bennett[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EACD91D740F2406EB8A1385B65BBDDED-LYDAY, BENNETT]
Sent: Mon 12/18/2023 9:26:06 AM (UTC-06:00)
Subject: Daily News/Media Roundup - Monday, December 18th, 2023

Good morning all,
Below is the relevant news for today and yesterday relating to the AGO, Missouri, and Nation:

AGO News:

Attorney General Bailey Obtains 295 Year Sentence for Franklin County Statutory Rape and Sodomy Convictions
STL Record l No Author Listed
https://stlrecord.com/stories/652878641-attorney-general-bailey-obtains-295-year-sentence-for-franklin-county-statutory-rape-and-sodomy-convictions

-"Missouri Attorney General Andrew Bailey announced that his office obtained a 295-year sentence for Brett Pendleton of Franklin County, Missouri, in connection with the sexual abuse of his eight-year-old daughter in 2018. In October, the Attorney General's Office obtained convictions against Pendleton for Statutory Rape in the First Degree, five counts of Statutory Sodomy in the First Degree, an Attempted Statutory Sodomy in the First Degree, Child Molestation in the First Degree, Abuse of a Child, and two counts of Delivery of a Controlled Substance to a Minor. "I want Missouri to be the safest state in the nation for children," said Attorney General Bailey. "As Attorney General and a former prosecutor, I will work to obtain justice for victims, especially our most vulnerable. I'm proud of the work my office did in this case to do just that." Pendleton was indicted by a Franklin County grand jury in January of 2018. The charges stemmed from events on January 1, 2018, when he took his eight-year-old daughter to a motel room, forced her to smoke marijuana and ingest methamphetamine, and proceeded to sexually abuse her for hours. The victim was located at the motel by a family member, who took her to the hospital to report the abuse. The Washington Police Department initiated an investigation, and the investigation uncovered evidence that corroborated the victim's account of what had happened to her… The case was tried by assistant attorneys general Tristin M. Estep and Paige K. Wheeler, and the trial team included victim advocate Carrie Boessen and investigator Rob Jauer. At sentencing, the court heard argument from the State on behalf of the minor victim, argument from the defense, as well as a statement from the defendant, Brett Pendleton. The court sentenced Pendleton to seven consecutive life sentences, plus 85 years, the maximum sentence authorized by law. Because life sentences are calculated at 30 years for purposes of parole eligibility, Pendleton's sentence is calculated at 295 years in the Missouri Department of Corrections. When pronouncing the sentence, Judge Hellmann informed the defendant that he had ruined the victim's life and that this sentence ensured that he would not have the opportunity to create any additional victims."

Republican attorney general exposes DOJ funding to Soros-backed group that trains left-wing prosecutors
New York Times Post l No Author Listed
https://nytimespost.com/republican-attorney-general-exposes-doj-funding-to-soros-backed-group-that-trains-left-wing-prosecutors/

-"A Republican state attorney general is asking members of Congress to probe a Justice Department grant that he says benefits a "radically progressive" George Soros-linked group responsible for training prosecutors in ways to implement a soft-on-crime approach to their work. Missouri's Attorney General Andrew Bailey sent letters to congress Wednesday to urge both Republican and Democrat lawmakers "to further investigate and eliminate funding for programs that are counter-productive to public safety" and that "aid or encourage prosecutors to abuse discretion by refusing to bring criminals to justice." Bailey's letters follow what he describes as a "galvanizing moment" in Missouri when disgraced St. Louis circuit attorney Kim Gardner – "a progressive soft-on-crime prosecutor" – let a repeat criminal out on bail who then drove his speeding car into a young girl, leaving her with injures that required the amputation of both of her legs. Gardner ultimately resigned after mounting evidence of duty dereliction and criticism from both political parties. "As states like Missouri are leading the fight to uphold justice and put criminals behind bars, organizations and their partners in the federal government are doing just the opposite," Bailey wrote. "The fact is, the U.S. Department of Justice (DOJ), in lock-step with radicals like George Soros, is actively funding organizations like the Vera Institute that are turning our streets into war zones," he said. Bailey names the Vera Institute — a Brooklyn-based advocacy group that says it wants to "transform the

AMERICAN OVERSIGHT

criminal and legal justice systems" with ties to Washington, D.C., Democrats — as a "deeply embedded" key partner in Gardner's former office, "turning it into a catastrophic social experiment more concerned with lowering prosecution rates than convicting violent criminals." Soros' Open Society Foundations donated nearly $11 million to the Vera Institute in previous years. Bailey says Gardner "bragged" that her office "partnered with the Vera Institute of Justice's Reshaping Prosecution program to shrink the system and instigate transformational change in St. Louis" as it implemented a "new approach centered on … racial equity." "Ms. Gardner's partnership with George Soros and the Vera Institute, with the aim of 'actively shrinking the criminal legal system's footprint,' was a disastrous experiment, and it unmoored the office from sound law enforcement practices. The Vera Institute is a far-left advocacy organization dedicated to broad and nebulous goals such as moving away from 'case-by-case' prosecutorial discretion (deemed to be a 'narrow view of justice'), choosing instead to focus on 'systemic impact of case decisions.'" In a statement to Fox News Digital, Vera said the group "entered into a partnership with then-Circuit Attorney for the City (CAC) of St. Louis Kim Gardner on a project to analyze her office data, measure racial disparities and identify areas for reform, and increase transparency with her community. The partnership helped the CAC implement policy reforms such as increased diversion programs that promote safety by addressing underlying drivers of crime and reducing recidivism."…"

'Progressive Tyrants': Missouri AG Launches Investigation Into Media Matters

State of the Union l Jordan Andrews

https://www.msn.com/en-us/news/us/progressive-tyrants-missouri-ag-launches-investigation-into-media-matters/ar-AA1lEeWr?ocid=Peregrine

-"issouri Attorney General Andrew Bailey has launched an investigation into Media Matters for America, alleging that the outlet misled readers about X to pressure advertisers to withdraw support from the social media platform. Bailey accused Media Matters of using fraud to solicit donations and violating consumer protection laws… "We have reason to believe Media Matters used fraud to solicit donations from Missourians in order to trick advertisers into pulling out of X, the last platform dedicated to free speech in America. Radicals are attempting to kill Twitter because they cannot control it, and we are not going to let Missourians get ripped off in the process," Bailey stated. "I'm fighting to ensure progressive tyrants masquerading as news outlets cannot manipulate the marketplace in order to wipe out free speech."… Media Matters has responded to Paxton's investigation by filing a lawsuit, claiming violation of the First Amendment… The controversy arises from allegations that Media Matters sought to undermine free speech on X. Musk said Media Matters was attempting to undermine free speech because "they perceive it as a threat to their ideological narrative and those of their financial supporters.'"

After report of antisemitism, Missouri's AG is defending X, formerly Twitter. Here's why.

Springfield News-Leader l Kelly Dereuck

https://www.news-leader.com/story/news/politics/2023/12/18/mo-attorney-general-investigates-group-that-found-antisemitism-on-x/71908924007/

-"Arguing that Missourians who donated to a left-leaning media watchdog nonprofit may have been misled, state Attorney General Andrew Bailey has waded into a recent controversy involving the social media platform X, formerly known as Twitter. Bailey… launched an investigation into Media Matters, a liberal advocacy group, on grounds that it improperly solicited donations from Missourians to target X, which has been mired in controversy since Elon Musk purchased the company in 2022. "The concern here and the allegation here is that Media Matters defrauded Missourians in a coordinated scheme to manipulate the marketplace and bully advertisers to pull out of X, formerly known as Twitter, in order to attack Twitter and do away with the last platform dedicated to free speech in America," Bailey said. Media Matters released a report that showed advertisements from prominent brands being featured alongside antisemitic content. Following this, major brands including IBM, NBCUniversal and its parent company Comcast pulled their advertisements from X to avoid any future instances of this occurrence. Musk soon filed a lawsuit against Media Matters, alleging that it manufactured the results of the report by following users known for posting antisemitic content, which then generated similar social posts, all but ensuring that any advertisements would appear next to harmful content… Bailey's own investigation is scrutinizing "potentially unlawful business practices" on grounds that it "may have violated Missouri consumer protection laws, including laws that prohibit nonprofit entities from soliciting funds under false pretenses." "Media Matters is a 501(c)(3) organization and so they can only raise money for the nonprofit purpose, but their nonprofit was not founded in order to manipulate the marketplace to attack X," Bailey said. Bailey is requesting records from the nonprofit pertaining to strategy to target advertisers on X, communication with third parties about that strategy, conversations with specific advertisers, and internal messages regarding "content intended to 'cancel,' 'deplatform,' 'demonetize,' or otherwise interfere with businesses or organizations located in Missouri, or utilized by Missouri residents." Bailey's investigation hinges on finding sufficient evidence that Media Matters made any effort to skew the results of their initial report, which has not been definitively proven by Bailey or any of the other attorneys general looking into the matter, such as Texas Attorney General Ken Paxton and Louisiana Attorney General Jeff Landry. However, Bailey said that X's own internal review showed that they were only able to replicate occurrences such as those found in the Media Matters report "one out of 500 million times for one of the advertisers and only two out of 500 million times for one of the other advertisers." "This is manipulation of an algorithm designed to emphasize controversial speech that was then used to bully those advertisers into pulling out X,"

AMERICAN OVERSIGHT

Bailey said. “The advertisers have become pawns in the market manipulation, which creates a whole new set of problems because it runs afoul of antitrust law to have a conspiracy to form a combination in restraint of trade.” Bailey and Landry penned a joint letter to advertisers urging them not to be “swindled by activist deception and dive into a controversial issue that only harms Americans and free speech.” “Sometimes these militant campaigns to punish the free speech of others have short-term success.You may recall how activists were able to get Major League Baseball’s All-Star Game moved out of Atlanta based on trumped-up and false allegations of racism — spread by the President, no less — after the Georgia General Assembly enacted reforms to the state’s voting laws. Yet, now we see that the same All-Star Game is returning to Georgia in 2025 as genuine facts emerged and the false smear fell apart,” Bailey and Landry wrote in a joint letter. They ended by encouraging advertisers, among them Apple, Disney, IBM, Sony and others, to “strongly consider this context and the perverse incentives of activists before quickly jumping to conclusions based on assertions that are likely false.” Jared Schroeder, a professor of media law at the University of Missouri School of Journalism, sees similarities between this investigation and other lawsuits currently underway in Florida and Texas that seek to ensure that private actors aren’t limiting free speech. Although Bailey’s investigation stands on grounds of market manipulation and potential antitrust violations, his intentions are to ensure that X, a platform that purports to encourage free speech, isn’t limited by private actors having an impact on its existence. “What our Attorney General's doing here is about whether or not Media Matters actions led to limitations on free speech,” Schroeder said…”

Elon Musk’s fight against Media Matters gets backup from Missouri attorney general

STL NPR l Jason Rosenbaum

https://www.stlpr.org/government-politics-issues/2023-12-18/elon-musks-fight-against-media-matters-gets-backup-from-missouri-attorney-general

-“Attorney General Andrew Bailey announced last week he’s initiating an investigation against Media Matters for America, a Washington, D.C.-based group that writes articles critical of conservative media outlets and personalities. Media Matters also showcased some of the alleged deficiencies of Musk’s stewardship of X, the new name for Twitter, including how extremist accounts were thriving on the site. “I believe in the right to free speech. I think that it's central to our republic and who we are as an American people and to our freedom,” Bailey said in an interview with St. Louis Public Radio. “I'm concerned that there may be entities that will lie, cheat and steal to take that freedom away from us.” At issue are articles showing how ads appeared next to accounts that espouse antisemitic and pro-Adolf Hitler content. Musk sued Media Matters, accusing the group of “contriving” and “manufacturing” screenshots showcasing the juxtaposition. Bailey announced last week that he’s looking into whether Media Matters fraudulently tried to solicit contributions from Missourians to persuade advertisers to flee X. In a letter sent to Media Matters, Bailey demanded a slew of documents including “communications and documents related to soliciting charitable funds from residents of Missouri.” Bailey said the investigation could look into whether Media Matters violated the Missouri Merchandising Practices Act or antitrust laws. Even though X is based in San Francisco and Media Matters is based in Washington, D.C., Bailey said: “We need to know how many Missourians were solicited for contributions by Media Matters under what pretense and if Missourians were defrauded in this coordinated attack on X.”… In his letter to Media Matters, Bailey alluded to X’s lawsuit, which accuses the group of “falsely suggesting that fringe, extremist content regularly appears next to content from corporate advertisers when in fact the opposite is true.”… Bailey said in an interview that X’s internal investigation showed that it was “exceedingly remote” that ads were placed next to “controversial speech.” Others note that companies have decided to stop advertising on X not because of Media Matters, but because of Musk’s comments… When asked if it was possible that advertisers decided to leave X because of Musk’s controversial statements, including the one about the Great Replacement Theory, Bailey replied: “I think that's what we're going to have to find out during our investigation.” “I would point out that the allegation here is that Media Matters is who emphasized controversial speech,” Bailey said. “And if they didn't like what was being said on Twitter, they should have offered counterspeech to defeat those ideas with better ideas, instead of manipulating the algorithms to defraud the advertisers.” There could be multiple barriers to Bailey getting the information he wants in his investigation. For one thing, Washington, D.C., has what’s known as a shield law that protects against news outlets having to turnover sources or work product to governmental agencies. While Bailey has said that he doesn’t consider Media Matters to be a news outlet… Bailey said, “We'll see how a court would rule on that issue.” He added, “We're going to continue to pursue the matter because the Missouri Merchandising Practices Act under state statute gives the attorney general's office authority over not-for-profits.”… He also said the fact that the articles in question do not feature an explicit ask for money may complicate efforts for Bailey to prove Media Matters engaged in fraudulent solicitation. The articles do feature a graphic on a sidebar asking for donations to make sure “right-wing lies don’t set the agenda” — but Musk isn’t featured in the illustration… Bailey said the purpose of his investigation is to “see how many Missourians contributed and under what pretense and was there fraud in the solicitation of contributions.”… Bailey’s office is also part of a high-stakes lawsuit seeing if the federal government overstepped its bounds when it tried to get social media platforms to take down content. He’s said that if a governmental agency doesn’t like a tweet or a Facebook post, it should fight that speech with more speech — not try to persuade social media companies to take down the content… When asked if it would be a better course of action for his office to merely speak out against Media Matters’ articles, Bailey replied, “I would say we're doing that in exposing this for what it is and fighting back with the superiority of our moral

AMERICAN OVERSIGHT

ideals as expressed through our words." "[That's] a powerful form of weaponry in the battlefield for ideas, and that emphasizes my love of free speech as a foundational principle of our republic," Bailey said. "But if Missourians were harmed, or have the potential to be harmed by fraudulent schemes and market manipulations, we're going to fight to protect Missourians as well.'"

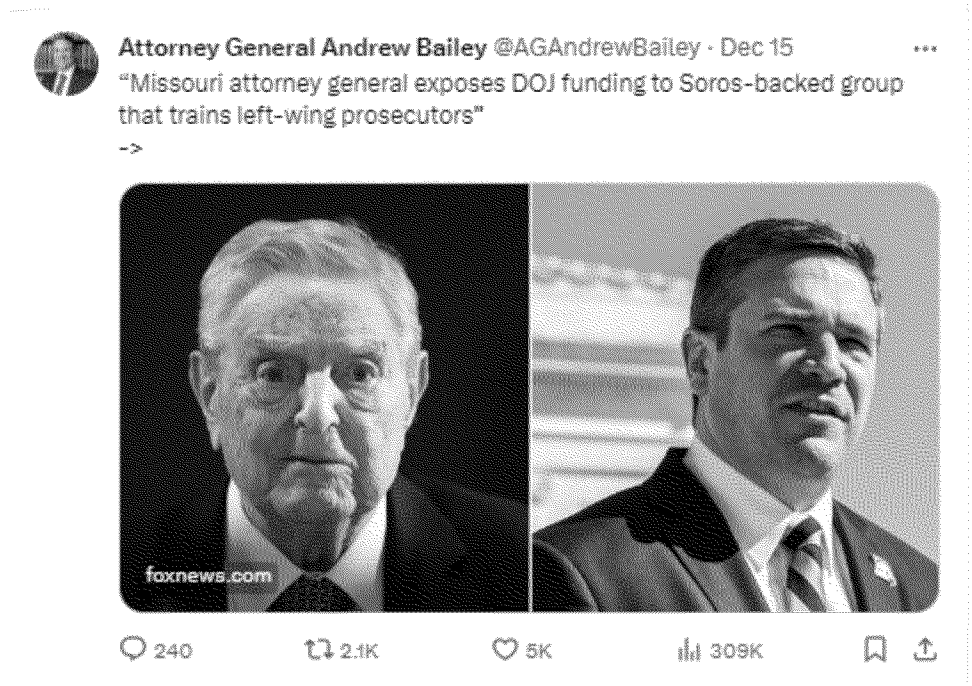
Opinion: Missouri AG isn't defending free speech. He's just trying to boost Elon Musk's X
The KC Star l Editorial Board
https://www.kansascity.com/opinion/editorials/article283108283.html#storylink=cpy

AGO Interviews:

Missouri AG: Evidence Against Media Matters Would 'Chill Spine Of The Devil'
One America News l Tipping Point
https://www.oann.com/video/tipping-point-video/missouri-ag-evidence-against-media-matters-would-chill-spine-of-the-devil/

Missouri Attorney General, explains why he launched an investigation into Media Matters for deceptive practices and discusses his lawsuit against Washington University for failing to hand over discovery documents
Washington Watch with Tony Perkins
https://www.frc.org/washingtonwatchweeklyradio/weekend-edition-december-16-2023

AGO Tweets:



AMERICAN OVERSIGHT



Missouri News:

Police investigating threats made to Creve Coeur synagogues

STL Post-Dispatch | Steph Kukuljan

https://www.stltoday.com/news/local/crime-courts/police-investigating-threats-made-to-creve-coeur-synagogues/article_0b16439c-9d17-11ee-9f8d-5b4a1271bb3d.html

-"Authorities said three synagogues in Creve Coeur received threatening emails that implied there were bombs at the facilities. Canine officers from the Creve Coeur and St. Louis County police departments searched each synagogue and confirmed that there were no immediate safety concerns, according to a release. Creve Coeur police are currently investigating the source of the threats and whether they are related to similar statements recently received by other organizations across the U.S. No other information was disclosed, including which synagogues received the messages. Creve Coeur police said updates would be provided on social media. Antisemitism has been on the rise in the U.S. in recent years, particularly since war broke out on Oct. 7 when Hamas and other militants killed 1,200 people in Israel and captured around 240. More than 100 of them were released during a weeklong cease-fire late last month. Scott Biondo, community security director for the Jewish Federation of St. Louis, told the Post-Dispatch that the emails were similar to those sent to other Jewish organizations in the country in recent months and that federal authorities do not believe they are credible threats. Authorities also do not believe the messages are directly related to the Israel-Hamas conflict as the emails don't contain any language referring to the war… His department, which provides security services for dozens of Jewish organizations from Joplin in southwest Missouri to Paducah, Kentucky, has seen a rise in antisemitism incidents over the past year, including acts of vandalism and remarks made on social media. Biondo said Jewish organizations have prepared for "a worst-case scenario" and that they are more than prepared to deal with threats like those made Sunday."

Missouri State Auditor to unveil 'preliminary results' of audit of Jackson County Assessment Department

KMBC | Nick Sloan

https://www.kmbc.com/article/missouri-state-auditor-to-unveil-preliminary-results-of-audit-of-jackson-county-assessment-department/46150358#

-"Fitzpatrick will announce his findings at 1 p.m. on Monday in Kansas City. The audit began last September after the Jackson County Legislature welcomed the audit. The audit aims to scrutinize the procedures employed for property value assessments, which saw an average increase of 30 percent for property owners in Jackson County. "While the audit for the Jackson County Assessment Department is still in progress, Fitzpatrick will share some of the preliminary results for the

AMERICAN OVERSIGHT

benefit of homeowners who have questioned whether the large increases to the assessed values of their homes were done in compliance with state law," his office said in a news release about the press conference. Before the audit was conducted, Fitzpatrick requested a copy of the county's contract with Tyler Technologies and information about all payments made to Tyler Technologies, including dates, check numbers, and amounts from Oct. 1, 2020, through the present. Over 54,000 appeals were filed, and the county has resolved just over 39,000 of them."

Missouri Dept. of Revenue owed more than $78 million in delinquent temporary tag fees

KCTV l Joe McLean

https://www.kctv5.com/2023/12/15/missouri-dept-revenue-owed-more-than-78-million-delinquent-temporary-tag-fees/

-"The Missouri Department of Revenue is owed a combined $78,614,363 in delinquent state, local and penalty fees related to 58,922 expired temporary vehicle permits…One of the many bills that have so far been pre-filed in the Missouri House of Representatives is a measure that would crack down hard on Missouri drivers with expired temporary vehicle tags. If passed, the measure would allow law enforcement officers to confiscate expired vehicle tags, forcing the driver to either stop driving the vehicle or get it registered. In August, the City of St. Charles began encouraging citizens to capture a picture of any expired temporary tags and report them to police. The county later began allowing its officers to confiscate the expired temporary plates."

Capitol Perspectives: Legislative estimates of tax cut losses

Missouri Independent l Phil Brooks

https://missouriindependent.com/2023/12/18/capitol-perspectives-legislative-estimates-of-tax-cut-losses/

-""As Missouri lawmakers face state budget proposals in the 2024 legislative session, they might want to consider what their staff had reported about the financial impact of tax cuts passed in prior years. In 2023, the legislature approved tax reductions for government employee pensions and Social Security benefits. A year earlier, the legislature passed a measure providing reductions in the income tax rate when there was a substantial increase in tax collections. Those two tax cuts likely were partially responsible for a subsequent decline in the growth of state tax collections. Although Gov. Mike Parson signed the pension and Social Security tax cut, he later cited the revenue loss from that bill for his veto of 201 items in the budget the legislature had passed... Legislative staff had warned of significant losses to state general revenue from the two tax cuts. Those warnings came from the legislature's Legislative Oversight Division which provides estimates termed "fiscal notes" as to the projected revenue impacts from measures before the legislature. The division's final fiscal note for the 2023 retirement income tax-break estimated a $130 million tax-collection drop from the bill in the current budget year and "up to" $309 million revenue loss in each of the next two budget years. A year earlier, the fiscal note for the 2022 income-tax rate reduction estimated a $370 million drop when fully implemented. The Oversight Division's estimate was confirmed when the governor announced the "consensus revenue estimate" by his administration and legislative budget leaders forcasts a 0.7 percent general revenue loss for the current budget year that ends June 30 and just a 0.2 percent general revenue increase for the subsequent fiscal year. That revenue increase is not much when you consider growing inflation costs… Of course, tax cuts for Missourians, including retirement tax-exemptions is another politically popular issue — particularly with statistics showing a higher voter turnout by the elderly. That emphasis on tax cuts was prominent in the governor's email to the news media on the consensus revenue estimate of how much will be available for the legislature to spend. The governor's email included a quote from Senate Appropriations Chair Lincoln Hough, R-Springfield, that "Our projected growth in revenue is lower due to Missourians keeping more of their hard-earned money in their pocket, which increases individual household income." That reflects the argument of Republican legislators that lowering taxes ultimately will spur economic growth. In fact, while income tax collections are down 8.2% year to date through November, sales tax collections increased by 12.8%. Also, a reduction in the growth of tax collections does not necessarily mean budget increases for state programs will be as limited as the consensus revenue estimate suggested… State government has a $6.2 billion surplus of unspent funds that includes federal funds amassed during the COVID era. So, there is a lot of money that could be used for increased funding for state programs in the next fiscal year. However, years ago legislative fiscal conservatives warned against using one-time money for government programs that would continue after that money was gone. This all raises several fascinating budget issues for the Republican-controlled legislature in the 2024 election-year."

Springfield teachers' union organizes Tuesday protest over student discipline issues

Springfield News-Leader l Claudette Riley

https://www.news-leader.com/story/news/education/2023/12/17/teacher-union-organizes-protest-over-sps-student-discipline-issues/71924668007/

-"An hour before the school board meets Tuesday, there will be a protest over chronic student discipline issues at the headquarters for Springfield Public Schools. It was organized by the Springfield National Education Association. Springfield NEA president Laura Mullins spoke at the Nov. 28 meeting, saying employees feel "broken, discouraged and frustrated" over how student behavior issues have been handled. The union elected to represent teachers, and nearly all support staff, accused the district of not following the code of conduct — steps for disciplining students based on the infractions – and "making our numbers look good" by under-reporting incidents…The Springfield NEA asked employees, parents and community members to show up for the "Stakeholders for Safe Schools" event at 4:30 p.m. Tuesday at the Kraft Administrative Center."

AMERICAN OVERSIGHT

Hawley Will Now Focus on Federal Budget to get Payments for St. Louis-Area Radiation Victims
MissouriNet l Marshall Griffin
https://www.missourinet.com/2023/12/15/hawley-will-now-focus-on-federal-budget-to-get-payments-for-st-louis-area-radiation-victims/

-"U.S. Senator Josh Hawley, R-Missouri, delayed passage of the bill and voted "no" because his amendment to include payments for radiation victims was cut out. Hawley said he'll now try to get his amendment added onto the federal budget. "That is my number one priority," he told Missourinet. "I can't believe that we would spend trillions of dollars on who knows what and we wouldn't spend a few billion dollars over the next 50 years to compensate the people of Missouri and the people of New Mexico and Colorado and the Navajo Nation and everybody else in this country who has been poisoned by nuclear radiation by their government." Congress has until mid-January to reach another budget deal or again risk a government shutdown. But Hawley is not limiting his efforts to just the federal budget. "I will work to get this measure attached to anything that I think has a reasonable chance to move, to pass," he said. "I want to see this enacted into law. I want to see the people of our state get compensated. I want to see them be able to afford their health care. I want to see them be recognized by their government, and (for) this government (to) admit what it has done." Hawley's amendment would extend the life of the Radiation Compensation Exposure Act (RECA) for 19 years and add several states whose residents would be eligible to take part, including Missouri. RECA is set to expire next May. Meanwhile, the fate of the National Defense Authorization Act is up to President Biden. The bill includes a $5.2% pay increase for U.S. military members – their largest raise in more than two decades."

Franklin County clerk to accept GOP candidate filings regardless of vetting plan
EMissourian l Jonathan Riley
https://www.emissourian.com/local_news/franklin-county-clerk-to-accept-gop-candidate-filings-regardless-of-vetting-plan/article_ee61c240-9b8f-11ee-a0a7-f7da95150e8e.html

-"The Franklin County Republican Central Committee (FCRCC) plans to begin "vetting" candidates for county office ahead of the 2024 elections, but that may not prevent those who don't meet the committee's desired qualifications from running for office as Republicans. Franklin County Clerk Tim Baker told The Missourian he has received legal guidance from County Counselor Mark Piontek that state law allows any Republican who files a declaration of candidacy and pays the required fee, whether or not they pass the FCRCC's test, to appear on the ballot. "What I've been instructed basically is that I'm supposed to accept their declaration of candidacy, and it's under both Statute 115.347 and the other Statute is 115.357," Baker said. That would appear to circumvent the FCRCC's announcement in mid-November that it would be vetting all Republican candidates for county elected positions before submitting them to the county clerk for inclusion on the ballot. "Unless a candidate is vetted, checks to cover the filing fee will not be submitted to the County Clerk's office by the Central Committee nor will they be accepted by the County Clerk without the approval of the Republican Central Committee," the FCRCC said at the time…Baker and Chaney appear to be in disagreement over whether the process — by default, without a court injunction stating otherwise — would allow any Republican candidate to file, or whether the FCRCC could reject a candidate's filing fee. Both said litigation may be required to clarify the issue of whether a county political committee has the authority of state law to prevent a candidate from appearing on the ballot. "I'm to accept their candidacy, that's what the statute says, and then I'm also the pass-through for the check unless they hand it to the treasurer, so if the treasurer is not present in my office, from either central committee, then it is my job to be the pass-through. I receive the check, I hand them a receipt stating that I received the check, and that check then gets turned over to the central committee," he said…Chaney said he thought that, at least in races for county-level offices, the local party central committee would have the authority to reject a declaration of candidacy if the would-be candidate failed to pass or refused to participate in the committee's vetting process. But he said he doubts Ashcroft's office would have authority to intervene if such rejections were challenged. "In those particular cases, I don't know that the secretary of state's office would have any jurisdiction to manipulate or mandate the party to do one thing or another. Nor would we have any ability to tell the clerk 'Hey, you can or can't accept that individual,'" he said…Despite the conflicting interpretations of whether the FCRCC can reject a candidate, Baker said his position is not adversarial to the FCRCC, and the central committee's vice chairman, Roger Jackson, similarly said the FCRCC's relationship with Baker's office is "not confrontational," despite the difference in interpretation…Jackson said that Rafael Madrigal, a Pacific alderman who is running for the District 119 state representative seat currently held by Brad Banderman, has already taken the FCRCC's multiple-choice vetting test and passed, even though as a candidate for a state-level office, Madrigal would not be subject to FCRCC's vetting process or require its approval. Jackson also noted that just because Madrigal passed the test, that doesn't mean the FCRCC has endorsed him…Jackson said he was disappointed with the state Republican Party's response to the FCRCC's plan. The party has said the vetting process will invite litigation and that it will not indemnify county central committees that are sued…"

Editorial: After years of dysfunction, city prosecutor's office is being quietly restored
STL Post-Dispatch l Editorial Board
https://www.stltoday.com/opinion/editorial/editorial-after-years-of-dysfunction-city-prosecutors-office-is-being-quietly-restored/article_11870884-9b6d-11ee-af4d-b3840a9365d6.html

AMERICAN OVERSIGHT

National News:

Appeals Court Revives Case Challenging Connecticut Rule on Transgender Athletes

Epoch Times l Aldgra Fredly

https://www.theepochtimes.com/us/appeals-court-revives-case-challenging-connecticut-rule-on-transgender-athletes-5548666?ea_src=frontpage&ea_med=lead-special-judiciary-medium-0

-"A federal appeals court on Friday revived a lawsuit filed by four female athletes challenging a Connecticut policy that allows transgender students born male to compete against girls in high school athletic events. The full 2nd Circuit Court of Appeals ruled that the case should return to the district court for review because the plaintiffs have standing in the litigation and have alleged injuries that may qualify for monetary relief. "We do not consider whether plaintiffs' Title IX claims have any merit or whether they would be entitled to the relief that they seek as a matter of equity, but rather whether the district court has jurisdiction to hear their claims in the first instance," the judges said in a ruling on Dec. 15. The plaintiffs—Selina Soule, Chelsea Mitchell, Alanna Smith, and Ashley Nicoletti—argued they were "deprived of honors and opportunities" to compete at higher levels because of a policy that allowed males who identify as female to compete against girls. According to the court, all four plaintiffs had personally competed in Connecticut high school track and identified instances in which they raced against and finished behind one or both transgender athletes Andraya Yearwood and Terry Miller…The plaintiffs said the Connecticut Interscholastic Athletic Council (CIAC) policy discriminated against them by requiring them to compete against transgender athletes, who have a "physiological athletic advantage." The 2013 CIAC policy allows transgender students to compete in high school competitions designated for the gender they identify with. However, the plaintiffs argued that the CIAC policy violated Title IX, a federal law designed to create equal opportunities for women in education and athletics…It concluded that the plaintiffs pleaded "a concrete, particularized, and actual injury in fact: the alleged denial of equal athletic opportunity and concomitant loss of publicly recognized titles and placements" during track competitions where they finished behind the transgender athletes…Conservative legal group Alliance Defending Freedom (ADF), which represents the plaintiffs, praised the court's decision as an important victory for female athletes across the country. "Selina, Chelsea, Alanna, and Ashley—like all female athletes—deserve access to fair competition," ADF Senior Counsel Roger Brooks said in a press release. "The CIAC's policy degraded each of their accomplishments and scarred their athletic records, irreparably harming each female athlete's interest in accurate recognition of her athletic achievements," he added. A three-judge 2nd Circuit panel last year agreed with a federal judge that the plaintiffs had not shown they were deprived of opportunities because all of them regularly competed in state track championships and won some of them. The full court said it would reconsider the case in February…"

Supreme Court to Review Arizona Death Row Inmate's Sentence

Epoch Times l Matthew Vandum

https://www.theepochtimes.com/us/supreme-court-to-review-arizona-death-row-inmates-sentence-5548431?ea_src=frontpage&ea_med=lead-special-judiciary-title-0

-"The Supreme Court has agreed to review the death sentence imposed on an Arizona inmate who claims he received ineffective assistance from counsel during the sentencing process. The Sixth Amendment to the U.S. Constitution guarantees a criminal defendant the right to effective assistance of counsel. In the case, the state of Arizona is appealing a ruling by the U.S. Court of Appeals for the 9th Circuit that the death row inmate was entitled to a new sentencing hearing. The inmate argues that his lawyer failed to secure a mental health expert and conduct appropriate medical tests in a timely manner during sentencing. The case comes after the Supreme Court cracked down on ineffective-assistance-from-counsel claims in May 2022. In Shinn v. Ramirez, the court held 6-3 that federal courts reviewing inmate cases may not conduct evidentiary hearings to fully examine ineffective-counsel claims that should have been raised in state court proceedings. The court granted the petition for certiorari, or review, in Thornell v. Jones, in an unsigned order on Dec. 13. No justices dissented. The court did not explain its decision. At least four of the nine justices must vote for the petition for it to advance to the oral argument stage…The case of the respondent, Danny Lee Jones, now 59, goes back to March 1992 when he was visiting his friend, Robert Weaver…Mr. Jones attacked Mr. Weaver from behind, hitting him in the head with a bat. He also attacked his victim's grandmother but she survived. Mr. Weaver's seven-year-old daughter, Tisha, hid in a bedroom but Mr. Jones found her and struck her twice in the head and either strangled her or suffocated her with a pillow. After the child died, Mr. Jones stole Mr. Weaver's gun collection, grabbed the keys to the grandmother's car, went to the garage, found Mr. Weaver, and hit him fatally five more times on the head. After putting the firearms in the car, Mr. Jones fled. The public defender assigned to Mr. Jones's case had been an attorney for three years but had never been lead attorney in a capital case. Mr. Jones was convicted of killing Mr. Weaver and his daughter, and for the attempted murder of the grandmother. After the convictions, the public defender visited Mr. Jones's mother and second step-father in the search for potentially mitigating evidence for the sentencing hearing. At the sentencing hearing, the attorney presented testimony from an investigator and the step-father. The investigator testified about an accomplice allegedly involved in the crimes. The step-father testified that Mr. Jones's mother gave birth to Mr. Jones when he was 15 years old and had complications during the pregnancy and delivery. He also said Mr. Jones had experienced several head injuries when he was growing up and that his personality began to change drastically when he was 13 or 14 years old. Mr. Jones began lying, skipping classes at school, drinking, and using drugs. His first step-father had introduced him to marijuana when he was around 10 years old and by the time he was 17, he was an alcoholic. But in December 1993, Mr. Jones was sentenced to death. The 9th Circuit

AMERICAN OVERSIGHT

previously ordered that Mr. Jones be given a new sentencing hearing but the Supreme Court overturned that decision in 2011. A federal district court denied Mr. Jones's claim of ineffective assistance of counsel during the sentencing process. Then last year, a divided 9th Circuit applied the standards laid down by the Antiterrorism and Effective Death Penalty Act of 1996 and reversed that decision, without giving deference to the district court's detailed factual findings. The Supreme Court has agreed to take a look at the most recent appeals court decision. The legal issue is whether the 9th Circuit violated the Supreme Court's 1984 ruling in Strickland v. Washington, which held that to make out a claim for ineffective counsel, it must be shown that the defense attorney was objectively deficient and that there was a reasonable likelihood a different outcome would have followed if a competent attorney had represented the accused person. Specifically, the Supreme Court will look at whether the circuit court erred when it disregarded the district court's findings as to the evidence presented during the sentencing hearing…"

Supreme Court to Take Up Dispute Over Estate Tax Owed by Family Business

Epoch Times l Matthew Vandum

https://www.theepochtimes.com/us/supreme-court-to-take-up-dispute-over-estate-tax-owed-by-family-business-5548233

-"The Supreme Court will consider a dispute about whether life insurance payouts should be deemed to be corporate assets in calculating federal income taxes payable on a deceased person's estate. The court granted the petition for certiorari (pdf), or review, in Connelly v. Internal Revenue Service, in an unsigned order on Dec. 13. No justices dissented. The court did not explain its decision. At least four of the nine justices have to vote in favor of the petition for it to advance to the oral argument stage. The case concerns two brothers' closely-held corporation. After one of the brothers died, tax authorities and the estate failed to agree on the value of stock. Closely-held corporations often enter into agreements that require the redemption of a shareholder's stock after the shareholder dies to preserve the closely held nature of the business. Corporations that enter into such agreements often purchase life insurance on the shareholder to make sure the transaction is funded. The appeal of Thomas Connelly, executor of the estate of the late Michael Connelly, was rejected by the U.S. Court of Appeals for the 8th Circuit in June. The IRS said the estate owed close to $1 million after it found that St. Louis-based Crown C Corp., a building materials business, did not report life insurance proceeds after Michael Connelly died in 2013. Michael Connelly, who was president and CEO of the corporation when he died, owned 77.18 percent of the company's shares, while Thomas Connelly owned 22.82 percent. The Supreme Court will look at whether a life insurance policy obtained to finance the company's repurchase of the deceased co-owner's shares should be factored into the valuation of the stock…"

Exactly 250 years from the event that started the Revolution

Washington Examiner l Dan Hannan

https://www.washingtonexaminer.com/opinion/columnists/250-years-from-event-started-revolution

"Exactly 250 years ago, on Dec. 16, 1773, a gang of rowdies, some dressed as Mohawk braves, boarded three merchant ships in Boston Harbor and, over three hours, dumped 342 chests of tea into the cold waves. A new law had, in fact, lowered the price of tea, but they still resented paying a token levy on it…"

EU opens investigation into Musk's X over Israel-Hamas war misinformation

Washington Examiner l Christopher Hutton

https://www.washingtonexaminer.com/policy/technology/eu-opens-investigation-x-israel-hamas-war-misinformation

-"Elon Musk's X, formerly known as Twitter, is being investigated by the European Union over allegations that it breached Europe's highly restrictive laws on online speech while addressing misinformation related to the Israel-Hamas conflict. The European Commission announced on Monday that it was opening an investigation into whether X had broken the Digital Services Act, which holds Big Tech companies accountable for "harmful and illegal" content and requires transparency about content moderation and algorithms. The investigation will look specifically into "the dissemination of illegal content in the context of Hamas's terrorist attacks against Israel" and whether X's efforts to stop "information manipulation" through the Community Notes system were sufficient. This is the first time the EU has launched proceedings under the DSA. "The higher the risk large platforms pose to our society, the more specific the requirements of the Digital Services Act are," Executive Vice President for A Europe Fit for the Digital Age Margrethe Vestager said in a statement. "We take any breach of our rules very seriously. And the evidence we currently have is enough to formally open a proceeding against X." X is one of 16 platforms regulated by the DSA, which went into effect in April 2023, although the company declined to sign an agreement with the EU to regulate its online content…X CEO Linda Yaccarino responded by affirming that X was committed to "serving the public conversation, especially in critical moments like this, and understands the importance of addressing any illegal content that may be disseminated through the platform." This included removing tens of thousands of posts involving false information, suspending hundreds of accounts, and posting thousands of Community Notes, or X's crowd-sourced fact-checking service."

Biden Admin Locks In Skimpiest Offshore Oil And Gas Leasing Schedule In US History As Prices Remain High At The Pump

Daily Caller l Nick Pope

https://dailycaller.com/2023/12/15/biden-administration-finalizes-offshore-oil-gas-leasing-schedule/

-"The Department of the Interior (DOI), which oversees the Bureau of Ocean Energy Management (BOEM), announced that it is finalizing the leasing schedule, which meets the bare minimum acreage required by the Inflation Reduction Act (IRA) in

AMERICAN OVERSIGHT

order for the administration to issue offshore wind leases, according to the DOI. The 2024-2029 schedule only features three lease sales in the Gulf of Mexico, with no sales scheduled for any other area off the country's shores; DOI finalized the plan as the national average per-gallon price at the pump hovers at around $3.10. BOEM's finalized plan is a far cry from the schedule that former President Donald Trump and his administration were crafting, which would have allowed for 47 lease sales in the Gulf of Mexico and beyond, including in the Pacific Ocean and off the Alaskan coast. The three leases—scheduled to take place in 2025, 2027 and 2029— amount to just over 60 million acres in total, which is the threshold that the administration is required to meet in order to continue issuing offshore wind leases to advance its sweeping climate agenda…Offshore oil production in federally-controlled Gulf waters accounted for about 15% of total U.S. crude oil output in 2021, according to the U.S. Energy Information Administration. As the Gulf of Mexico's oil is considered less carbon-intensive to produce than oil from most other regions, diminished production in the affected zone could be replaced by more carbon-intensive barrels from elsewhere in the world, according to the American Petroleum Institute. "This restrictive offshore leasing program is the latest tactic in a coordinated strategy to reduce energy production, ultimately weakening America's energy dominance, limiting consumers' access to affordable reliable energy and compromising our ability to lead on the global stage," American Petroleum Institute President and CEO Mike Sommers said of the schedule in September…"

Education Department reveals 40% of student loan borrowers missed first payment since COVID

Washington Examiner l Misty Severi

https://www.washingtonexaminer.com/policy/education/education-department-40-percent-student-loan-borrowers-missed-payment

-"The Department of Education revealed that 40% of student loan borrowers missed their first repayment date in October, including four million borrowers who were required to start paying back their loans for the first time. Undersecretary of Education James Kvaal said 60% of student loan borrowers whose payments were due in October made them by mid-November, but the 40% who did not would not face harsh punishments…The Biden administration has made an on-ramp to restart the payment plans, which had been stalled for three years because of hardships caused by the COVID-19 pandemic, by delaying the harshest punishments for not making a payment through next September. Those punishments include delinquency, default, and mandatory collections. The White House has also rolled out a "SAVE" debt forgiveness plan over the summer. President Joe Biden also forgave just under $5 billion in student loans last week, which affected nearly 80,300 borrowers under the income-driven repayment forgiveness and Public Service Loan Forgiveness programs. The Biden administration has forgiven a total of $132 billion in student loan debt for more than 3.6 million borrowers. The billions in federal student loan relief comes even after the Supreme Court stopped Biden's student loan forgiveness program in August, which would have forgiven up to $20,000 in student loan debt for eligible low- and middle-income borrowers…"

Here's How One State Court Decision Could Cost Republicans Their House Majority

Daily Caller l Arjun Singh

https://dailycaller.com/2023/12/17/court-decision-cost-republicans-house/

-"On Tuesday, the court ruled for the plaintiffs in Hoffmann v. New York State Independent Redistricting Commission, a case where several voters challenged the state's current congressional maps that were drawn by a court-appointed special master in 2022, based on which Republicans picked up five seats in the House and accounted for their five-seat majority. The court's decision to order the commission to redraw the state's maps, which the Democratic-controlled legislature must approve, may lead to new district boundaries that include more Democratic-leaning precincts and result in all Republican incumbents losing reelection. "The Democrats, you know, they have a lot more to gain by trying to make it where the legislature redraws the new maps," said Shawn Donahue, an assistant professor of politics at the University of Buffalo and expert on voting rights and representation, to the Daily Caller News Foundation…In the 2022 case, Harkenrider v. Hochul, the court struck down maps that were enacted by the state legislature for partisan gerrymandering, with the bipartisan commission deadlocking on approving the proposed maps before then, with all Democrats voting in favor while all Republicans were against them. The legislature, where Democrats have a two-thirds majority in both houses, will have free choice in determining whether to accept or reject the commission's maps, again, should they not advantage Democratic candidates for the House in 2024's elections…Not everyone believes that Republicans are imperiled by the changes. Vice Casale, a political consultant for New York candidates, thinks that political realignments in New York's districts make the process more complicated. "The Democrats cannot just redistrict New York Republicans into oblivion," Casale wrote to the DCNF. "There are still too many seats where they can only make so many changes before it starts to affect other districts. For example, making Congressman Williams' district bluer to take the seat back and then making Congressman [Pat] Ryan's district bluer to help protect him will only help Congressman Molinaro by giving him a redder district."… The reaction from the potentially affected lawmakers has been negative. "While I disagree with the decision to jettison NY's current congressional map, I urge those drawing the new map to make the new districts compact & competitive. Doing so ensures the 2024 election is about important policies, rather than predetermined partisan outcomes." wrote LaLota in an email to the DCNF, while a spokesperson for Molinaro referred to a tweet by the candidate on the issue. "There's nothing fair about this," he wrote."

AMERICAN OVERSIGHT

I hope everyone has an amazing day!

Best,

Bennett Lyday | Policy & Operations Specialist
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
O: (573) 751-4390
C: (573) 645-9671
Bennett.Lyday@ago.mo.gov

AMERICAN OVERSIGHT

To: Attorney General[Attorney.General@ago.mo.gov]; Attorney General1[attorney.general@iq.ago.mo.gov]
From: Haines, Diana[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F8BBEFA5DB13494F949065486CF81B25-HAINES, DIANA]
Sent: Tue 12/19/2023 10:08:34 AM (UTC-06:00)
Subject: FW: Post by Alex Jones on X Alex Jones @RealAlexJones *E M E R G E N C Y B R E A K I N G N E W S* - EU Officially Comes For Elon Musk! Unelected Body Launches Plan To Silence Americans Ahead Of 2024 Election. This Amounts To A Foreign Coup

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

From: dared Olson <daredolson@icloud.com>
Sent: Tuesday, December 19, 2023 12:56 AM
To: winston.peters@parliament.govt.nz; christopher.luxon@parliament.govt.nz; David.Seymour@parliament.govt.nz; nicola.willis@parliament.govt.nz; shane.jones@parliament.govt.nz; Casey Costello <casey.costello@nzfirst.nz>; brooke.vanvelden@parliament.govt.nz; mark.mitchell@parliament.govt.nz; judith.collins@parliament.govt.nz; Tanya Unkovich <tanya.unkovich@nzfirst.nz>; Hatchard Report <guy-hatchard@hatchardreport.com>; aaron@sirillp.com; Todd Callender <todd@dradvocates.com>; csu.auckland@justice.govt.nz; Ian Mc Innes <mcinnesiw@gmail.com>; JaninaJMassee <JaninaMassee@proton.me>; Dr David Wilson <david.wilson@nzfirst.nz>; daredolson@icloud.com
Cc: whistleblowers@infowars.com; SenatorHawley@hawley.senate.gov; MOIQGov@governor.mo.gov; Haines, Diana <Diana.Haines@ago.mo.gov>; susan.schauffler@sos.mo.gov; scott.fitzpatrick@auditor.mo.gov; brandon.alexander@auditor.mo.gov; mike.kehoe@ltgov.mo.gov; bill.eigel@senate.mo.gov; deredolson@gmail.com

Subject: Post by Alex Jones on X Alex Jones @RealAlexJones ????????? ???????? ???? - EU Officially Comes For Elon Musk!

Unelected Body Launches Plan To Silence Americans Ahead Of 2024 Election. This Amounts To A Foreign Coup!...

Alex Jones

@RealAlexJones

????????? ???????? ???? - EU Officially Comes For Elon

Musk!

Unelected Body Launches Plan To Silence Americans Ahead Of 2024 Election. This Amounts To A Foreign Coup! #DefendElon

Report: infowars.com/posts/eu-annou…
pic.twitter.com/5xTz1UJ6eg

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

To: Attorney General[Attorney.General@ago.mo.gov]
From: Haines, Diana[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F8BBEFA5DB13494F949065486CF81B25-HAINES, DIANA]
Sent: Tue 12/19/2023 10:08:34 AM (UTC-06:00)
Subject: FW: Post by Alex Jones on X Alex Jones LRI@RealAlexJonesPDI *E M E R G E N C Y B R E A K I N G N E W S* - EU Officially Comes For Elon Musk! Unelected Body Launches Plan To Silence Americans Ahead Of 2024 Election. This Amounts To A Foreign Coup

Diana Haines – Executive Assistant
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8807
Diana.Haines@ago.mo.gov

From: dared Olson <daredolson@icloud.com>
Sent: Tuesday, December 19, 2023 12:56 AM
To: winston.peters@parliament.govt.nz; christopher.luxon@parliament.govt.nz; David.Seymour@parliament.govt.nz; nicola.willis@parliament.govt.nz; shane.jones@parliament.govt.nz; Casey Costello <casey.costello@nzfirst.nz>; brooke.vanvelden@parliament.govt.nz; mark.mitchell@parliament.govt.nz; judith.collins@parliament.govt.nz; Tanya Unkovich <tanya.unkovich@nzfirst.nz>; Hatchard Report <guy-hatchard@hatchardreport.com>; aaron@sirillp.com; Todd Callender <todd@dradvocates.com>; csu.auckland@justice.govt.nz; Ian Mc Innes <mcinnesiw@gmail.com>; JaninaJMassee <JaninaMassee@proton.me>; Dr David Wilson <david.wilson@nzfirst.nz>; daredolson@icloud.com
Cc: whistleblowers@infowars.com; SenatorHawley@hawley.senate.gov; MOIQGov@governor.mo.gov; Haines, Diana <Diana.Haines@ago.mo.gov>; susan.schauffler@sos.mo.gov; scott.fitzpatrick@auditor.mo.gov; brandon.alexander@auditor.mo.gov; mike.kehoe@ltgov.mo.gov; bill.eigel@senate.mo.gov; deredolson@gmail.com
Subject: Post by Alex Jones on X Alex Jones LRI@RealAlexJonesPDI ????????? ???????? ???? - EU Officially Comes For Elon Musk! Unelected Body Launches Plan To Silence Americans Ahead Of 2024 Election. This Amounts To A Foreign Coup!...



Alex Jones

LRI@RealAlexJonesPDI



????????? ???????? ???? - EU Officially Comes For Elon Musk!

Unelected Body Launches Plan To Silence Americans Ahead Of 2024 Election. This Amounts To A Foreign Coup! #DefendElon

Report: infowars.com/posts/eu-annou…
pic.twitter.com/5xTz1UJ6eg

12/19/23, 13:42

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

To: Atkins, Jay[Jay.Atkins@ago.mo.gov]; Beal, Bryce[Bryce.Beal@ago.mo.gov]; Bryson, Isabelle[Isabelle.Bryson@ago.mo.gov]; Childers, Cooper[Cooper.Childers@ago.mo.gov]; Clausner, Evan[Evan.Clausner@ago.mo.gov]; Davis, Clifton[Clifton.Davis@ago.mo.gov]; Divine, Josh[Josh.Divine@ago.mo.gov]; Donohue, Peter[Peter.Donohue@ago.mo.gov]; Dusheke, Sheala[Sheala.Dusheke@ago.mo.gov]; Freedlund, Samuel[Samuel.Freedlund@ago.mo.gov]; Haines, Diana[Diana.Haines@ago.mo.gov]; King, Kelly[Kelly.King@ago.mo.gov]; Lanahan, Maria[Maria.Lanahan@ago.mo.gov]; Lewis, Jason[Jason.Lewis@ago.mo.gov]; Mackelprang, Shaun[shaun.mackelprang@ago.mo.gov]; Meyer, Rhonda[rhonda.meyer@ago.mo.gov]; Monroe, Kathryn[Kathryn.Monroe@ago.mo.gov]; Morgan, Jeremiah[jeremiah.morgan@ago.mo.gov]; McCuien, Grace[Grace.McCuien@ago.mo.gov]; Rathert, Branden[Branden.Rathert@ago.mo.gov]; Rutledge, Caleb[Caleb.Rutledge@ago.mo.gov]; Scott, Todd[Todd.Scott@ago.mo.gov]; Sieren, Madeline[Madeline.Sieren@ago.mo.gov]; Wagner, Ray[Ray.Wagner@ago.mo.gov]
From: Lyday, Bennett[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EACD91D740F2406EB8A1385B65BBDDED-LYDAY, BENNETT]
Sent: Tue 12/19/2023 8:49:59 AM (UTC-06:00)
Subject: Daily News/Media Roundup - Tuesday, December 19th, 2023

Good morning all,
Below is the relevant news for today and yesterday relating to the AGO, Missouri, and Nation:

AGO News:

Appeals Court Upholds Burrow's Conviction
KFMO | Mike Ramsey
https://www.kfmo.com/news/appeals-court-upholds-burrows-conviction

-"Missouri Attorney General Andrew Bailey is announcing his office successfully defended the convictions of Cecil Burrow, of Ironton, for four counts of first degree sodomy at the Eastern District Court of Appeals. Bailey says the appeals court affirmed the circuit court's judgment denying Burrow's claim the state had failed to establish sufficient evidence. Burrow had been found guilty of sodomy after he was arrested for allegedly having sexual intercourse with a 19 year old woman while she was passed out at Lake Hannah in St. Francois County in July of 2018. It's also said Burrow admitted to the incident during interviews with law enforcement officials. Burrow was sentenced to 20 years for each conviction. The Court ordered the sentences to run consecutively, resulting in a total of 80 years in the Department of Corrections. The Eastern District Court of Appeals' decision upholds his original convictions and sentences."

Burrow's four SFC statutory sodomy convictions upheld
Daily Journal | Kevin Jenkins
https://dailyjournalonline.com/2023/12/19/burrows-four-sfc-statutory-sodomy-convictions-upheld/

-"Missouri Attorney General Andrew Bailey announced on Monday that his office successfully defended in the Eastern District Court of Appeals the convictions of Cecil Burrow, 65, of Ironton, for four counts of first-degree sodomy. The appeals court affirmed the circuit court's judgment, denying Burrow's claim that the state had failed to establish sufficient evidence. "As attorney general, I will always work to protect Missourians, which includes defending the convictions of dangerous criminals," said Bailey. "I'm proud of the tireless efforts my Criminal Appeals Unit put into this case. The Attorney General's Office will continue to obtain justice for victims throughout the state." Following a May 2022 jury trial in St. Francois County, Burrow was convicted of four counts of first-degree sodomy related to an incident that occurred in July of 2018. The evidence showed Burrow sexually assaulted the 19-year-old victim, who, the defendant told police, was "too drunk to know what was going on." Burrow was sentenced to 20 years for each conviction. The court ordered the sentences to run consecutively, resulting in a total of 80 years in the Department of Corrections. The Eastern District Court of Appeals' decision upholds his original convictions and sentences."

Free Speech Advocates Fight Back: Counter-Offensives Launched Against Leftist 'Media Watchdogs'
American Greatness | No Author Listed
https://amgreatness.com/2023/12/17/free-speech-advocates-fight-back-counter-offensives-launched-against-leftist-media-watchdogs/

-"A network of Leftist, self-proclaimed "watchdogs," supported by corporations and political interests aligned with the Biden Administration, have been largely unchecked in their efforts to censor, de-platform, and "misinformation-ize" Americans who dare to speak and share information counter to the Leftist agenda. From "COVID" and the 2020 election, to George Floyd and Ukraine, this network — legitimized by the corrupt legacy media — has suppressed the free speech of millions of Americans, and even a sitting U.S. President. Now, free speech advocates are fighting back. Elon Musk kicked off the counter-offensive by filing a lawsuit, on behalf of his social media platform X, against Media Matters for America (MMA). The suit alleges MMA of "intentional deception and a malicious campaign aimed at damaging the company's reputation and revenue stream," reported Legal Newsline… That lawsuit, filed in the U.S. District Court for the Northern District of Texas Fort Worth Division, was followed up with an investigation by Attorney General Ken Paxton (R-Texas) for potentially violating the Texas Business Organizations Code and the Deceptive Trade Practices Act as the legal basis for this inquiry… Missouri Attorney General Andrew Bailey (R) has now followed up with his own investigation into MMA. Bailey said: "We have reason to believe Media Matters used fraud to solicit donations from Missourians in order to trick advertisers into

AMERICAN OVERSIGHT

pulling out of X, the last platform dedicated to free speech in America. Radicals are attempting to kill Twitter because they cannot control it, and we are not going to let Missourians get ripped off in the process. I'm fighting to ensure progressive tyrants masquerading as news outlets cannot manipulate the marketplace in order to wipe out free speech." Last week, conservative news sites The Daily Wire and The Federalist joined with Paxton and the New Civil Liberties Alliance in filing a lawsuit agains the U.S. Department of State… The lawsuit specifically implicates NewsGuard, yet another self-proclaimed "media watchdog" that rates the "trustworthiness" of news sites. Legal Newsline reports that NewsGuard has around 40,000 subscribers. NewsGuard, which has come under fire for receiving funding from Big Pharma, was also sued by Consortium News in October… Free speech video platform Rumble has filed a lawsuit against another Leftist, so-called "watchdog" — Check My Ads. Rumble sued Nandini Jammi and Claire Atkin, co-founders of Check My Ads, in federal court in Florida, alleging "intentional economic harm and false statements by the defendants," reported the Florida Record… So, where do we go from here? The lawsuits will make their way through the courts, and the state investigations will follow their courses. These efforts, however, are likely not to be the last, as the actions of a few free speech advocates are likely to embolden those who have remained silent for too long. As Edmund Burke wrote, "The only thing necessary for the triumph of evil is for good men to do nothing." Good men have stepped forward. Now is the time for others to join the fight."

Bailey Expresses Concern Over Grain Belt

Central MO Info l NO Author Listed

https://www.centralmoinfo.com/bailey-expresses-concern-over-grain-belt/

-"Missouri Attorney General Andrew Bailey is concerned about projects like Grain Belt Express. He says landowners have rights. Invenergy says the project will save Missouri consumers 5.8 billion dollars over 15 years, provide 15 hundred jobs during construction, and provide power to 39 municipal utilities in the state. Bailey encourages landowners to do research before selling their land to companies. Bailey supports U.S. Senator Josh Hawley's proposed legislation that would ensure Missourians affected by the Grain Belt Express transmission lines to be fairly compensated.

Conservatives move to keep abortion off the 2024 ballot

Politico l Alice Miranda Ollstein and Megan Messerly

https://www.politico.com/news/2023/12/18/first-rule-of-the-anti-abortion-playbook-dont-let-the-public-vote-on-abortion-00132049

-"Conservatives are testing new tactics to keep abortion off the ballot following a series of high-profile defeats… Republicans are also appealing to state courts to keep referendums off the ballot, while GOP lawmakers in states including Missouri and Oklahoma are pushing to raise the threshold for an amendment to pass or to make it to the ballot in the first place. The emerging strategy aims to prevent abortion rights groups from notching their third, and largest, set of ballot measure victories since Roe v. Wade was overturned. And while conservatives celebrated the fall of Roe for returning the question of abortion rights to the people, these efforts are seen as an implicit admission that anti-abortion groups don't believe they can win at the ballot box — even in red states — and that the best way to keep restrictions on the procedure is to keep voters from weighing in directly… "I do not want to see abortion put in our constitution," said Rep. Brad Hudson, a Missouri Republican. "I believe the right to life is a fundamental right that all human beings have and certainly should not be taken away because of a vote by a simple majority." Hudson filed legislation for the new session, which begins next month, that would require constitutional amendments to pass with a statewide majority and a majority in more than half of the state's eight congressional districts. It is one of several GOP proposals around the country that would undermine efforts to approve abortion protections at the ballot in 2024 — though changes to the initiative process would need to be approved by voters. Anti-abortion advocates and Republican state attorneys general in states like Florida, Missouri and Nevada, are challenging the initiatives in court as unconstitutionally vague, confusing or misleading. And in multiple states where abortion-rights initiatives have passed, conservative groups and politicians are suing to block their implementation. GOP state officials are also turning once-routine steps around certifying the ballot language and estimating its cost to taxpayers into pitched ideological battles to delay and derail the process… "All options should be on the table," said Steven Aden, the chief legal officer of the anti-abortion group Americans United for Life. "Because we believe that abortion is truly about the right to life of human individuals in the womb, we don't believe those rights should be subjected to majority vote."… To stop more states across the political spectrum from restoring or codifying Roe-like protections, national and local anti-abortion groups have launched "decline to sign" campaigns to thwart groups working to put abortion rights on the 2024 ballot — hoping to prevent the issue from coming before voters. The group Students for Life of America plans to buy ads, hold events, partner with churches, and send staff and volunteers door to door in several states — including Arizona, Florida, Nevada and Missouri — to persuade people not to give organizers the signatures they need… In Missouri, Republican state officials also argued this summer that legalizing the now-banned procedure would cost the state billions of dollars each year because future taxpayers would be aborted. They lost in court but the delays will make it hard for abortion-rights groups to fundraise and collect the signatures they need. "The timeline has absolutely impacted the interest of investors because they see how much more of a challenge it is on a limited timeline," said Mallory Schwarz, executive director of Abortion Action Missouri. "They have lost in court four times in the past month, and they don't care because their goal was to run out the clock."…"

Opinion: Question for Missouri AG Andrew Bailey: Who decides who the 'bad actors' are?

AMERICAN OVERSIGHT

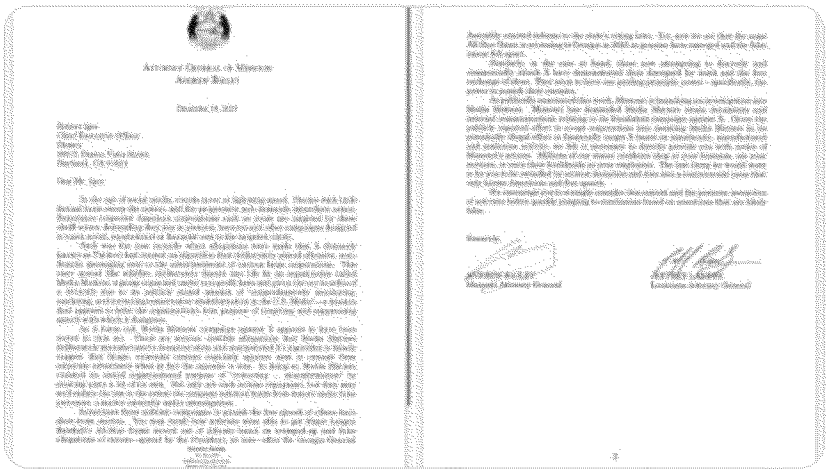
STL Post-Dispatch | Tony Messenger
https://www.stltoday.com/news/local/column/tony-messenger/messenger-question-for-missouri-ag-andrew-bailey-who-decides-who-the-bad-actors-are/article_ca528618-9dcf-11ee-ac82-6b7200010fa9.html

AGO Tweets:

Attorney General Andrew Bailey @AGAndrewBailey · 21h

Last week, @AGJeffLandry and I directed a letter to major companies who pulled their advertisements from X.

We wanted to let the corporations know that Missouri has opened an investigation into Media Matters for allegedly fraudulent behavior.



192 943 3.5K 209K

Attorney General Andrew Bailey @AGAndrewBailey · 21h

Given the publicly reported effort to co-opt corporations into assisting Media Matters in its potentially illegal effort to financially target X based on manufactured and malicious activity, we felt it necessary to directly provide advertisers with notice of our investigation.

8 34 161 3.5K

Attorney General Andrew Bailey @AGAndrewBailey

The last thing we want is for major companies to be swindled by activist deception and dive into a controversial issue that only harms Americans and free speech.

10:17 AM · Dec 18, 2023 · **2,681** Views

3 29 139 1

Attorney General Andrew Bailey @AGAndrewBailey · 21h

I'm thankful for @AGJeffLandry's partnership on our landmark free speech case, Missouri v. Biden, to combat government censorship on social media platforms.

Thankful for his partnership on this matter.

6 30 136 2.5K

Attorney General Andrew Bailey @AGAndrewBailey · 21h

Read more about it here: ago.mo.gov/attorney-gener...

7 20 86 2.1K

AMERICAN OVERSIGHT

Attorney General Andrew Bailey @AGAndrewBailey · 20h

Joe Biden is refusing to secure our southern border, which he is constitutionally mandated to do.

We've got two lawsuits pending to force him to do so. We're likely to receive a ruling in the coming weeks.

When @POTUS won't do his job, every state becomes a border state.

> **Bill Melugin** @BillMelugin_ · Dec 15
>
> NEW: Arizona Gov. Katie Hobbs (D), announces via executive order that she is deploying the AZ National Guard to the AZ border, saying "the federal government is refusing to do its job to secure our border." She adds that Biden admin hasn't responded to her reimbursement request.

67 129 454 22K

Attorney General Andrew Bailey @AGAndrewBailey · 19h

This is precisely why we've filed suit to force Joe Biden to finish President Trump's border wall with money Congress already appropriated.

Close. The. Border.

> **Jorge Ventura Media** @VenturaReport · 21h
>
> 🚨HAPPENING NOW - Over +2,000 migrants are awaiting to be processed in Eagle Pass as massive groups of migrants continue to cross illegally here. Federal officials are completely overwhelmed by the migrant surge that is non-stop here. This also comes after CBP suspended...
>
> Show more



52 144 325 12K

Missouri News:

Jackson County broke law by improperly raising home valuations, Missouri auditor claims

The KC Star l Jonathan Shorman, Kacen Bayless

https://www.kansascity.com/news/politics-government/article283202998.html

-"Missouri State Auditor Scott Fitzpatrick on Monday alleged Jackson County used a "flawed and inadequate" property assessment process that violated state law, affecting up to 200,000 homeowners. Fitzpatrick, a Republican, said the problems should invalidate any increase in assessed valuation greater than 15%. He urged homeowners whose valuation rose by more to only pay their property taxes under protest – a process that allows owners to file a lawsuit if they don't receive the refund they believe they're owed. The state auditor's comments came as his office released the preliminary findings of an ongoing audit into the Jackson County Assessment Department, led by Director Gail McCann Beatty, a former Democratic leader of the Missouri House. Republican lawmakers are also seeking to make the county assessor an elected office. Many homeowners have been in an uproar for months after assessments jumped significantly this year. Residential

AMERICAN OVERSIGHT

property values increased by roughly 40% overall since the last assessment in 2021, according to county data. The City of Lee's Summit sued Jackson County over the assessment process in September; property owners have also filed multiple lawsuits that were argued in front of the Missouri Supreme Court last week. The Missouri State Auditor's Office found that the Jackson County Assessment Department failed to provide property owners with adequate notice of their rights regarding physical inspections. If a home valuation rises by more than 15%, the county has to perform an exterior "physical inspection" and owners can also schedule an interior inspection as part of an appeal. But auditors found letters sent to owners didn't explain the owner's rights on physical inspections beyond a statement regarding the right to an interior inspection… McCann Beatty, in a lengthy statement later on Monday, said that Jackson County believes that there were mistakes in Fitzpatrick's findings, saying that it was her office's position that they fully complied with state law… McCann Beatty said Fitzpatrick's interpretation of physical inspections "should cause concern among assessor's statewide as such a theory would have significant impacts on their assessment process."… Property assessments, which take place every two years, have long been a source of controversy in Jackson County. Many houses were chronically undervalued, McCann Beatty and other officials have said, until she began raising valuations in 2019. The lingering anger over the valuation growth has prompted new interest in the Republican-dominated Missouri General Assembly in making the assessor in Democratic-leaning Jackson County an elected position. The assessor is appointed by the county executive – currently Democrat Frank White, Jr. – and Jackson County is the only charter county in Missouri that doesn't elect the position. Ahead of the start of the legislative session in January, at least four constitutional amendments have been pre-filed in the General Assembly, all by Republicans who represent portions of Jackson County, to require elections for assessor… Cierpiot and other lawmakers have introduced similar amendments in the past. Still, this year's assessment controversy is fueling new calls to make the assessor position elected. Preston Smith, a former Republican candidate for county executive frequently critical of the assessment process, said that without elections, the assessor is "unaccountable to the people."… Cierpiot said he has "no illusion" that a Republican would win a race for assessor in heavily Democratic Jackson County. He added that McCann Beatty, who had past experience as a real estate appraiser, has the background required for the job. "So it's not a stab at her at all," he said."

Police chief recovering after DUI collision in Foley, Missouri

Fox 2 l Reggie Lee

https://fox2now.com/news/missouri/police-chief-recovering-after-dui-collision-in-foley-missouri/

-"Following a collision with a speeding car on Monday morning, a police chief in Foley, Missouri, is recovering. Chief Charles Hobby says the crash happened last Thursday at the four-way stop on Highway 79. The other driver was going 60 miles an hour when his car hit him, flipped and hit another car. No one was seriously injured. The driver was arrested for DUI."

Ashcroft: No evidence of Missouri lawmaker's claim of foreign election interference

KCTV l Joe McLean

https://www.kctv5.com/2023/12/18/ashcroft-no-evidence-missouri-lawmakers-claim-foreign-election-interference/

-"Missouri Secretary of State Jay Ashcroft said there is no evidence to the claim that unregistered foreign agents are interfering in Missouri's elections… "At this point in our review we have not been provided any evidence that even remotely relates to Missouri election interference," Ashcroft said in a press release. "The information provided thus far does not indicate any violation of Missouri Election Law. Therefore; without additional information and specific allegations regarding the election violation we can take no further action." According to Ashcroft, his staff sent Unsicker a form used to lodge an official complaint of election interference. Unsicker replied to the request by saying, "While this complaint involves a political opponent, I do not believe I can say anything further with regards to this complaint."… Unsicker amplified the allegations against her primary opponent, Elad Gross, a civil rights attorney and former assistant attorney general. Gross' mother served in the Israeli military in the 1970s and then emigrated to the U.S. in the 1980s. The allegations claim – albeit with no evidence – that both Gross and his mother are now operating on behalf of the Israel Defense Forces to interfere with Missouri's elections… Uniscker has recently been criticized by members of her own party for her association with Eric Garland, the person who originally made the accusations against Gross, and Charles Johnson, whom the Anti-Defamation League brands an alt-right activist who has publicly questioned the number of deaths in the holocaust. Unsicker was later stripped of her committee assignments and now faces calls from within the Democratic caucus for her removal."

School performance stagnates across Missouri after pandemic learning loss

STL Post-Dispatch l Blythe Bernhard, Josh Renaud

https://www.stltoday.com/news/local/education/school-performance-stagnates-across-missouri-after-pandemic-learning-loss/article_c3113e94-99dd-11ee-94a7-f32394ddd08a.html

-"The 2023 annual performance reports released Monday measure school districts on standardized test scores, graduation and attendance rates along with strategic plans and other factors. Missouri school districts and charters scored an average of 77%, down from 96% in 2018, when scores were last calculated with a different methodology… Local districts that scored in the top 10% statewide include Brentwood, Clayton, Crystal City, Festus, Fort Zumwalt, Francis Howell, Kirkwood, Lindbergh and Lafayette Prep charter school in St. Louis. Ladue, Rockwood and Webster Groves fell out of the top 10% since last year. The bottom 10% statewide includes Grandview (Jefferson County), Normandy, Ritenour, Riverview Gardens and St. Louis Public Schools plus St. Louis charter schools Confluence, Kairos Academies, Lift for Life and North Side Community.

AMERICAN OVERSIGHT

Hawthorn and La Salle charter schools, also among the lowest performers, closed this fall. Republican state legislators such as Sen. Andrew Koenig, of Manchester, have said that school choice policies from open enrollment to expansion of private school vouchers will dominate the next session in Jefferson City… The annual performance report, in its second year with a more rigorous scoring system, is the primary component of school district accreditation. Any changes to accreditation won't be made until three years of data are available in fall 2024. This year's scores indicate that 87 school districts statewide fall in the range of provisionally accredited, 50% to 69%, including Ferguson-Florissant, Hazelwood, Normandy, Ritenour, Riverview Gardens and St. Louis… The state doesn't classify charter schools, but their scores are used by their sponsors for renewal decisions every five years. Half of the charter school systems in St. Louis fall in the provisionally accredited range for 2023: Biome, Confluence, Kairos, Lift for Life, Momentum and North Side Community. Districts with provisional accreditation get extra attention from the state board of education because they are at risk of losing accreditation entirely. No school district in the state is currently unaccredited, which triggers a state law allowing students to transfer to higher-performing districts… Vandeven, who will be replaced by state Sen. Karla Eslinger as education commissioner next summer, mentioned low teacher retention and student absenteeism as main factors that have negatively affected school performance… Chronic absenteeism is a lingering effect of the pandemic. About 1 in 4 Missouri students is chronically absent, defined as missing more than 10% of class days. For Black students, the rate of chronic absenteeism is closer to half. Another hot topic in Jefferson City is expected to involve the increasingly popular four-day school week, used by nearly one-third of Missouri's school districts this year. Legislators have proposed bills that would require a public vote in any districts considering the schedule change. The Show-Me Institute libertarian think tank proposes an "automatic trigger" of open enrollment in any district that switches to a four-day week. The 2023 performance scores do not show a significant difference between school week schedules. School districts with a four-day week averaged 75.9%, while those on full weeks averaged 77%. One of the bright spots in the data is Crystal City School District in Jefferson County, which reached a score of 89.7% this year after switching to a four-day week in fall 2020…"

Missouri school administrators question district scores in second year of new formula

Missouri Independent l Annelise Hanshaw

https://missouriindependent.com/2023/12/18/missouri-administrators-question-school-district-scores-in-second-year-of-new-formula/

-"The Missouri Department of Elementary and Secondary Education released its annual performance reports on Monday, which measure districts on standardized tests, attendance rates and other factors. It showed 70% of districts had a lower score for the 2022-23 school year than the previous year. But school administrators are raising red flags about the data, pointing to massive swings in scores in both directions across the state and wondering — with only a year to go before the data will impact school-district accreditation — whether the testing program's formula needs to be adjusted… The Missouri School Improvement Program 6, known as MSIP 6, is being phased in over a period of three years for the department to be able to fully apply its point system. This year, the program included "growth scores," which administrators say can lower the district's overall grade and be misunderstood. "What (the Department of Elementary and Secondary Education) is calling the growth scores really isn't growth at all," Gregg Klinginsmith, superintendent of the Warren County School District, told The Independent. He said the growth scores show if students are beating expectations on standardized tests but don'trepresent how much the student body has learned. A school can receive a low score for growth, but it only shows that students are not meeting the target the growth formula predicted… When The Independent asked for the formula's documentation, the department pointed to resources that summarize the calculations. Reports from 2013 explains the Missouri Growth Model in more detail, though the multi-step formula is blotted out from the technical documentation. Doug Hayter, executive director of the Missouri Association of School Administrators, said educators have a lot of questions about the growth model… It really boils down to "how well DESE predicted your school will do," Klinginsmith said. "They adjust that formula from year to year, and the growth scores really is what is separating districts."… The model relies on predicting standardized test scores based on previous years' performance and comparing the result to the prediction. The Department of Elementary and Secondary Education believes the model reveals a school's instructional effectiveness, according to the summary report. The previous annual performance report scores were the first in the sixth version of the Missouri School Improvement Program, and growth scores were only available for English and math. Monday's release, which gives scores from the 2022-23 school year, includes growth points for social studies and science as well — an additional 12 points of MSIP 6's possible 192 points… Under MSIP6, fewer schools are scoring high marks when compared to the previous scoring system. In 2018 under MSIP 5, 371 school districts and charter schools scored at least 90%. Now, just 26 districts and charters met that target…"

Missouri lawmaker wants to abolish state's K-12 education department, transfer its powers

Springfield News-Leader l Claudette Riley, Kelly Dereuck

https://www.news-leader.com/story/news/education/2023/12/19/missouri-lawmaker-wants-abolish-state-education-department/71882125007/

-"The proposed legislation was filed by state Sen. Bill Eigel, a Republican from St. Charles County who is also seeking the GOP nomination in the 2024 Missouri governor's race. "My campaign is about busting up the bureaucracies of Jefferson City. I'm not sure there is a bigger bureaucracy in Jefferson City than the Department of Elementary and Secondary Education," Eigel

AMERICAN OVERSIGHT

said. Eigel said the "original mission" of DESE was to transfer money from Jefferson City to local school districts. He said it now has 2,000 employees and has lost its way… He alleged the state is requiring districts to embrace diversity, equity and inclusion or DEI or teaching lessons in line with the controversial Critical Race Theory. He did not give specific examples. "It serves as an authoritarian branch over local public school districts and really, after taking a bunch of money from the federal government, is pushing mandates down on those local school districts that I don't think that they agree with whether it's requiring them to teach DEI standards, CRT standards, whatever it is." Should Eigel's bill be approved, DESE would likely cease to exist as a standalone entity. The pre-filed Senate Bill 1005, which is relatively short, would give the governor the discretion to reassign many of the duties of the K-12 education department to other state agencies. Under the proposal, the Commissioner of Education continues to serve as chief administrative officer for the state's Board of Education… The proposal allows the commission to "retain or employ certain staff members who are necessary to assist with the implementation of the provisions of the act," subject to the approval of the governor at the state board… Asked for its number of employees, DESE said there were 1,799 on the payroll for the 2023 fiscal year but a majority — 1,327 or 73% — support the Missouri Schools for the Severely Disabled, the Missouri School for the Deaf, the Missouri School for the Blind, and Missouri Vocational Rehabilitation… This week, the state released the Annual Performance Report showing how schools and districts measure up against academic and other benchmarks, approved by the state board, as part of the sixth iteration of the Missouri School Improvement Program… Compared to the prior year, the state recorded slight increases in reading, except in grades 6 and 7, in the 2022-23 year. The scores for math and science were flat or slightly higher in all grades and courses compared to the prior year. Scores in social studies went down. The report showed in third grade, a pivotal benchmark, 58% of students in reading and 59% of students in math were one or more years behind where they should be at that point. Eigel said one goal of his proposed legislation is to give districts "more independence and flexibility" so they can opt out of certain requirements put in place by DESE."

Missouri Gov. Parson announces approval of $5 million grant for college nursing programs

KCTV l Gabe Swartz

https://www.kctv5.com/2023/12/19/missouri-gov-parson-announces-approval-5-million-grant-nursing/

-"Missouri Gov. Mike Parson announced Monday that $5 million in grant funding was approved to help nursing programs at Missouri colleges and universities. "It is vitally important that we continue to invest in Missouri's health care workforce to stay competitive nationally, especially for our high-demand fields such as nursing," said Parson. "These grant funds will allow nursing programs to increase faculty support, develop future faculty through scholarships and nursing educator programs, and invest in clinical simulation technology." A special appropriation to the Missouri State Board of Nursing led to the recommendation of 20 grants totaling $5 million in support… "We applaud nursing programs for leveraging their research, creativity and commitment to patient safety by proposing solutions to address the nursing program capacity issues," said Lori Scheidt, the executive director of the Missouri State Board of Nursing. Parson previously approved $3 million in funding in September 2022. The Missouri State Board of Nursing also was awarded more than $10 million through the Nursing Education Incentive Program."

The Full Story of School Choice (Audio)

KWTO l The Elijah Haahr Show

https://post.futurimedia.com/kwtoam/playlist/38/listen-2692.htmlr_bZb4TOkxhVWZry-QLMM

-"School Choice isn't just a "yes" or "no" issue. Missouri Rep. Doug Richie breaks down what could pass, what should pass, and his thoughts."

Missouri Legislature to Consider Ways to Fight Organized Shoplifting Rings (Audio)

MissouriNet l Alisa Nelson

https://www.missourinet.com/2023/12/19/missouri-legislature-to-consider-ways-to-fight-organized-shoplifting-rings-listen/

-"Organized shoplifting rings are on the rise in Missouri and nationwide. Alisa Nelson talks to Representative Lane Roberts, of Joplin, who is proposing a bill intended to fight these crimes."

Rep. Crystal Quade proposing eliminating Missouri grocery tax

Fox 2 l Reggie Lee

https://fox2now.com/news/missouri/rep-crystal-quade-proposing-eliminating-missouri-grocery-tax/

-"A Missouri House leader wants to save you money at the grocery store. House Minority Leader Crystal Quade is proposing a plan to eliminate Missouri's tax on groceries. The Springfield Democrat says her plan would make food more affordable. She plans to introduce her plan at 9:30 a.m. via Zoom…"

National News:

Judge Halts Removal of Confederate Memorial at Arlington National Cemetery

Epoch Times l Bill Pan

https://www.theepochtimes.com/us/judge-halts-removal-of-confederate-memorial-at-arlington-national-cemetery-5549024

-"A federal judge on Dec. 18 issued a temporary order halting the planned removal of a Confederate monument at Arlington National Cemetery in Virginia, according to reports. Work had already begun to remove what's known as the Confederate Memorial, which was erected in 1914 in honor of soldiers who died fighting for the Confederacy during the Civil War. The

AMERICAN OVERSIGHT

monument hadn't yet been dismantled when the order was issued and remains in place on cemetery grounds. The lawsuit was filed on Dec. 17 by a group calling itself Defend Arlington, The Associated Press reported. The same group sued the U.S. Army and the U.S. Department of Defense in February to halt the memorial's removal, but a district judge last week tossed the case and allowed the work to proceed in accordance with recommendations from a congressionally mandated naming commission. The commission, comprised of civilian authorities and retired and current defense officials, was tasked to review the Defense Department's assets and identify "all names, symbols, displays, monuments, and paraphernalia that honor or commemorate the Confederate States of America." The Army has renamed nine bases across the nation to comply with the commission's final report. In its latest lawsuit, Defend Arlington accused the Army, which maintains the cemetery, of violating federal regulations. "The removal will desecrate, damage, and likely destroy the Memorial longstanding at ANC as a grave marker and impede the Memorial's eligibility for listing on the National Register of Historic Places," the lawsuit states. U.S. District Judge Rossie Alston, who granted Defend Arlington's request for a restraining order, said the parties should be prepared to make their case at a hearing scheduled for Dec. 20. In a footnote, the judge wrote that he "takes very seriously the representations of officers of the Court and should the representations in this case be untrue or exaggerated the Court may take appropriate sanctions."…"

The Campaign against Clarence Thomas Misfires Yet Again

National Review l John Yoo

https://www.nationalreview.com/2023/12/the-campaign-against-clarence-thomas-misfires-yet-again/

-"There is an old lawyer's joke: "If the facts are against you, argue the law. If the law is against you, argue the facts. If the law and the facts are against you, pound the table and yell like hell." It looks like ProPublica, a self-styled "independent, nonprofit newsroom that produces investigative journalism with moral force," has now descended to the anonymous humor of the bar. Its writers have waged a yearlong campaign against Justice Clarence Thomas, to the point of accusing him of accepting financial gifts from conservative donors who hoped to influence him. These charges have failed. Not only has the Wall Street Journal editorial page debunked their facts, Justice Thomas has complied with the judicial-ethics rules, and, most important, has always followed the central principle of judicial honor: to have no personal interest in any case that appears before the Court. So now that ProPublica has lost on the facts and the law, it has leveled its most shocking allegation of all — that Justice Thomas believed in 2000 that federal judges were underpaid! The horror. To spin this story of a threat to the Constitution itself, ProPublica interviewed former Florida representative Cliff Stearns, who allegedly sat with Thomas on a plane. Thomas allegedly said that Supreme Court justices were underpaid and that if Congress didn't act, "one or more justices will leave soon." From this stray comment, ProPublica claims that Justice Thomas himself was threatening to leave the bench if Congress did not increase his pay. (Don't let Chuck Schumer find out or the judiciary will never see another penny.) Of course, ProPublica nowhere finds any statement, public or private, where Thomas has ever said anything of the kind. And as someone who first clerked for Thomas in 1993 and has stayed in close touch with him over the past three decades, I have never, ever heard him complain about his salary or talk about resigning. Not once… The sad thing is that ProPublica missed a story of real substance. In 2000, the federal judiciary as a whole was underpaid because Congress had violated the Constitution. Article III of the Constitution provides for judicial independence, one of the core principles of the separation of powers, by providing that "Compensation" for federal judges "shall not be diminished during their Continuance in Office." But for more than a decade, Congress had blocked cost-of-living increases — the very same that go out to every recipient of federal benefits or wages — for judges. Congress had imposed an effective pay cut on judges by allowing inflation to erode the real value of their compensation. The real story: Congress had linked its own pay to that of the judiciary and was hoping that pressure to increase the judges' pay would allow it to quietly raise its own. Thomas, if he had spoken to Stearns at all about this, was no doubt making the point that the judiciary, as an independent third branch of government, was inadequately funded. This would have nothing to do with Thomas's own personal finances, which seemed to be fine. (Like most Americans, he had to borrow money for major life expenditures such as buying a house or a car — another sin in ProPublica's book.) Reporting what other judges were saying would be Thomas's right and even, I think, his duty, if matters reached the point of affecting the ability of judges to continue to serve the courts. In fact, no judge would have had to pressure any member of Congress for pay increases secretly, as ProPublica implies. Judges were only too happy to do so in public. At this time and for years before and after, federal judges, including several justices, were testifying publicly before Congress to seek more appropriations for judicial pay. Matters came to such a head that a group of federal judges even sued to force Congress to live up to its constitutional duties. The judges won, as Christopher Landau, their lawyer (and a former ambassador to Mexico and a Thomas clerk) describes. The result was such a slam dunk that the United States government threw in the towel and dropped any appeal to the Supreme Court. ProPublica is helping to support a political attack on a Court that the Left hates, one that has returned abortion to the states, strengthened Second Amendment rights, and ended racial quotas in schools. Accordingly, ProPublica has accused Justice Thomas of accepting fancy trips from Harlan Crow, a wealthy conservative developer, and even accepting large financial gifts without disclosing them on disclosure forms. The Wall Street Journal editorial page has debunked these accusations and found that Justice Thomas followed the rules, aside from an error in filing the right forms. It concluded that the Pro Publica stories constitute "crude propaganda — lousy opinion writing and unreliable information rolled into one and deceptively packaged as straight news." Sadly, ProPublica and the Thomas critics it encourages have now descended to

AMERICAN OVERSIGHT

pounding the table and yelling as part of their campaign against a Court whose decisions they simply dislike."

Texas Governor Signs Law Giving Police Power to Arrest Illegal Immigrants

Epoch Times l Savannah Hulsey Pointer

https://www.theepochtimes.com/us/texas-governor-signs-law-giving-police-power-to-arrest-illegal-immigrants-5548854?ea_src=ai_recommender&ea_med=desktop_news

-"Texas Gov. Greg Abbott has signed a border security bill into law that will give state law enforcement broad authority to arrest migrants who have entered Texas illegally and will allow local judges to order such migrants out of the country. The Dec. 18 move by the Republican governor puts into place one of the nation's strictest immigration laws and sets up a clash with the federal government, which has authority over immigration policy. Under the new rules, all law enforcement officials in the state of Texas, including those who are hundreds of miles from the border, would have the authority to detain migrants suspected of entering the nation illegally. Because the offense is considered a misdemeanor, the judge has the authority to order the defendant to leave the country… Separately on Dec. 18, U.S. Customs and Border Protection temporarily shut down two railroad border crossings in Texas to shift officers to help process migrants. Rail operators said the closures at Eagle Pass and El Paso would hamper trade ahead of Christmas… The new legislation doesn't apply to residents who have been in the nation for more than two years, according to state Rep. David Spiller, one of the Republicans who sponsored the bill. In its defense, he stated it would be implemented primarily in the vicinity of the border and that it contained adequate safeguards… It's highly probable that it will face challenges in court. Opponents will argue that it is a blatant breach of the law in the United States, as the authority to deport individuals is entirely vested in the federal government. Mr. Abbott, currently serving his third term as governor of Texas, has made the implementation of increasingly aggressive policies at the border between Texas and Mexico a central focus of his administration. In addition to providing law enforcement with broader arrest powers, Republicans in Texas are on pace to approve $1.5 billion to fund continued construction of an addition to federal border wall sections. In recent months, Texas has also filed a lawsuit in an effort to maintain a floating barrier on the Rio Grande and to prohibit agents of the Border Patrol from destroying razor wire. Mr. Abbott also started Operation Lone Star, a program in cooperation with the Texas Department of Public Safety and the Texas National Guard, in March of 2021…"

US border overwhelmed by migrant surges in three states, closing international bridges and causing chaos

New York Post l Alex Oliveria, Marjorie Hernandez

https://nypost.com/2023/11/28/news/border-protection-shuts-down-crossings-to-consolidate-resources-at-4-migrant-hotspots/

-"Border Patrol forces in California, Texas and Arizona are so overwhelmed by the thousands of migrants surging into the US, they're having to take drastic measures to deal with them. Crises have emerged in four areas, according to local sources and Customs and Border Protection (CBP), closing one of the two international bridges at Eagle Pass, Texas, border station to all traffic since Monday afternoon. Meanwhile, an international crossing at Lukeville, Arizona, was also closed down. The closures were undertaken "in order to redirect personnel to assist the US Border Patrol with taking migrants into custody," CBP said. Elsewhere along the southern border, similar drastic measures were taken to address surges at other hotspots. The Tuscon Sector, which covers most of the the Arizona-Mexico border, halted its social media accounts Sunday to utilize all its personnel in addressing the "unprecedented flow" of migrants, sector chief John R. Modlin announced… CBP figures showed 52,000 people had presented themselves at border crossings along the Southwest border for entry into the US in October, a figure far eclipsed by the 189,000 who were encountered attempting to illegally cross into the country between points of entry in the same month. Erika Pinheiro, executive director of migrant services at legal aid company Al Otro, told The Post the cartels and people smugglers deliberately change tactics and send migrants to different areas to test for weaknesses in US border patrol coverage… In California, new barriers are being erected along the banks of a canal north of the border in the San Ysidiro district of San Diego, where migrants have increasingly been staging stampedes into the country. The barriers stretch along the banks of the Tijuana River where it crosses into the US through a shallow concrete-laid canal, which masses of migrants have been using to swarm across the border in large groups. Half a mile of fencing is also being erected along the river banks on the Mexican side, according to Border Report… California has become the epicenter of the latest surge of migrants arriving at the border in recent weeks. Since mid-September alone, over 40,000 migrants have been processed through the San Diego sector, coming from countries as far flung as China, India, Turkey and Romania… In the 2023 fiscal year ending on September 30, more than 230,000 migrants crossed along the sector — a 20-year high in the area. Just two months ago, the crisis was so bad in Eagle Pass, Texas, where two bridges cross the Rio Grande into Mexico, that Bridge 1 was again closed to divert CBP resources to address the more than 10,000 migrants who were arriving in the city daily, according to Border Report… At least $500,000 in trade revenue during the closure in September, Eagle Pass Mayor Rolando Salinas Jr. said."

Major Oil and Shipping Companies Suspend Travel Through Key Waterway

Epoch Times l Jack Phillips

https://www.theepochtimes.com/world/major-oil-and-shipping-companies-suspend-travel-through-key-waterway-5548858?ea_src=ai_recommender&ea_med=desktop_news

-"A number of large shipping companies and oil firms have said they are suspending transit through the Red Sea to avoid attacks on vessels by Yemen's Houthi rebels amid the Israel–Hamas war. Oil prices rose sharply on the news. Brent crude,

OVERSIGHT

the global benchmark, was up about 2 percent at $78.15 a barrel by 1:45 a.m. New York time on Dec. 18. U.S. oil also rose by about 2.4 percent, to about $73.47 a barrel. Norwegian oil and gas firm Equinor on Dec. 18 said it had rerouted some vessels that had been headed toward the Red Sea, and Belgian oil tanker firm Euronav said on Dec. 18 it would avoid that area until further notice. French shipping group CMA CGM announced on Dec. 16 that it was pausing all container shipments through the Red Sea. Most significantly, oil giant BP said on Dec. 18 that it had temporarily paused all transits through the key waterway… Denmark's A.P. Moller-Maersk on Dec. 15 said it would pause all container shipments through the Red Sea until further notice, following a "near-miss incident" involving its vessel Maersk Gibraltar a day earlier. The ship was targeted by a missile while traveling to Jeddah, Saudi Arabia, from Salalah, Oman, the company confirmed. German container shipping line Hapag Lloyd said on Dec. 18 that it would reroute several ships via the Cape of Good Hope until the safety of passage through the Suez Canal and the Red Sea could be guaranteed… The USS Carney, a U.S. Navy destroyer, responded on Dec. 18 to a distress call from a commercial ship that was attacked in the Red Sea. "Multiple projectiles" were fired at the Swan Atlantic merchant vessel, an official said, adding that it isn't clear what kind of projectiles were fired. The Houthis, a group that was designated as a terrorist organization until 2021, when the State Department removed the designation, claimed responsibility for attacks on two MSC vessels last week. Ali al-Qahoum, a member of the Iran-backed Houthi Ansarullah group, told a Lebanese media outlet that Yemen and the Houthis, who control much of Yemen, have their defensive options readied to respond to any moves that the United States, Israel, or other country might make in the near future… The USS Carney on Dec. 16 intercepted 14 drones launched by the Houthis in Yemen over the weekend, according to officials. Those drones were “shot down with no damage to ships in the area or reported injuries,” the U.S. Central Command said in a statement on social media… Earlier in December, the USS Carney shot down at least three Houthi drones that were heading in the ship’s direction. In November, the USS Thomas Hudner shot down drones that were launched from Yemen, a country that was the site of a civil war that began after longtime former leader Ali Abdullah Saleh stepped down in 2012—he was assassinated in 2017. The U.S. military has also carried out strikes targeting ammunition storage facilities and weapons depots that were being used by Iranian or Iran-backed forces in eastern Syria and Iraq. “While the Houthis are pulling the trigger, so to speak, they’re being handed the gun by Iran,” U.S. national security adviser Jake Sullivan told journalists while in Israel on Dec. 14.”

Pentagon Announces Task Force To Combat Houthi Attacks In Red Sea

Daily Caller l Micaela Burrow

https://dailycaller.com/2023/12/18/pentagon-announces-task-force-combat-houthi-attacks-red-sea/

-“The U.S. and allies on Monday announced a multinational task force aimed at undercutting attacks on commercial vessels in the Red Sea as the Houthi rebels put a vice on shipping through a critical waterway, the Pentagon said early Tuesday in Bahrain. Operation Prosperity Guardian will involve a multitude of nations including the United Kingdom, Bahrain, Canada, France, Italy, the Netherlands, Norway, Seychelles and Spain and build on an existing regional task force established to ensure maritime security, Secretary of Defense Lloyd Austin said while on a tour of the Middle East. The Iran-backed Houthis, based in Yemen, have launched barrages of missile and drone attacks on commercial shipping in recent weeks, while U.S. warships scramble to come to their rescue… At least 10 shipping companies have suspended transits through the Red Sea, citing the danger posed by the Houthis, according to a list compiled by Reuters… Some of the participants will conduct joint patrols through the Red Sea and around the Gulf of Aden and the critical Bab el-Mandeb strait, while others will provide intelligence support, The Associated Press reported. Combined Task Force 153, the task force on which Prosperity Guardian is modeled, involves 39 countries, but officials are still working to parse out which would participate, the AP reported. CTF 153 began in 2022 to ensure maritime security in the waters now terrorized by the Houthis. The USS Carney, the USS Stethem and the USS Mason, American Arleigh Burke-class guided-missile destroyers, have been patrolling the waters every day to hold the ropes on a deterioriating security situation. The USS Dwight D. Eisenhower aircraft carrier arrived in the Bab el-Mandeb from the Arabian Gulf on Monday, satellite imagery shows. Attacks on Dec. 3 prompted the move to establish the task force, the AP reported. Three commercial vessels sustained hits by Houthi missiles that day as U.S. destroyers fended off drones.”

Medical activists 'cherry-pick' research to justify racialized healthcare: Study

Washington Examiner l Breccan F. Thies

https://www.washingtonexaminer.com/policy/healthcare/medical-activists-cherry-pick-research-racialized-healthcare

-“The data justifying "racial concordance," the idea that patients will receive better care from doctors of their own race, have been "cherry-picked" to advance diversity, equity, and inclusion in medicine, according to a new study. The theory of "racial concordance" has become prominent among America's leading medical schools and organizations, as well as within left-wing political leadership. The theory holds that doctors of certain races are "inherently biased toward members of other races," the study stated. Organizations like the American Medical Association, the Association of American Medical Colleges, which represents all accredited U.S. medical schools, and "Top Doctor" search engine Castle Connolly have all heavily pushed the ideology. However, the supporting data for this idea exist in a relatively small number of studies, with "generally cherry-picked" evidence that is "decisively outweighed by the full body of scientific research," causing the study's authors to conclude that "medical research does not support racial concordance."… Claiming the ideology "promotes racialization of yet another aspect of American life," Goldfarb went on to say that most doctors "want to see

AMERICAN OVERSIGHT

elimination of healthcare disparities. We believe the way to accomplish this is to improve access to healthcare by minority communities and better outreach by healthcare systems to those communities." The new study does not claim that racial disparities in healthcare are nonexistent, instead calling them "a persistent and tragic phenomenon." However, it does maintain that racializing healthcare is neither beneficial nor supported by the academic papers often cited in favor of it. In the most recent review of the literature on racial concordance, 12 analyses showed beneficial outcomes, eight showed harm, and 86 found no difference. Researchers in that review concluded that "results reveal little evidence to suggest that patients of color who share racial or ethnic identity with their physicians experience a different quality of physician communication." The Do No Harm study, called "Racial Concordance in Medicine: The Return of Segregation," notes that in the few instances where racial concordance was deemed beneficial, they were the "exception rather than the norm" and should be "contextualized against the backdrop of a much larger body of evidence."… The American medical establishment, however, has continued pushing the racial concordance idea, going so far as to claim that a black baby is twice as likely to survive with a black doctor than a doctor of a different race and that black doctors are more equipped to treat pain in black patients, ideas espoused by Justice Ketanji Brown Jackson in her dissent to Students for Fair Admissions v. Harvard and ideas pushed by the AAMC in its amicus brief in support of racialized college admissions for that case. The study used by the AAMC, which was cited as the basis for Jackson's claim in the dissent, actually found that the survival rate of black newborns with black attending physicians is about 99.7%, while the survival rate of black newborns with white attending physicians is about 99.6%, according to study author Jay Greene, a senior research fellow at the Heritage Foundation. Similarly, the allegation about pain assessment is not supported by the studies the AAMC cited, Greene said, which did not look at pain in black patients in reference to doctors of different races. Despite that, the brief was signed by 14 organizations involved with training healthcare professionals, such as the American Association of Colleges of Nursing, and 26 organizations that represent healthcare professionals like the AMA. The authors of the Do No Harm study likened these organizations to the doctors who took part in the Tuskegee syphilis study, in which medical professionals infamously lied to black patients about their illnesses and kept them sick without available treatment. "One of the lessons of the Tuskegee Experiment is that medical professionals are morally and professionally obligated to tell the truth," the study stated. "When it comes to the state of evidence on racial concordance in medicine, it's clear that many influential individuals and organizations are derelict in that responsibility.'"

Parents Sue Blue State School District For 'Intentionally' Transitioning Daughter Without Their Consent

Daily Caller l Kate Anderson

https://dailycaller.com/2023/12/18/parents-sue-michigan-school-district-transitioning-daughter/

-"Two parents filed a lawsuit Monday against a Michigan school district after discovering that their daughter's middle school was allegedly socially transitioning her without their knowledge. Dan and Jennifer Mead claim that they discovered that their daughter, G.M., who was attending East Rockford Middle School in the 2022 school year, was going by male pronouns and a different name and that the school tried to cover it up, according to the lawsuit. The Meads, who are being represented by Alliance Defending Freedom (ADF), said that they initially had no reason to suspect anything because the school had previously been upfront with them about any issues involving their daughter. "District employees—employees the Meads had trusted with sensitive information about G.M.'s mental health— deliberately changed G.M.'s school records to conceal the fact that the District was treating their daughter as a boy without their knowledge," the lawsuit reads. "The Meads only discovered it because one employee forgot to remove the masculine name and male pronouns from one section of G.M.'s records, after removing it from other sections of the same document, and inadvertently gave the Meads the document she had only partially altered." The school allegedly continued to refer to the Meads' daughter as a male, despite them communicating that they did not consent to it, according to the lawsuit. The Meads eventually decided to homeschool in late 2022 after their daughter came home with a book titled Heartstopper Volume 1, a graphic novel that depicts "one teenage boy physically assaulting and later forcibly kissing another teenage boy without his consent," that was allegedly provided by the school counselor, Erin Cole. School staff repeatedly cited that their behavior was in line with school policy and, when Mr. Mead asked Principal Adam Burkholder whether the school would promise to notify them about this issue in the future, Burkholder allegedly refused, according to the lawsuit. "District employees didn't even notify Dan and Jennifer—let alone seek their consent—before beginning to call their young daughter by a masculine name and male pronouns," Kate Anderson, senior counsel and director of ADF's Center for Parental Rights, said in a press release. "By intentionally concealing this information from the Meads, the school district violated their constitutionally protected right to make decisions regarding their daughter's education and wellbeing and destroyed the trust the Mead family had placed in the district and its employees.'"

Lawmakers ask DOJ to probe Apple's blocking of Android app allowing blue bubbles

Washington Examiner l Christopher Hutton

https://www.washingtonexaminer.com/policy/technology/lawmakers-ask-doj-probe-apple-blocking-app-allowing-blue-bubbles

-"A bipartisan group of congressional critics of Big Tech is asking the Department of Justice to investigate whether Apple breached antitrust laws by blocking an app that allows Android users access to iMessage. The group sent a letter to DOJ Assistant Attorney General Jonathan Kanter late on Sunday asking him to investigate Apple's decision to prevent the Beeper Mini app from accessing its servers. Beeper Mini found a workaround that allowed Android users to access the

AMERICAN OVERSIGHT

iMessage service, meaning that their texts would appear in blue bubbles rather than green. The difficulties texting between Android and iOS have long frustrated people in group texts, although Apple has said it will get rid of the green bubbles next year… The authors are "concerned that Apple's recent actions to disable Beeper Mini harm competition, eliminate choices for consumers and will discourage future innovation and investment in interoperable messaging services." They also said they are worried that Apple's actions against Beeper Mini may "more broadly chill future investment and innovation from those that seek to compete with existing digital gatekeepers." Beeper Mini had initially figured out how to reverse engineer the iMessage protocol and support it on Android through falsified security IDs. The Beeper Mini app began to act up, and Apple released a statement confirming that it had blocked Beeper Mini's exploit for accessing the system. Beeper Mini adapted its method to work on Android, although it required users to have an Apple ID instead. The app's developers confirmed that it was still having technical problems and that it believed Apple was "deliberately blocking iMessages from being delivered" for some users. The company reported on Sunday that the app had been broken for "more than 60 hours." Apple announced in November that it was adding support for RCS, the preferred encryption protocol for Android, in 2024. It previously resisted giving Android users access to blue bubbles on security grounds. When asked what his plans were for amending the gap between iMessage and Android, Apple CEO Tim Cook told conference attendees to "get their mom an iPhone." The decision is believed to have been provoked by the European Union's attempt to crack down on Apple through the antitrust-focused Digital Markets Act."

I hope everyone has an amazing day!

Best,

Bennett Lyday | Policy & Operations Specialist
Missouri Attorney General's Office
207 West High Street
Jefferson City, MO 65101
O: (573) 751-4390
C: (573) 645-9671
Bennett.Lyday@ago.mo.gov

AMERICAN OVERSIGHT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MEDIA MATTERS FOR AMERICA, ERIC HANANOKI, Plaintiffs, v. WARREN KENNETH PAXTON JR., in his official capacity as Attorney General of the State of Texas, ANDREW BAILEY, in his official capacity as Attorney General of the State of Missouri, Defendants.	Civil Action No. 24-cv-147 **(EXPEDITED HEARING REQUESTED)**

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST BAILEY

AMERICAN OVERSIGHT

TABLE OF CONTENTS

INTRODUCTION 1

BACKGROUND 2

I. In 2023, under Musk's ownership, advertisements frequently appeared on X alongside racist, antisemitic, and violent content. 2

II. Media Matters and Hananoki reported on X's pattern of permitting the placement of advertisements alongside extremist content. 5

III. Texas Attorney General Ken Paxton issued a retaliatory civil investigative demand to Media Matters, but this Court enjoined its enforcement. 7

IV. Missouri Attorney General Andrew Bailey issued a copycat demand, moved prematurely to enforce it in Missouri state court, and served abusive discovery. 9

V. Bailey's actions have chilled Plaintiffs' First Amendment–protected activities by subjecting them to a retaliatory investigation in a foreign jurisdiction. 15

LEGAL STANDARD 17

ARGUMENT 17

I. This Court has personal jurisdiction over Bailey in his official capacity as Attorney General of Missouri. 17

A. The Court has long-arm jurisdiction over Bailey. 17

B. The Court has constitutional personal jurisdiction over Bailey. 23

II. Media Matters and Hananoki are likely to prevail on the merits of their claims. 25

A. Plaintiffs are likely to establish that Bailey retaliated against their constitutionally protected activities in violation of the First Amendment. 25

B. Plaintiffs are likely to establish that Bailey's Demand violates both the First and Fourth Amendments and the D.C. and Maryland shield laws. 32

C. Plaintiffs are likely to establish that the legal process against them in Missouri violates due process due to a lack of contact with that state. 36

III. Plaintiffs will suffer irreparable harm absent an order restraining Bailey's investigation and efforts to enforce his Demand. 37

IV. The remaining equitable factors strongly favor granting preliminary relief. 38

CONCLUSION 39

AMERICAN OVERSIGHT

TABLE OF AUTHORITIES

Page(s)

Cases

Am. Fed'n of Lab. & Cong. of Indus. Orgs. v. Fed. Election Comm'n,
333 F.3d 168 (D.C. Cir. 2003) 33

Ams. for Prosperity Found. v. Bonta,
141 S. Ct. 2373 (2021) 33

Anatol Zukerman & Charles Krause Reporting, LLC, v. U.S. Postal Serv.,
64 F.4th 1354 (2023) 25

Anderson v. Reilly,
691 F. Supp. 2d 89 (D.D.C. 2010) 25

Aref v. Lynch,
833 F.3d 242 (D.C. Cir. 2016) 25, 27, 28, 31

Bice v. Bernstein,
No. 93-CA-22258, 1994 WL 555379 (Md. Cir. Ct. Apr. 20, 1994) 35

BMW of N. Am., Inc. v. Gore,
517 U.S. 559 (1996) 36

Bristol-Myers Squibb v. Super. Ct. of Cal.,
582 U.S. 255 (2017) 36

Buckley v. Valeo,
424 U.S. 1 (1976) 33

Burger King Corp. v. Rudzewicz,
471 U.S. 462 (1985) 37

Calder v. Jones,
465 U.S. 783 (1984) 24

Centro Tepeyac v. Montgomery County,
722 F.3d 184 (4th Cir. 2013) 38

Constantine v. Rectors & Visitors of George Mason Univ,
411 F.3d 474 (4th Cir. 2005) 27

Cooksey v. Futrell,
721 F.3d 226 (4th Cir. 2013) 29

AMERICAN OVERSIGHT

Crawford-El v. Britton,
93 F.3d 813 (D.C. Cir. 1996) 25

Def. Distrib. v. Grewal,
971 F.3d 485 (5th Cir. 2020) 21, 24

El Dia, Inc. v. Rossello,
165 F.3d 106 (1st Cir. 1999) 25

Equitable Tr. Co. v. State Comm'n on Human Relations,
411 A.2d 86 (Md. 1980) 35

Experience Works, Inc. v. Chao,
267 F. Supp. 2d 93 (D.D.C. 2003) 17

Fed. Trade Comm'n v. Am. Tobacco Co.,
264 U.S. 298 (1924) 33

Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.,
592 U.S. 351 (2021) 36

Giovani Carandola, Ltd. v. Bason,
303 F.3d 507 (4th Cir. 2002) 39

Goodyear Dunlop Tires Operations, S.A. v. Brown,
564 U.S. 915 (2011) 36, 37

Grunseth v. Marriott Corp.,
868 F. Supp. 333 (D.D.C. 1994) 35

Hartley v. Wilfert,
918 F. Supp. 2d 45 (D.D.C. 2013) 27

Hartman v. Moore,
547 U.S. 250 (2006) 25

Hedgepeth ex rel. Hedgepeth v. Washington Metro. Area Transit Auth.,
386 F.3d 1148 (D.C. Cir. 2004) 25

Heller v. Nicholas Appelgate Cap. Mgmt. LLC,
498 F. Supp. 2d 100 (D.D.C. 2007) 23

IMAPizza, LLC v. At Pizza Ltd.,
334 F. Supp. 3d 95 (D.D.C. 2018) 23

Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee,
456 U.S. 694 (1982) 36

AMERICAN OVERSIGHT

Karem v. Trump,
960 F.3d 656 (D.C. Cir. 2020) 38

Klayman v. Obama,
142 F. Supp. 3d 172 (D.D.C. 2015) 39

Lacey v. Maricopa County,
693 F.3d 896 (9th Cir. 2012) 34

Leaders of a Beautiful Struggle v. Balt. Police Dep't,
2 F.4th 330 (4th Cir. 2021) 39

Lewis v. Mutond,
568 F. Supp. 3d 47 (D.D.C. 2021) 23

Local 1814, Int'l Longshoremen's Ass'n v. Waterfront Comm'n of N.Y. Harbor,
667 F.2d 267 (2d Cir. 1981) 34

Major League Baseball v. Crist,
331 F.3d 1177 (11th Cir. 2003) 34

Marcus v. Search Warrants,
367 U.S. 717 (1961) 33

Menken v. Emm,
503 F.3d 1050 (9th Cir. 2007) 24

Minneapolis Star & Tribune Co. v. Minn. Comm'r of Revenue,
460 U.S. 575 (1983) 38

Mouzavires v. Baxter,
434 A.2d 988 (D.C. 1981) 19

NAACP v. Alabama,
357 U.S. 449 (1958) 33

New York Times Co. v. Sullivan,
376 U.S. 254 (1964) 1, 26

Nieves v. Bartlett,
139 S. Ct. 1715 (2019) 31

Nken v. Holder,
556 U.S. 418 (2009) 17

Ohio v. EPA,
No. 22-1081, 2024 WL 1515001 (D.C. Cir. Apr. 9, 2024) 18

AMERICAN OVERSIGHT

Okla. Press Publ'g Co. v. Walling,
327 U.S. 186 (1946) 32

Pebble Ltd. P'ship v. EPA,
310 F.R.D. 575 (D. Alaska 2015) 32, 34

Perry v. Schwarzenegger,
591 F.3d 1147 (9th Cir. 2010) 32

Perry v. Sindermann,
408 U.S. 593 (1972) 25

Playboy Enters. v. Meese,
639 F. Supp. 581 (D.D.C. 1986) 28

Ports Petroleum Co. of Ohio v. Nixon,
37 S.W.3d 237 (Mo. 2001) 14

Prysmian Cables & Sys. USA, LLC v. Szymanski,
573 F. Supp. 3d 1021 (D.S.C. 2021) 39

Pursuing Am.'s Greatness v. Fed. Election Comm'n,
831 F.3d 500 (D.C. Cir. 2016) 17, 38

Roth v. United States,
354 U.S. 476 (1957) 26, 38

Schleit v. Warren,
693 F. Supp. 416 (E.D. Va. 1988) 20

Shoen v. Shoen,
48 F.3d 412 (9th Cir. 1995) 28

Shoppers Food Wearhouse v. Moreno,
746 A.2d 320 (D.C. 2000) 22

Snoeyenbos v. Curtis,
60 F.4th 723 (4th Cir. 2023) 27

Stanford v. Texas,
379 U.S. 476 (1965) 33

Tech. Patents, LLC v. Deutsche Telekom AG,
573 F. Supp. 2d 903 (D. Md. 2008) 29

Thompson Hine, LLP v. Taieb,
734 F.3d 1187 (D.C. Cir. 2013) 19

AMERICAN OVERSIGHT

Time, Inc. v. Hill,
385 U.S. 374 (1967) 26

Turner v. U.S. Agency for Global Media,
502 F. Supp. 3d 333 (D.D.C. 2020) 29

United States v. Ferrara,
54 F.3d 825 (D.C. Cir. 1995) 19

Urquhart-Bradley v. Mobley,
964 F.3d 36 (D.C. Cir. 2020) 22

Vishay Intertech., Inc. v. Delta Int'l Corp.,
696 F.2d 1062 (4th Cir. 1982) 23

Walden v. Fiore,
571 U.S. 277 (2014) 23, 37

White v. Lee,
227 F.3d 1214 (9th Cir. 2000) 29

Winter v. Nat. Res. Def. Council, Inc.,
555 U.S. 7 (2008) 17

Ex parte Young,
209 U.S. 123 (1908) 17

Zurcher v. Stanford Daily,
436 U.S. 547 (1978) 32, 34

Statutes

28 U.S.C. § 2201 25

28 U.S.C. § 2202 25

D.C. Code § 13-421 ..... 8, 17

D.C. Code § 13-422 18

D.C. Code § 13-423(a)(1) 18

D.C. Code § 13-423(a)(3) 18

D.C. Code § 13-423(b) 21

D.C. Code § 16-4702 35

D.C. Code § 16-4703 35

AMERICAN OVERSIGHT

Md. Cts. & Jud. Proc. Code Ann. § 9-112(b)(1).....35

Md. Cts. & Jud. Proc. Code Ann. § 9-112(c)(2).....35

Mo. Rev. Stat. § 351.572 16

Mo. Rev. Stat. § 407.020 16

Mo. Rev. Stat. § 407.040 .....10, 20

Mo. Rev. Stat. § 407.080 28

Mo. Rev. Stat. § 407.090 13

Mo. Rev. Stat. § 407.472 10

AMERICAN OVERSIGHT

INTRODUCTION

This motion turns on questions the Court has already answered. On March 25, 2024, Missouri Attorney General Andrew Bailey issued a civil investigative demand (the "Missouri Demand" or "Demand") to Plaintiff Media Matters for America. Less than three weeks later, this Court entered a preliminary injunction against a civil investigative demand (the "Texas Demand") issued by Texas Attorney General Ken Paxton. According to Bailey himself, he is coordinating with Paxton in his "war" against Media Matters and his Missouri Demand is "virtually identical" to Paxton's Texas Demand. Bailey's lawless investigation, like Paxton's before it, is a frontal assault on our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). Plaintiffs come to this Court once again seeking immediate relief to safeguard their constitutionally protected speech and press rights. The Court should take Bailey at his word about the nature of his investigation and grant Plaintiffs an immediate temporary restraining order against Bailey, as well as a preliminary injunction providing the same relief the Court has already granted against Paxton.

The few differences in the circumstances giving rise to the instant motion only make the need for relief against Bailey more apparent. Bailey moved prematurely to enforce his Demand by filing a state-court enforcement petition (the "Petition") *before Media Matters was even aware of the Demand*. Media Matters must respond in that action just days from now, on April 29. Bailey then doubled down on his abusive tactics by serving Media Matters with "Requests for Production" in the Missouri action that would require Plaintiffs to comply with nearly all the Demand's substance before his enforcement action is even resolved. These bad-faith tactics and Bailey's retaliatory Demand and Petition have caused and are causing Plaintiffs irreparable harm. Only the immediate entry of a temporary restraining order, followed by a preliminary injunction, will stave off further injury pending full and final resolution of the merits.

AMERICAN OVERSIGHT

BACKGROUND[1]

I. In 2023, under Musk's ownership, advertisements frequently appeared on X alongside racist, antisemitic, and violent content.

Elon Musk completed his purchase of the social media platform now known as X on October 27, 2022. He purchased the platform, purportedly, because of his belief that "it is important to the future of civilization to have a common digital square."[2] After taking control, Musk laid off approximately 80 percent of the platform's staff and downsized or eliminated critical teams responsible for overseeing platform policy, trust and safety, communications, and ethical AI. Compl. ¶ 26, ECF No. 1. He likewise laid off many of the content moderators responsible for keeping the platform free of harassment. *Id*. Musk's changes raised public alarm and sparked concern amongst lawmakers over the platform's ability to combat misinformation and hate speech.[3]

Under the auspices of promoting "free speech," Musk also suspended products and policies that protected users from misinformation and violent content. Compl. ¶ 27. He reinstated suspended accounts of known white supremacists and conspiracy theorists while suspending the accounts of journalists reporting on his air travel. *Id*. In the wake of Musk's breakneck changes to the social media platform, extremist, racist, antisemitic, and violent content surged on X. *Id*. ¶ 28. Within the first 12 hours of Musk's takeover, there was "a nearly 500% increase in the use of the

[1] Although the Court is already familiar with much of the relevant background, including Musk's takeover of Twitter/X and Plaintiffs' subsequent reporting about extremism on that platform, Plaintiffs repeat some of that background here to ensure a fulsome record with respect to the claims against Bailey.

[2] Douglas Yeung, *The 'Digital Town Square' Problem*, TheRANDBlog (Jan. 13, 2023), https://www.rand.org/pubs/commentary/2023/01/the-digital-town-square-problem.html.

[3] Brian Fung & Clare Duffy, *How a single year of Elon Musk turned Twitter into a husk of its former self*, CNN (Oct. 27, 2023), https://www.cnn.com/2023/10/27/tech/elon-musk-twitter-x-one-year-changes/index.html [hereinafter *A single year of Elon Musk turned Twitter into a husk*].

AMERICAN OVERSIGHT

N-word." *Id*. Within the first week, use of the word "Jew" increased fivefold with antisemitic content receiving the most engagement. *Id*. Within just two months, the *New York Times* reported the following about the rise in hate speech on the platform:

- "Before Elon Musk bought Twitter, slurs against Black Americans showed up on the social media service an average of 1,282 times a day. After the billionaire became Twitter's owner, they jumped to 3,876 times a day."
- "Slurs against gay men appeared on Twitter 2,506 times a day on average before Mr. Musk took over. Afterward, their use rose to 3,964 times a day."
- "[A]ntisemitic posts referring to Jews or Judaism soared more than 61 percent in the two weeks after Mr. Musk acquired the site."

Id. ¶ 29. The platform likewise saw a renewed explosion of baseless conspiracy theories concerning, among other things, COVID-19 vaccines and QAnon. This spike in violent and extremist content on X, as well as Musk's drastic management changes, were widely reported on by a broad array of media outlets at the time. *Id.* ¶ 34 (collecting sources).

These developments quickly led to advertisers leaving the platform. Since "the early days of Musk's takeover, many of Twitter's largest advertisers—including the likes of General Mills and the Volkswagen Group—paused their spending over concerns about X's layoffs, content moderation capabilities and general uncertainty about the platform's future."[4] The result was a precipitous drop in X's revenue. In July 2023, Musk reported "a 50% decline in ad revenue and heavy debt load" and, in September, reported that advertising revenue was "still down 60%."[5] Still

[4] *A single year of Elon Musk turned Twitter into a husk*, *supra* note 3; Alberto Chiumento, et al., *Advertisers react to Twitter's new ownership,* Reuters (Nov. 18, 2022), https://www.reuters.com/technology/advertisers-react-twitters-new-ownership-2022-11-03/; Alan Ohnsman, *GM, Ford Say They Aren't Running Twitter Ads As They Assess Changes Under Elon Musk*, Forbes (Oct. 28, 2022), https://www.forbes.com/sites/alanohnsman/2022/10/28/gm-ford-say-they-arent-running-twitter-ads-as-they-assess-changes-under-elon-musk.

[5] *A single year of Elon Musk turned Twitter into a husk*, *supra* note 3.

AMERICAN OVERSIGHT

more advertisers began to flee X when the increasing hateful and violent rhetoric started appearing alongside their advertising, creating a false association between their brands and vile hate speech.

X's inability to control the placement of extremist content alongside advertisements was widely reported in the media, beginning soon after Musk's takeover. Examples include:

1. **Reuters**, "Advertisers react to Twitter's new ownership" (Nov. 18, 2022) ("Advertisers are grappling with Twitter's new ownership under Tesla boss Elon Musk, who once tweeted 'I hate advertising.'").
2. **Washington Post**, "Amazon, Uber ads appear on Twitter pages of white nationalists restored by Musk," Faiz Siddiqui (Dec. 6, 2022) ("Ads from dozens of major brands were appearing on white nationalist and extremist accounts.").
3. **ARS Technica**, "Twitter running major brands' ads with extremist tweets—until they get flagged," Ashley Belanger (Dec. 7, 2022) ("[T]he US Department of Health and Human Services realized its promoted tweet about updated COVID vaccines was appearing on Twitter pages of white nationalist accounts.").
4. **The Verge**, "Twitter advertisers aren't happy with ads appearing on pages of white nationalists," Jon Porter (Dec. 7, 2022).
5. **Center for Countering Digital Hate**, "Toxic Twitter: How Twitter Generates Millions in Ad Revenue by Bringing Back Banned Accounts," (Feb. 2023) ("[J]ust ten reinstated accounts renowned for publishing hateful content and dangerous conspiracies will generate up to $19 million a year in advertising revenue for Twitter.").
6. **Washington Post**, "Extremist influencers are generating millions for Twitter, report says," Taylor Lorenz (Feb. 9, 2023).
7. **Kansas City Star**, "Mizzou ad appears on racist X page as social media site faces concerned advertisers," Jonathan Shorman (Mar. 15, 2023) ("CNN reported on Thursday that in the past 24 hours it had spotted ads on X, formerly called Twitter, for the University of Missouri and major brands, such as Amazon, Samsung, Cox Communications and others, on the profile page of VDARE, a racist outlet.").
8. **Business Insider**, "Disney, Microsoft, the NBA Had Twitter Ads Next to Neo-Nazi Propaganda," Katherine Tangalakis-Lippert (June 18, 2023) ("Ads for Disney, ESPN, the NBA, Adobe, and Microsoft appeared . . . next to vitriolic white supremacist content.").
9. **New York Post**, "Disney, Microsoft ads on Twitter show up next to neo-Nazi propaganda as advertisers return: report," Shannon Thaler (June 19, 2023) ("Neo-Nazi propaganda continues to find a home on Twitter and is adjacent to ads from major companies.").

Compl. ¶ 34. This coverage occurred independently of Plaintiffs' reporting efforts, reflecting the widespread interest and discussion around hate speech in America's "digital town square."

AMERICAN OVERSIGHT

II. Media Matters and Hananoki reported on X's pattern of permitting the placement of advertisements alongside extremist content.

Since 2004, Media Matters has reported on misinformation and bias in the media. As part of its mission to educate the public about violent extremism and political rhetoric, Media Matters began researching and reporting on the rise in extremist and fringe content on X after Musk's changes to the platform. Eric Hananoki, a Senior Investigative Reporter at Media Matters whose beat includes political extremism, has for over a decade researched and written about extremist and violent rhetoric on social media platforms, often shining a spotlight on politicians and other public figures in the process. Declaration of Eric Hananoki ("First Hananoki Decl.") ¶¶ 2, 4, 6–9, ECF No. 4-3. His reporting has been widely cited and discussed in America's largest news outlets. *Id.* ¶ 5. And government agencies and public officials have relied on it in their work, including in a Department of Justice indictment, the Mueller Report on Russian interference in the 2016 election, and a bipartisan U.S. Senate Select Committee on Intelligence report. *Id.* ¶ 6. Even Paxton has previously relied on Hananoki's reporting. In 2020, Hananoki uncovered "tweets filled with racist rhetoric, violent threats" and conspiracy theories from an Assistant Attorney General in Texas, prompting Paxton's office to fire the employee. *Id.* ¶ 8.

Hananoki has reported on X—and before that, Twitter—for nearly a decade. *Id.* ¶ 9. In 2023, he wrote numerous articles about X concerning the marked increase in extremism on the platform after Musk's takeover. *Id.* ¶¶ 10–12. Hananoki's research and reporting has often focused on what advertisements X's users may encounter on the platform. *Id.* ¶ 12. Since February 10, 2023, Media Matters has published at least fourteen articles about X's placement of advertisements alongside hateful content, most of which were researched and written by Hananoki. Declaration of Benjamin Dimiero ("First Dimiero Decl.") ¶ 12, ECF No. 4-4. They include:

1. "Under Elon Musk, Twitter is running corporate ads alongside tweets from Holocaust deniers," (Feb. 10, 2023).

AMERICAN OVERSIGHT

2. "Linda Yaccarino just started as Twitter's new CEO, but Elon Musk already destroyed the platform for advertisers," (June 8, 2023).
3. "Dish, Samsung, Wall Street Journal, and others are advertising on the Twitter account of a leading white nationalist group," (June 22, 2023).
4. "Update: Twitter placed ads for USA Today, National Women's Soccer League, and other major brands on a terrorism-linked neo-Nazi account," (July 27, 2023).
5. "Advertisers beware: Elon Musk and Linda Yaccarino are trying to lure you back by rebranding Twitter, but it's still a toxic cesspool," (Aug. 8, 2023).
6. "X Corp. CEO Yaccarino's interview on CNBC should alarm major advertising brands," (Aug. 11, 2023).
7. "Update: Under Linda Yaccarino, X is placing ads for major brands on a verified pro-Hitler account (Aug. 16, 2023).
8. "X is placing ads for brands like the NFL and MLB next to unhinged conspiracy theories about Jewish people and 9/11," (Sept. 11, 2023).
9. "X is placing major ads on a heavily followed antisemitic account that endorses killing politicians and LGBTQ advocates," (Sept. 12, 2023).
10. "X is placing ads for the NFL on prominent white nationalist accounts," (Sept. 27, 2023).
11. "X is placing ads for MLB, the NFL, and the Pittsburgh Steelers on antisemitic and Holocaust denial accounts," (Oct. 12, 2023).
12. "Pro-Hitler and Holocaust denier account: X has paid me $3,000 in ad revenue sharing," (Nov. 13, 2023).
13. "As Musk endorses antisemitic conspiracy theory, X has been placing ads for Apple, Bravo, IBM, Oracle, and Xfinity next to pro-Nazi content," (Nov. 16, 2023).
14. "X is placing ads for Amazon, NBA Mexico, NBCUniversal, and others next to content with white nationalist hashtags," (Nov. 17, 2023).

Media Matters's reporting is consistent with the findings of other news sources—in the wake of Musk's purchase (and regardless of his intent), the X platform continued to allow the juxtaposition of advertisements alongside extremist content. *Id.* ¶ 13; *see also* First Hananoki Decl. ¶ 13. Hananoki employed ordinary and unremarkable investigative journalistic practices to investigate this issue, using an existing X research account controlled by Media Matters to follow white supremacist accounts and gauge how X's automated advertising algorithm would respond. Compl. ¶¶ 39–40.

AMERICAN OVERSIGHT

Hananoki's November 16, 2023, article reported the results of his investigatory work, providing public examples of X's advertisement placement alongside extreme content and reporting on Musk's apparent endorsement of a widespread antisemitic conspiracy theory that Jewish people are seeking to promote "hatred against whites" and are seeking to "flood[] the[] country" with "hordes of minorities." First Hananoki Decl. ¶ 14. In researching, fact checking, and drafting the November 16 article, Hananoki complied with Media Matters's policies and used ordinary journalistic practices. First Dimiero Decl. ¶¶ 7, 11–12. Hananoki typically works from home in Maryland, but sometimes visits Media Matters's District of Columbia office for work-related purposes. First Hananoki Decl. ¶ 3.

In the months since this action was filed, reporting by other outlets has continued to bolster Hananoki's findings. For instance, just a few weeks ago, on April 16, NBC News released a report finding that at least "150 paid 'Premium' subscriber X accounts and thousands of unpaid accounts have posted or amplified pro-Nazi content on X in recent months, often in apparent violation of X's rules[.]" Ex. 1, Second Supplemental Declaration of Eric Hananoki ("Third Hananoki Decl.") ¶ 13.[6] NBC News found adds running on 74 of those 150 accounts, and cited Hananoki's earlier reporting about the same issue. *Id.*

III. Texas Attorney General Ken Paxton issued a retaliatory civil investigative demand to Media Matters, but this Court enjoined its enforcement.

Despite a year's worth of reporting by Media Matters and other outlets on X's inability to protect advertisers from extremist content, Musk singled out Hananoki's November 16 article reporting on Musk's apparent endorsement of an antisemitic conspiracy theory, for which Musk

[6] Quoting David Ingram, *Verified pro-Nazi X accounts flourish under Elon Musk*, NBC News (Apr. 16, 2024), https://www.nbcnews.com/tech/social-media/x-twitter-elon-musk-nazi-extremist-white-nationalist-accounts-rcna145020.

AMERICAN OVERSIGHT

also received widespread condemnation by other news outlets. First Hananoki Decl. ¶¶ 14, 16–18. Two days after the article was published, with direct reference to Hananoki's article, Musk posted on X that he would file "a thermonuclear lawsuit against Media Matters." *Id.* ¶ 16.

Certain conservative media and political figures—nearly all themselves prior subjects of Media Matters's reporting on political extremism—quickly urged retaliation against Media Matters. In particular, on November 19, 2023, President Trump's former advisor Stephen Miller declared, "There are 2 dozen+ conservative state Attorneys General," implying states should investigate Plaintiffs for their journalism. Compl. ¶ 46. Texas Attorney General Ken Paxton answered the call, announcing in a November 20, 2023, press release that he was launching an "investigation" into Media Matters under Texas's deceptive trade practices act, and issuing a sweeping civil investigative demand for Media Matters's internal and journalistic documents one day later, under the auspices of the same "investigation." ECF No. 4-5 at 5–13.

Plaintiffs filed this action on January 17, 2024, naming Paxton as the sole defendant. One day later, Plaintiffs moved for a temporary restraining order and preliminary injunction against Paxton. ECF No. 4. After Paxton confirmed that his office would take no steps to enforce the Texas Demand while the preliminary injunction motion was pending, ECF No. 11, the Court entered a Minute Order on January 23 denying the request for a temporary restraining order as moot. The Court then held a hearing on the preliminary injunction motion on February 15, and thereafter ordered supplemental briefing on whether Paxton, when sued in his official capacity, is a "person" within the meaning of the District of Columbia's personal jurisdiction statute, D.C. Code § 13-421.

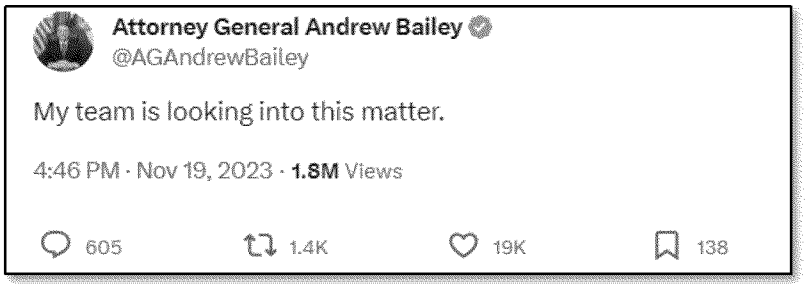
On April 12, 2024, this Court granted a preliminary injunction against Paxton preventing him from taking any steps to enforce the Texas Demand or issue further demands. ECF Nos. 37,

AMERICAN OVERSIGHT

38. In doing so, the Court made various factual determinations, including that Paxton's issuance of the Texas Demand "had the effect of chilling Plaintiffs' expressive activities nationwide" and had "deprived D.C. residents [of] access to Plaintiffs' reporting." Mem. Op. at 22, ECF No. 37 (hereinafter "PI Op.").

IV. Missouri Attorney General Andrew Bailey issued a copycat demand, moved prematurely to enforce it in Missouri state court, and served abusive discovery.

Paxton was not the only state attorney general to respond to Stephen Miller's call for retaliation against Media Matters. On November 19, 2023, Missouri Attorney General Andrew Bailey announced that his "team [was] looking into" Plaintiffs' coverage of Musk and extremism on X. @AGAndrewBailey, X.com (Nov. 19, 2023, 4:46 PM ET), https://perma.cc/J463-656K.



Bailey subsequently issued a "Notice of Pending Investigation" on December 11, 2023, demanding that Media Matters preserve certain documents. ECF No. 39-3. But Bailey never formally served that Notice, instead electing only to email it to the generic email inbox "action@mediamatters.org." His press release announcing the Notice provided no explanation as to what possible basis he had for investigating or exercising jurisdiction over Media Matters, yet nonetheless lambasted the organization as a group of "progressive tyrants." ECF No. 39-4 at 4.

Although Bailey did not immediately take further retaliatory steps, he continued to attack Media Matters publicly. In one interview, on a YouTube show called "Cancel This!," Bailey claimed that "Media Matters is built on lies . . . It's a radical, progressive, tyrannical advocacy

AMERICAN OVERSIGHT

group masquerading as a news outlet." Third Hananoki Decl. ¶ 5.[7] He then described Media Matters as a weapon of "the enemy." *Id.* In another interview, on Newsmax, Bailey voiced no disagreement when host Rob Schmitt remarked about Media Matters that "these people are evil" and "these people should be deported for this." *Id.*[8] In a third interview, Bailey indicated that he had "coordinated with Texas," and was "in talks with other states as well" as part of the "new front in the war, in the fight for free speech." *Id.*[9]

Then, on March 25, 2024, months after this lawsuit was filed but before the preliminary injunction motion against Paxton was resolved, Bailey copied Paxton's playbook by issuing a civil investigative demand of his own. Missouri law grants Bailey the power to issue such demands in several narrow contexts. *See, e.g.*, Mo. Rev. Stat. § 407.040 (Merchandising Practices Act); *id.* § 407.472 (Charitable Organizations and Solicitations Act). As in Texas, the Missouri Attorney General is not required by statute to show probable cause or establish jurisdiction before issuing a civil investigative demand. Rather, state law authorizes him to do so, among other reasons, whenever he "believes it to be in the public interest that an investigation should be made." *Id.*

Bailey's Demand, like Paxton's, seeks to rifle through Media Matters's most sensitive internal documents—donor records, internal correspondence, and journalistic source material—in retaliation for Media Matters's reporting about X. *See* ECF No. 39-5. Among other things, it seeks names, home addresses, and donation amounts for Missouri-based donors to Media Matters;

---

[7] Quoting Cancel This!, *It's A Color-Coded Christmas Party for This Boston Mayor + Andrew Bailey & Nelson McIlveen LIVE!*, YouTube at 1:41:27–1:43:05 (Dec. 14, 2023), https://www.youtube.com/watch?v=xDFXO1MjIME.

[8] Quoting Rob Schmitt Tonight, Newsmax at 40:54–42:00 (Dec. 12, 2023), https://www.newsmaxtv.com/Shows/Rob-Schmitt-Tonight/vid/52639c50-996a-11ee-a4f2-5b4ee1ed8474.

[9] Quoting Tim Jones & Chris Arps Show, *MO A.G. Andrew Bailey: Missouri Doesn't Have Sanctuary Cities*, NewsTalkSTL at 5:32–58 (Dec. 12, 2023), https://omny.fm/shows/newstalk-stl/mo-a-gandrew-bailey-missouri-doesnt-have-sanctuar.

AMERICAN OVERSIGHT

internal communications about sources and uses of donated funds; internal communications about strategy; and confidential source information related to Mr. Hananoki's reporting. *Id.* at 4–5. The Missouri Demand is, like the Texas Demand, incredibly broad in scope; for instance, it seeks several categories of documents without imposing any temporal limits on the requested production. *See id.*

The Missouri Demand is materially very similar to the Texas Demand, and in many respects is a word-for-word copy. Indeed, Bailey has described the Missouri Demand as "virtually identical" to the Texas Demand. ECF No. 39-6 ¶ 20. For instance, the Texas Demand sought "all of Media Matters for America's external communications with Apple Inc., International Business Machine Corporation (IBM), Bravo television network, NBCUniversal, Oracle Corporation, and Comcast Corporation, Lions Gate Entertainment Corporation, Warner Bros Discovery Inc., Paramount Pictures Corporation, and Sony Group Corporation from November 1, 2023 to November 21, 2023." ECF No. 1-4 at 7. The Missouri Demand similarly seeks "[a]ll communications with Apple, International Business Machine Corporation, Bravo Television Network, NBCUniversal, Oracle Corporation, Comcast Corporation, Lions Gate Entertainment Corporation, Warner Bros Discovery Inc., Paramount Pictures Corporation, or Sony Group Corporation from November 1, 2023, to March 25, 2024." ECF No. 39-5 at 5.[10]

Substantial evidence indicates that Bailey issued the Missouri Demand—and then immediately moved to enforce in court—to harass and retaliate against Plaintiffs, rather than for any good-faith investigative reason. For example, although more than three months passed

[10] This Court has previously noted the close relationship between the two investigations. In its decision enjoining Paxton, the Court noted that Bailey had "followed [Paxton's] lead" by "serving a 'virtually identical' CID on Media Matters and filing a petition to enforce it in Missouri state court." PI Op. at 5 n.3.

AMERICAN OVERSIGHT

between Bailey's Notice of Pending Investigation and his issuance of the Missouri Demand, Bailey apparently expended little investigative effort in that time. Neither the Missouri Demand nor the Petition seeking to enforce it identifies *any* new facts regarding Media Matters that have come to light in the three months since Bailey first announced that he was "looking into" Media Matters's reporting. Both documents simply regurgitate the vague and groundless accusations leveled at Media Matters in the Notice. Similarly, Bailey's press release announcing the escalation in harassment was short on facts and long on baseless invective directed at Media Matters and Hananoki. Among other things, it characterized Media Matters as a "political activist organization," described its reporting on X as "an "attempt to destroy X, because they [sic] cannot control it," and described its reporters as "radical 'progressives'" and "'progressive' activists masquerading as news outlets [sic]." ECF No. 39-7 at 4. And although Hananoki himself has not previously reported on Bailey, Bailey has, like Paxton, been the subject of critical reporting from Media Matters.[11] Bailey's Demand, much like Paxton's, thus reeks of opportunistic retaliation.

The sequence of events surrounding issuance of the Missouri Demand confirms that it is being used as a tool of harassment (and a failsafe against suspension of the Texas Demand), rather than for any good-faith investigative purpose. The Missouri Demand had a return date of April 15, 2024. ECF No. 39-5 at 3. Media Matters received the Demand by certified mail on April 1, 2024. Ex. 2, Supplemental Declaration of Cynthia Padera ("Second Padera Decl.") ¶ 6. Remarkably, Bailey filed an enforcement petition against Media Matters in Missouri state court on March 25—the same day he issued the Missouri Demand, a full *week* before Media Matters had even received

[11] *E.g.*, Payton Armstrong, *On Salem Media, Jenna Ellis and Missouri Attorney General Andrew Bailey push states to ban health care for trans people*, Media Matters for Am. (Aug. 31, 2023). https://www.mediamatters.org/salem-media-group/salem-media-jenna-ellis-and-missouri-attorney-general-andrew-bailey-push-states.

AMERICAN OVERSIGHT

the Demand in D.C., and several weeks before the return date. *See* ECF No. 39-6. That Petition, citing this case, claims an immediate enforcement action is appropriate because Media Matters has previously resisted Paxton's Demand. *Id.* ¶ 20. On Bailey's view, because Media Matters chose to vigorously defend its constitutional rights against Paxton rather than capitulate to his bullying, Bailey is free to disregard the basic dictates of due process—and even Missouri state law, *see* Mo. Rev. Stat. § 407.090—by enforcing a Demand without even serving it. This rush to court further illustrates that Bailey issued the Missouri Demand chiefly to harass and punish Media Matters, rather than for any bona fide investigatory purpose. Indeed, as noted below, Bailey was fully aware of the case pending before this Court, and thus likely engineered the Missouri "investigation" as a backup should Paxton's virtually identical Demand be enjoined.

Bailey served the Petition by dispatching a process server to Media Matters's D.C. office on March 28, 2024. Second Padera Decl. ¶ 8. By that point, Bailey was well aware that such an action would likely subject him to this Court's jurisdiction. Plaintiffs had made Paxton's similar dispatch of a process server to serve his Demand the crux of their jurisdictional arguments to this Court. And Bailey was following this case closely—he relied on Plaintiffs' arguments in this case to rationalize his premature move to enforce his Demand. ECF No. 39-6 ¶ 20.

Although Bailey's Demand purports merely to be investigating Media Matters, the Petition goes much further, affirmatively alleging that Media Matters "has used fraud to solicit donations from Missourians." *Id.* at 2. But the Petition provides zero factual support for that inflammatory suggestion, asserting only that Bailey "has reason to believe" that Media Matters has somehow violated Missouri law. *Id.* ¶ 22. The Petition, echoing Bailey's press releases, describes Media Matters and its employees as "radical 'progressives" who are "attempt[ing] to destroy X, because they cannot control it," and as "activists masquerading as [a] news outlet[]."*Id.* at 2.

AMERICAN OVERSIGHT

The Petition indicates that Bailey intends to rely upon his authority under the Missouri Merchandising Practices Act ("MMPA") as the basis for issuing and enforcing the Demand. *Id.* ¶¶ 13–14, 16, 22–24; *see also* ECF No. 39-7 (accusing Media Matters of acting in direct violation of the Missouri Merchandising Practices Act). Specifically, Bailey's Petition alleges that "Media Matters has engaged in trade or commerce [in Missouri] within the meaning" of the MMPA. ECF No. 39-6 ¶ 11. But Media Matters indisputably engages in no "trade or commerce" in Missouri. *See* Second Padera Decl. ¶¶17–25. The Missouri Supreme Court has made clear that the relevant portion of the MMPA applies only to "the protection of consumers who are the actual buyers in a sale." *Ports Petroleum Co. of Ohio v. Nixon*, 37 S.W.3d 237, 241 (Mo. 2001). Media Matters makes no "sales" and has no "actual buyers" in Missouri or elsewhere. *See* Second Padera Decl. ¶ 23. Bailey's choice to invoke authority under a law that, on its face, has no possible application to Media Matters further demonstrates that his conduct is not for any real investigative purpose, but instead is aimed at harassing and retaliating against Media Matters.

On April 15, 2024, the return date for the Missouri Demand, Media Matters replied to the Demand in a letter objecting to it in full. ECF No. 39-8. In that letter, Media Matters informed Bailey of this Court's granting of a preliminary injunction against Paxton's Texas Demand and requested that Bailey withdraw the Missouri Demand. *Id.* at 2. Bailey refused to withdraw the Demand in an email sent by one of his deputies on April 17, 2024. ECF No. 39-9. That email failed to explain the basis for Bailey's purported jurisdiction over Media Matters, nor did it acknowledge—let alone distinguish—this Court's preliminary injunction against Paxton's "virtually identical" Demand. *Id.* The only thing made clear by the email is that Bailey intends to proceed with his investigation and attempts to enforce the Missouri Demand regardless of this Court's preliminary injunction order against Paxton.

AMERICAN OVERSIGHT

Plaintiffs moved for leave to file a supplemental complaint naming Bailey as an additional defendant on April 18, 2024. *See* ECF No. 39. This Court granted leave to file the supplemental complaint on April 24. *See* ECF No. 44.

Less than 24 hours after Plaintiffs sought leave to add him to this action, Bailey escalated matters further, serving Media Matters with Requests for Production that sweep as far as the Demand itself. Ex. 3, State's First Requests for Production to Respondent, *Missouri ex rel. Bailey v. Media Matters for Am.*, No. 24AC-CC02291 (Cir. Ct. Cole Cnty Apr. 19, 2024). Bailey has not bothered trying to justify his entitlement to discovery into the *substance* of the Demand in an action filed to determine whether the Demand is *enforceable*. Bailey's view appears to be that he may short-circuit procedural norms at will: He may issue a Demand without any plausible allegation that Media Matters has violated Missouri law, file to enforce that Demand within a few minutes of dropping it at the post office, then use discovery in the enforcement action as a stalking horse to get everything sought by the Demand.

V. Bailey's actions have chilled Plaintiffs' First Amendment–protected activities by subjecting them to a retaliatory investigation in a foreign jurisdiction.

In granting the preliminary injunction against Paxton, the Court credited Plaintiffs' undisputed evidence of substantial chill, finding that "Plaintiffs are *already* suffering First Amendment harm in the form of chilled protected activities." PI Op. at 39 (emphasis in original); *see also id.* at 31 ("Through sworn affidavits, Plaintiffs have demonstrated the profound chilling impact that the CID has had on its news operations and journalistic mission."). The Missouri Demand and Petition have served their intended purpose, to magnify and compound that chill. *See* Third Hananoki Decl. ¶¶ 6–14; Second Padera Decl. ¶¶ 10–16; Ex. 4, Supplemental Declaration of Benjamin Dimiero ("Second Dimiero Decl.") ¶¶ 4–9. That effect is no surprise: Bailey himself has admitted that he is coordinating his "war" on Media Matters with Paxton and considers Media

AMERICAN OVERSIGHT

Matters to be a weapon of "the enemy." Third Hananoki Decl. ¶ 5. And Paxton expressly encouraged other Attorneys General to follow his lead, *see* Compl. ¶ 51, which Bailey has now done. In fact, Bailey has gone even further: The Missouri Demand, unlike the Texas Demand, is the subject of a pending enforcement action. It therefore represents a significant escalation. Moving to enforce creates an imminent possibility that Plaintiffs will be coerced into granting Bailey access to Plaintiffs' most sensitive papers.

Bailey's enforcement action is also in a foreign venue with which neither Media Matters nor Hananoki has any ties. Media Matters is not registered as a foreign corporation in Missouri because it does not "transact business" in Missouri. Mo. Rev. Stat. § 351.572; *see* Second Padera Decl. ¶ 19. Nor does it have a registered agent in Missouri. Second Padera Decl. ¶ 21. Further, Media Matters is not engaged in "the sale or advertisement of any merchandise in trade or commerce" in Missouri. Mo. Rev. Stat. § 407.020; *see* Second Padera Decl. ¶ 23. Nor is it targeting any "solicitation of any funds for any charitable purpose" at Missouri. Mo. Rev. Stat §§ 407.020, .453; *see* Second Padera Decl. ¶¶ 24–25. Indeed, it is not even registered as a charity in Missouri because nearly two decades ago the Missouri Attorney General's Office itself concluded Media Matters was exempt from registration. ECF No. 39-11; *see also* Second Padera Decl. ¶ 20. Media Matters has never employed anyone in Missouri and has no physical presence in the state. Second Padera Decl. ¶¶ 18, 22. And Hananoki's reporting involved no contact with Missouri. Third Hananoki Decl. ¶ 8. Despite these readily ascertainable facts, Bailey's Petition seeking to enforce the Missouri Demand flatly asserts without support that "Media Matters transacts business in this county [*i.e.*, Cole County, Bailey's home jurisdiction]." ECF No. 39-6 ¶ 5.

AMERICAN OVERSIGHT

LEGAL STANDARD

To obtain a temporary restraining order or preliminary injunction, Plaintiffs must show: (1) likelihood of success on the merits; (2) likelihood of "suffer[ing] irreparable harm in the absence of preliminary relief;" (3) that "the balance of equities tips in [their] favor;" and (4) that "the injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). When a temporary restraining order or preliminary injunction is sought against the government, the last two requirements merge, "because the government's interest *is* the public interest." *Pursuing Am.'s Greatness v. Fed. Election Comm'n*, 831 F.3d 500, 511 (D.C. Cir. 2016); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009). The requirements for a preliminary injunction and for a temporary restraining order are the same. *Experience Works, Inc. v. Chao*, 267 F. Supp. 2d 93, 96 (D.D.C. 2003).

ARGUMENT

I. This Court has personal jurisdiction over Bailey in his official capacity as Attorney General of Missouri.

A. The Court has long-arm jurisdiction over Bailey.

The Court has statutory long-arm jurisdiction over Bailey under the same analysis it has already applied to Paxton. *See* PI Op. at 12–28. To begin, Bailey is a "person" under D.C. Code § 13-421. As the Court has already recognized, the D.C. civil-jurisdiction law's definition of "person" incorporates "the *Ex parte Young* legal fiction, which permits suits against a state official when the relief sought is to enjoin a constitutional violation." PI Op. at 12; *see also Ex parte Young*, 209 U.S. 123, 159–60 (1908). When Congress enacted § 13-421 in 1970, it would have understood "that the term 'person' included official-capacity defendants in suits involving injunctive relief." PI Op. at 13 (citing *Merck & Co. v. Reynolds*, 559 U.S. 633, 648 (2010)). Indeed, following analogous reasoning, the Supreme Court has imported the "longstanding *Ex Parte Young* fiction

AMERICAN OVERSIGHT

into its reading of § 1983." *Id.* at 14 (citing *Will v. Mich Dep't of State Pol.*, 491 U.S. 58, 71 n.10 (1989)). And if "the post-Civil War Congress that enacted § 1983 would have understood the term 'person' to include state officials sued for injunctive relief, the Congress that enacted the D.C. long-arm provision nearly a century later would have as well." *Id.* When they are sued for injunctive relief under the Constitution, state attorneys general—including Bailey—are therefore "persons" for purposes of § 13-421.[12]

The Court may exercise long-arm jurisdiction over Bailey under both D.C. Code § 13-423(a)(1) and (a)(3). That statute provides, in relevant part, that "a District of Columbia court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's: (1) transacting any business in the District of Columbia; [or] (3) causing tortious injury in the District of Columbia by an act or omission in the District of Columbia[.]"[13]

[12] As the Court recognized, a contrary reading of "person" would "upend years of settled jurisdictional understanding and significantly constrain plaintiffs' ability to sue federal officials for injunctive relief" in D.C. federal court. PI Op. at 14. That's so because the term "person" underpins the D.C. Code's general jurisdiction provision, not just its long-arm statute. *Id.*; *see also* D.C. Code § 13-422. Affected categories of cases would include those against "non-resident federal officials who maintain their primary place of business in the District," against "non-resident WMATA official[s]," and against "federal officials acting under color of D.C. law." PI Op. at 14–15 (collecting cases). Reading the term "person" to foreclose such cases would "produce 'absurd results.'" *Id.* at 15 (quoting *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1068 (D.C. Cir. 1998)). The Court properly declined Paxton's invitation to "read District of Columbia law in a way that would cast doubt on decades of federal court practice and jurisdictional reach." *Id.* at 16.

[13] The Court likely has long-arm jurisdiction over Bailey under subsection (a)(4) as well, as Bailey "regularly . . . engages in [a] persistent course of conduct" in the District in his official capacity as Missouri Attorney General. *See, e.g.*, *Ohio v. EPA*, No. 22-1081, 2024 WL 1515001 (D.C. Cir. Apr. 9, 2024). But for present purposes, subsections (a)(1) and (a)(3) suffice to establish the Court's jurisdiction. *See* PI Op. at 19 (declining to reach subsection (a)(4) after finding jurisdiction proper with respect to Paxton under subsections (a)(1) and (a)(3)).

AMERICAN OVERSIGHT

Subsection (a)(1) – Transacting business in D.C. Bailey is subject to this Court's jurisdiction, for starters, because he has transacted business in D.C. and that business gave rise to Plaintiffs' claims. The "transacting business" prong extends to the limits of the Due Process Clause, so the statutory and constitutional analyses "merge into a single inquiry." *United States v. Ferrara*, 54 F.3d 825, 828 (D.C. Cir. 1995). The Due Process Clause is satisfied—and with it, subsection (a)(1)—if the defendant has "minimum contacts" with the forum such that the defendant "should reasonably anticipate being haled into court there." *Thompson Hine, LLP v. Taieb*, 734 F.3d 1187, 1189 (D.C. Cir. 2013) (quoting *World-Wide Volkswagon Corp v. Woodson*, 444 U.S. 287, 297 (1980)). "Such minimum contacts must show that 'the defendant purposefully avail[ed] [him]self of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.'" *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)); *see also* PI Op. at 19. "It is now well-settled that the 'transacting any business' provision embraces those contractual activities of a nonresident defendant which cause a consequence here." *Mouzavires v. Baxter*, 434 A.2d 988, 992 (D.C. 1981) (citation omitted).[14]

Bailey has invoked the benefits and protections of the District's laws in at least two discrete ways. *First*, Bailey caused his abusive enforcement petition to be served upon Media Matters in the District by retaining and directing the activities of a professional process server in the District. As this Court held with respect to Paxton, and as many other courts have concluded, "the hiring of a process server creates an agency relationship between the attorney and process server, and that relationship establishes the attorney's presence in the jurisdiction to satisfy the 'minimum contacts' requirement." PI Op. at 20 (citing *Schleit v. Warren*, 693 F. Supp. 416, 419–20 (E.D. Va.

[14] As the Court concluded with respect to Paxton, jurisdiction under subsection (a)(1) is not limited to "only strictly commercial activity." PI Op. at 23.

AMERICAN OVERSIGHT

1988); *Balsly v. W. Mich. Debt Collections, Inc.*, No. 11-cv-642, 2012 WL 628490, at *5–7 (E.D. Va. Feb. 27, 2012); and *Hamilton, Miller, Hudson & Fayne Travel Corp. v. Hori*, 520 F. Supp. 67, 70 (E.D. Mich. 1981)). As these cases recognize, it is "reasonable to conclude that a lawyer who knowingly serves abusive process in a jurisdiction . . . is 'purposely avail[ing] himself of the privilege of conducting activities within the forum State.'" *Schleit*, 693 F. Supp. at 422–23 (quoting *Luke v. Dalow Indus., Inc.*, 566 F. Supp. 1470, 1472 (E.D. Va. 1983)). Bailey's "hiring of a process server in the District of Columbia to effect service on Media Matters therefore created the requisite jurisdictional contacts with the District." PI Op. at 20 (citing *Smith v. Jenkins*, 452 A.2d 333, 335 (D.C. 1982)).

Second, Bailey's Demand, service of the Demand, and premature attempt to enforce the Demand established a "course of dealing with a D.C. resident." PI Op. at 20. Bailey knew that the Demand "would require negotiations with Media Matters' counsel," who are based in the District. *Id.* at 21. So, too, would bringing a premature enforcement action and serving improper and retaliatory discovery. And although Bailey's Demand purports to require Plaintiffs to comply "in person or via mail" in "Jefferson City, Missouri," ECF No. 39-5 at 4, the statute on which Bailey relies limits productions for inspection to "reasonable time[s] and place[s]," Mo. Rev. Stat. § 407.040. Bailey cites no authority for the unintuitive proposition that Jefferson City is a "reasonable place" for inspecting the sensitive records of a Washington, D.C.–headquartered media organization with no relevant ties to Missouri at all, never mind to Jefferson City. Bailey therefore knew or should have known that if Media Matters elected to comply with parts of his Demand, his agents would likely need to travel to the District of Columbia to conduct such inspection. *Cf.* PI. Op. at 21 (citing Tex. Bus. & Com. Code § 17.61(e)).

AMERICAN OVERSIGHT

As with the claims against Paxton, "[t]he Fifth Circuit's decision in *Grewal* provides a close analogy to this case." PI Op. at 21. *Grewal* concerned the jurisdictional effects of the New Jersey Attorney General's sending a letter threatening action if a Texas business published certain files related to the 3D printing of firearms. *Def. Distrib. v. Grewal*, 971 F.3d 485, 488–89 (5th Cir. 2020). The Fifth Circuit concluded that the letter created sufficient minimum contacts with the State of Texas because the Attorney General "sought not merely to enforce New Jersey law but 'halt the company's activity nationwide, including activity that had no connection to New Jersey property or residents.'" PI Op. at 21–22 (quoting *Bulkley & Assocs., LLC v. Dep't of Indus. Rels. Div. of Occupational Safety & Health of the State of Cal.*, 1 F.4th 346, 353–54 (5th Cir. 2021)) (alteration accepted). The court in *Grewal* explained that Texas courts had jurisdiction because the New Jersey Attorney General's actions had created a chilling effect felt in Texas, reducing "Texans' access to materials" the Texas company sought "to publish." *Grewal*, 971 F.3d at 495. Similarly, here, Bailey's issuance of the Demand, filing and service of the enforcement Petition, and issuance of abusive discovery all have chilled Media Matters in D.C., and have thereby "deprived D.C. residents [of] access to Plaintiffs' reporting." PI Op. at 22. "Thus, like the New Jersey Attorney General in *Grewal*, [Bailey] 'projected himself across state lines and asserted a pseudo-national executive authority' that makes exercising jurisdiction over him reasonable and does not offend principles of federalism. *Id.* (quoting *Grewal*, 971 F.3d at 493). He did so, moreover, after Paxton "call[ed] upon other Attorneys General to investigate Media Matters." *Id.* Bailey's and Paxton's abuses of authority go hand in hand and are both subject to this Court's jurisdiction under the "transacting business" prong of the D.C. long-arm statute.

Finally, Plaintiffs' claims for relief plainly "aris[e] from," D.C. Code § 13-423(b), Bailey's transacting of business in the District, *see* PI Op. at 19 n.6 (noting that Paxton did not bother to

AMERICAN OVERSIGHT

dispute this point). This requirement is interpreted "flexibly and synonymously with 'relate to' or having a 'substantial connection with.'" *Shoppers Food Wearhouse v. Moreno*, 746 A.2d 320, 335 (D.C. 2000). Plaintiffs' claims against Bailey plainly have a substantial connection with his hiring of a process server and directing of that agent's activities in the District, a necessary step for Bailey to enforce his Demand. And Plaintiffs' claims similarly arise from the Demand itself and the course of dealing within the District it necessitates.

Subsection (a)(3) – Causing tortious injury by act or omission in D.C. Separately, Bailey is subject to this Court's jurisdiction because he has caused tortious injury to Plaintiffs by acts taken within the District. As with Paxton, application of this provision is "straightforward," because Bailey's "service of process, through an agent, was an act in the District of Columbia that injured Plaintiffs' constitutionally protected interests." PI Op. at 25–26. In the tort context, "minimum contacts exist where a defendant takes 'intentional and allegedly tortious[] actions' 'expressly aimed' at a jurisdiction," *Urquhart-Bradley v. Mobley*, 964 F.3d 36, 48 (D.C. Cir. 2020) (quoting *Calder v. Jones*, 465 U.S. 783, 789 (1984)), and the effects of those actions in the District of Columbia are not "some 'fortuitous' or 'unilateral' choice of the plaintiff's," *id.* (quoting *Walden v. Fiore*, 571 U.S. 277, 286 (2014)). That is the case here, as the service of the Petition is the action currently causing most of Plaintiffs' chill—it has created an imminent threat that Plaintiffs will be forced to turn over the materials Bailey seeks in the Demand. Although a process server served the petition on Bailey's behalf, the process server's in-forum acts are imputed to Bailey by virtue of the agency relationship. PI Op. at 26 (citing D.C. Code § 13-423(a)). As many courts have recognized, "if an out-of-state defendant causes abusive process to be served upon an in-state plaintiff, and the plaintiff subsequently sues the defendant in plaintiff's state," then

AMERICAN OVERSIGHT

"personal jurisdiction exists over the out-of-state defendant." *Vishay Intertech., Inc. v. Delta Int'l Corp.*, 696 F.2d 1062, 1067 (4th Cir. 1982); *see also* PI Op. at 27 (collecting cases). So too here.

B. The Court has constitutional personal jurisdiction over Bailey.

For constitutional purposes, specific personal jurisdiction exists where (i) the defendant has "purposefully directed" activity at residents of the forum and (ii) the plaintiff's claims "arise out of or relate to the defendant's contacts with the forum." *Lewis v. Mutond*, 568 F. Supp. 3d 47, 52 (D.D.C. 2021) (first quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472–73 (1985), and then quoting *Bristol-Myers Squibb v. Super. Ct. of Cal.*, 582 U.S. 255, 262 (2017)). Even "a single act, so long as it creates [a] 'substantial connection,' is sufficient." *Heller v. Nicholas Appelgate Cap. Mgmt. LLC*, 498 F. Supp. 2d 100, 109–10 (D.D.C. 2007) (quoting *Rudzewicz*, 471 U.S. at 475).

This Court has at least three related bases to exercise jurisdiction over Bailey consistent with the demands of due process. First, Bailey has repeatedly entered the District of Columbia for purposes of his investigation, both by using a common carrier to physically deliver the Demand to Media Matters's headquarters, and then by procuring the service of an agent—a process server—and directing that agent to enter the District of Columbia to serve the Petition upon Media Matters. It is well-settled that "although physical presence in the forum is not a prerequisite to jurisdiction, physical entry into the State—either by the defendant in person *or through an agent*, goods, *mail*, or some other means—is certainly a relevant contact" for purposes of personal jurisdiction. *Fiore*, 571 U.S. at 285 (emphases added) (citation omitted); *see also IMAPizza, LLC v. At Pizza Ltd.*, 334 F. Supp. 3d 95, 113 (D.D.C. 2018). The Court therefore has constitutional personal jurisdiction over Bailey for all the same reasons it has statutory personal jurisdiction under the "transacting business" prong of the D.C. long-arm statute. *See supra* Section I.A.

AMERICAN OVERSIGHT

Second, Bailey's Demand seeks numerous categories of documents that he had reason to believe would be located primarily in the District, where Media Matters is headquartered. By demanding reams of documents stored, and in many cases created, in the District, Bailey has unquestionably "directed" activity at the District. Plaintiffs' claims, in turn, "are based on" Bailey's Demand and steps to enforce it. *Grewal*, 971 F.3d at 492.

Third, Plaintiffs allege unlawful retaliation in violation of the First Amendment, an intentional tort. In intentional-tort cases, specific jurisdiction exists where the defendant has "(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." *Menken v. Emm*, 503 F.3d 1050, 1058 (9th Cir. 2007); *see also Calder*, 465 U.S. at 788–89. Here, jurisdiction is proper because Bailey has intentionally served a Demand and enforcement Petition on Media Matters in the District, causing a substantial and predictable chill to Media Matters. *See infra* Section II.A.

Again, the Fifth Circuit's decision in *Grewal* is directly on point. The court held there that the Attorney General of New Jersey had purposefully availed himself of Texas by issuing a cease-and-desist letter to a Texas company in Texas, thereby "project[ing] himself across state lines and assert[ing] a pseudo-national executive authority." 971 F.3d at 493. The plaintiffs in *Grewal* plausibly alleged the "letter had a chilling effect on the exercise of their First Amendment rights," which, "in turn, caused them to cease publication." *Id.* at 495. As the Fifth Circuit explained, "*this alone constitutes purposeful availment*" because "[t]he defendant is purposefully availing himself of 'the privilege of causing a consequence' in Texas." *Id.* at 493–94 (quoting *Wien Air Alaska, Inc. v. Brandt*, 195 F.3d 208, 213 (5th Cir. 1999)) (emphasis added). That is precisely the case here.

AMERICAN OVERSIGHT

II. Media Matters and Hananoki are likely to prevail on the merits of their claims.

A. Plaintiffs are likely to establish that Bailey retaliated against their constitutionally protected activities in violation of the First Amendment.

"[T]he law is settled that . . . the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out." *Hartman v. Moore*, 547 U.S. 250, 256 (2006). "Official reprisal for protected speech 'offends the Constitution [because] it threatens to inhibit exercise of the protected right.'" *Id.* at 256 (quoting *Crawford–El v. Britton,* 523 U.S. 574, 588 n.10 (1998)). It is "obvious" that efforts "to punish political speech by members of the press . . . run afoul of the First Amendment." *El Dia, Inc. v. Rossello*, 165 F.3d 106, 109 (1st Cir. 1999). The D.C. Circuit has long recognized First Amendment retaliation claims as "actionable" because "'retaliatory actions may tend to chill individuals' exercise of constitutional rights.'" *Crawford-El v. Britton*, 93 F.3d 813, 846 (D.C. Cir. 1996) (Henderson, J., concurring) (quoting *ACLU of Md., Inc. v. Wicomico County*, 999 F.2d 780, 785 (4th Cir. 1993)); *see also Perry v. Sindermann*, 408 U.S. 593, 597 (1972). To prevail on their retaliation claim, Plaintiffs must show that "(1) [they] engaged in conduct protected under the First Amendment; (2) [Bailey] took some retaliatory action sufficient to deter a person of ordinary firmness in [Plaintiffs'] position from speaking again; and (3) a causal link between the exercise of a constitutional right and the adverse action." *Aref v. Lynch*, 833 F.3d 242, 258 (D.C. Cir. 2016). Plaintiffs are likely to prove each of these elements and prevail on the merits of their first claim. A declaratory judgment and injunctive relief are appropriate remedies for First Amendment injury. *See* 28 U.S.C. §§ 2201, 2202; *Anatol Zukerman & Charles Krause Reporting, LLC, v. U.S. Postal Serv.*, 64 F.4th 1354, 1366–67 (2023); *Hedgepeth ex rel. Hedgepeth v. Washington Metro. Area Transit Auth.*, 386 F.3d 1148, 1152 n.3 (D.C. Cir. 2004); *Anderson v. Reilly*, 691 F. Supp. 2d 89, 92 (D.D.C. 2010).

AMERICAN OVERSIGHT

1. Media Matters's and Hananoki's newsgathering and reporting are protected First Amendment activities.

Media Matters is a nonprofit media watchdog group that provides journalistic research and investigative reporting on political extremism. Hananoki is a senior investigative reporter for Media Matters who covers political extremism, including extensive coverage of X's ongoing placement of advertisements on racist, antisemitic, and violent accounts on the X platform. Plaintiffs routinely investigate, publish, report, and comment on political extremism in American media, including on platforms like X. In particular, since Musk purchased X in October 2022, the platform has permitted advertisements to appear next to accounts that promote racist, antisemitic, and violent content. *See supra* Background, Section I. This development has been covered extensively, and not only by Plaintiffs. *See supra* Background, Section II. And X and Musk have invited this scrutiny by repeatedly framing X as the "digital town square" for public debate. *See supra* Background, Section I.

Plaintiffs' journalistic pursuits—about topics of public concern and discussion—are at the core of our First Amendment freedoms. "The protection given speech and press" by the First Amendment "assure[s] [an] unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth v. United States*, 354 U.S. 476, 484 (1957). This protection serves not only the news media itself, but society at large: "A broadly defined freedom of the press assures the maintenance of our political system and an open society," *Time, Inc. v. Hill*, 385 U.S. 374, 389 (1967). A free press is foundational to our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co.*, 376 U.S. at 269–70 (explaining such "freedom of expression upon public questions is secured by the First Amendment"). Thus, as the Court has already determined with respect to Paxton, PI Op. at 35, Plaintiffs' reporting about X and Musk is unequivocally protected

AMERICAN OVERSIGHT

by the First Amendment. "Speech on matters of public concern is at the heart of the First Amendment's protection." *Id.* at 35–36 (quoting *Snyder v. Phelps*, 562 U.S. 443, 451–52 (2011)).

2. Bailey's retaliatory conduct has compounded the chill Plaintiffs suffered because of Paxton's similar conduct.

Bailey, through his investigation and Demand, has taken "action sufficient to deter a person of ordinary firmness in [Plaintiffs'] position from speaking again." *Aref*, 833 F.3d at 258. The "cause of action targets conduct that tends to *chill* [First Amendment] activity, not just conduct that *freezes* it completely." *Constantine v. Rectors & Visitors of George Mason Univ,* 411 F.3d 474, 500 (4th Cir. 2005) (emphasis in original). Though not dispositive, Plaintiffs' "actual response" to the retaliatory conduct "'provides some evidence of the tendency of that conduct to chill First Amendment activity.'" *Hartley v. Wilfert*, 918 F. Supp. 2d 45, 54 (D.D.C. 2013) (quoting *Constantine*, 411 F.3d at 500. Plaintiffs are not required to "prove that the allegedly retaliatory conduct caused [them] to cease First Amendment activity altogether." *Constantine,* 411 F.3d at 500. It is sufficient to show—as Plaintiffs do—that Bailey's retaliatory acts would chill the First Amendment activity of similarly situated individuals and organizations of ordinary firmness.

The Court must "conduct this inquiry on a case-by-case basis, considering the actors involved and their relationship." *Snoeyenbos v. Curtis*, 60 F.4th 723, 731 (4th Cir. 2023). Here, as the result of their reporting about a company organized under Nevada law with its principal place of business in California, a non-profit news organization headquartered in Washington, D.C.—with most of its employees, including Hananoki, working within the Washington, D.C. metropolitan area—has been made subject to an investigation in Missouri seeking highly sensitive material regarding its funding, expenditures, organizational structure, communications with sources, and internal discussion of news stories. The investigation was initiated by the Missouri Attorney General without any showing that Plaintiffs violated that state's law or are even subject

AMERICAN OVERSIGHT

to its jurisdiction. Plaintiffs had *no* reasonable expectation of ever being subject to investigation by the Missouri Attorney General, never mind under the state's Merchandising Practices Act—Media Matters is a non-profit media organization, does not engage in trade or commerce with consumers, and neither it nor Hananoki has any relevant connection to the state of Missouri. Second Padera Decl. ¶¶ 17–25; Third Hananoki Decl. ¶ 8. Despite the plain lack of jurisdictional nexus, Bailey demands Plaintiffs turn over their most sensitive journalistic and organizational documents.

Bailey's explicit retaliation against Plaintiffs for news coverage and reporting would plainly "deter a person of ordinary firmness in plaintiff's position from speaking again," *Aref*, 833 F.3d at 258, particularly when paired with Bailey's constant stream of vitriol and solicitation of other state officials to join his retaliatory "war" on Media Matters. Indeed, the mere "*threat* of invoking legal sanctions and other means of coercion, persuasion, and intimidation" can be sufficient to tend to chill protected speech. *Playboy Enters. v. Meese*, 639 F. Supp. 581, 585 (D.D.C. 1986) (emphasis added) (quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963)); *see also Shoen v. Shoen*, 48 F.3d 412, 416 (9th Cir. 1995) (recognizing First Amendment harm from the "threat of administrative and judicial intrusion into the newsgathering and editorial process"). Here, Bailey's threats are backed up by the many enforcement powers he enjoys by virtue of his elected office—including, in particular, powers related to the enforcement of civil investigative demands. *See, e.g.*, Mo. Rev. Stat. § 407.080; *cf.* PI Op. at 36–37.

And Bailey's conduct has already moved well beyond threats; after issuing the Demand, he filed an extremely premature action to enforce it and has now served Media Matters with abusive discovery. Courts have, naturally, found that the actual commencement of a threatened investigation constitutes actionable retaliation. Indeed, the Fourth Circuit found a plaintiff's speech

AMERICAN OVERSIGHT

chilled when a state board told him that "he and his website were under investigation" and that the board had "statutory authority" to modify what content he could put on his website—actions that pale in comparison with Bailey's conduct here. *Cooksey v. Futrell*, 721 F.3d 226, 237 (4th Cir. 2013). "A person of ordinary firmness would surely feel a chilling effect" under such circumstances. *Id.*; *see also White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000) (concluding government officials "unquestionably chilled the plaintiffs' exercise of their First Amendment rights" through a retaliatory investigation even though the officials "did not ban or seize the plaintiffs' materials, and . . . ultimately decided not to pursue either criminal or civil sanctions against them"). Similarly, courts have recognized the "chilling effect" of haling a party into a jurisdiction with which it has limited contacts. *See, e.g.*, *Tech. Patents, LLC v. Deutsche Telekom AG*, 573 F. Supp. 2d 903, 917 (D. Md. 2008), *aff'd sub nom. Tech. Patents LLC v. T-Mobile (UK) Ltd.*, 700 F.3d 482 (Fed. Cir. 2012).

Finally, although not dispositive, Plaintiffs' speech has been chilled by Bailey's conduct. *See Hartley*, 918 F. Supp. 2d at 53; *Cooksey*, 721 F.3d at 236 (finding plaintiff had "sufficiently shown that he has experienced a non-speculative and objectively reasonable chilling effect of his speech due to the actions of the State Board"); *Turner v. U.S. Agency for Global Media*, 502 F. Supp. 3d 333, 381 (D.D.C. 2020). Hananoki indicates that "Bailey's Demand, Petition, and his aggressive public statements about Media Matters" all have had "an extremely negative effect" on his journalistic work. Third Hananoki Decl. ¶ 10. Hananoki perceives Bailey's retaliation to be "even more aggressive" than Paxton's, and has continued to curtail his "investigative reporting and to self-censor in researching and drafting new articles" in response. *Id.* ¶¶ 10, 12. For instance, even though other news outlets, such as NBC News, have published follow-on investigations building on Hananoki's 2023 reporting on X, Hananoki himself has been unable to do so. *Id.* ¶¶

AMERICAN OVERSIGHT

13–14. Similarly, Media Matters Editor-in-Chief Ben Dimiero attests that Paxton's actions had "stifled" Media Matters's "editorial process," and that Bailey's "are now contributing to and compounding that negative impact and disruption." Second Dimiero Decl. ¶ 5. Dimiero describes "a persisting sense on [Media Matters's] editorial team and in [its] organization that we must proceed extremely cautiously with our journalism or else face further legal retaliation that threatens our ability to operate." *Id.* ¶ 6. And he indicates that Bailey's investigation has "slowed [Media Matters's] output and hampered [its] ability to promptly publish coverage of emerging stories and topics." *Id.* ¶ 7; *see also id.* ¶¶ 8–9.

3. Bailey's retaliatory actions are a direct causal response to Plaintiffs' constitutionally protected activities.

Plaintiffs' commentary and reporting on X, and in particular Hananoki's November 16 article discussing Musk's apparent endorsement of an antisemitic conspiracy theory, caused Bailey's investigation. Bailey, like Paxton, first showed interest in Media Matters when Stephen Miller implied that some of the "2 dozen+ conservative state Attorneys General" should retaliate against Media Matters on Musk's behalf—Bailey's tweet that his "team" was "looking into" Media Matters was a direct response to Miller. *Supra* Background, Sections IV, V. And as with Paxton, Bailey's "initial press release establishes that [he] opened an investigation of Media Matters in response to its protected media activities." PI Op. at 37–38. In his December press release announcing his investigation, Bailey labeled Media Matters "[r]adicals" and "progressive tyrants" and accused them of "attempting to kill Twitter because they cannot control it." ECF No. 39-4 at 4. In interviews in the following days, he called Media Matters "a radical, progressive, tyrannical advocacy group masquerading as a news outlet" and a weapon of "the enemy." Third Hananoki Decl. ¶ 5 (collecting interviews). By Bailey's own account, he is "coordinating with Texas," and "other states as well" to fight what he sees as the "new front in the war." *Id.* Bailey continued to

AMERICAN OVERSIGHT

employ similarly charged language in his press release announcing the Demand and even in his enforcement Petition—a formal court filing. *See* ECF No. 39-7 at 4; ECF No. 39-6 at 3. His Petition, for instance, calls Media Matters a "political activist organization" and calls X "one of the last platforms dedicated to free speech in America." ECF No. 39-6 at 2. This is not the neutral and cautious language of a sincere, impartial investigation. As this Court put it, Bailey "has followed [Paxton's] lead," PI Op. at 5 n.3—including with respect to his motives driving his so-called investigation.

The Demand's substance also confirms that Bailey's retaliatory conduct is motivated by Plaintiffs' coverage of X and Musk. It demands that Plaintiffs turn over "[a]ll communications, internal and external, regarding your strategy to pressure advertisers into pulling advertisements from the social media platform, X"; "[a]ll documents discussing Elon Musk's purchase of X"; "[a]ll documents related to the article, or to the events described in the article, by Eric Hananoki entitled 'As Musk endorses antisemitic conspiracy theory, X has been placing ads for Apple, Bravo, IBM, Oracle, and Xfinity next to pro-Nazi content'"; and various documents and communications related to Media Matters's and Hananoki's research into X and communications with X advertisers. ECF No. 39-5 at 4–5. These demands reflect Bailey's desire to rifle through Plaintiffs' files concerning their news coverage and reporting.

In short, as with Paxton, there is no serious dispute that but for Plaintiffs' constitutionally protected reporting on X, Bailey would not have launched his retaliatory investigation, issued his Demand, or filed and served his enforcement Petition. On that basis, Plaintiffs will show "a causal link between the exercise of a constitutional right and the adverse action." *Aref*, 833 F.3d at 258; *see also Nieves v. Bartlett*, 139 S. Ct. 1715, 1722 (2019).

Plaintiffs are therefore likely to prevail on their claim for unlawful retaliation.

AMERICAN OVERSIGHT

B. Plaintiffs are likely to establish that Bailey's Demand violates both the First and Fourth Amendments and the D.C. and Maryland shield laws.

Plaintiffs' First Amendment retaliation claim, on its own, is sufficient to warrant a temporary restraining order and preliminary injunction. But Plaintiffs also face other imminent harms, captured by their other claims, that separately warrant immediate relief.

1. ***Constitutional Claims***. Attorney General Bailey has demanded that Plaintiffs turn over a trove of their most sensitive documents and has sued them in Missouri in an attempt to force compliance. Bailey's wide-ranging Demand touches upon nearly every part of Media Matters's operations, including its organizational and employee structure; its use of "solicited donations"; its "operational expenses"; its "communications," both "internal and external," about strategy, operations, articles, research, and matters of public concern; its social media accounts on X; and its communications with employees at X and X's advertisers (including potential sources). ECF No. 39-5 at 4. Plaintiffs are likely to show this intrusive Demand violates both the First and Fourth Amendments.

The Fourth Amendment limits the scope of administrative subpoenas. *Okla. Press Publ'g Co. v. Walling*, 327 U.S. 186, 208–11 (1946). Likewise, the First Amendment guards Plaintiffs from the compelled disclosure of materials that would chill their constitutional rights. *Perry v. Schwarzenegger*, 591 F.3d 1147, 1160 (9th Cir. 2010); *Pebble Ltd. P'ship v. EPA*, 310 F.R.D. 575, 582 (D. Alaska 2015) (subpoenas invalid when they have "the tendency to chill the free exercise of political speech and association which is protected by the First Amendment"). These twin constitutional guarantees often overlap; thus, where "the materials sought to be seized" by an administrative subpoena even "*may* be protected by the First Amendment," the requirements of the Fourth Amendment are applied with "scrupulous exactitude." *Zurcher v. Stanford Daily*, 436 U.S. 547, 564 (1978) (citing *Stanford v. Texas*, 379 U.S. 476, 485 (1965)) (emphasis added). "No

AMERICAN OVERSIGHT

less a standard could be faithful to First Amendment freedoms." *Stanford,* 379 U.S. at 485. That is especially true where, as here, no cause has been shown before demanding documents—such "unrestricted power of search and seizure [can] be an instrument for stifling liberty of expression." *Marcus v. Search Warrants,* 367 U.S. 717, 729 (1961).

Bailey's Demand seeks to pry into matters protected by the First Amendment and shows no trace of "scrupulous exactitude." *Stanford*, 379 U.S. at 485. Instead, it broadly seeks information about Plaintiffs' donors, sources of funding, and expenditures in a manner designed to chill Plaintiffs' speech and press activities. ECF No. 39-5 at 3–4. The Supreme Court has "long understood as implicit in the right to engage in activities protected by the First Amendment a . . . right to associate with others." *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2382 (2021) (quoting *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984)). The First Amendment thus "prohibit[s] . . . compelled disclosure" of documents about an organization's associational activities—including the compelled disclosures about members and donors—absent compliance with "exacting scrutiny." *Id.* at 2382–83, 2386 (holding California violated First Amendment by requiring disclosure of "donors' names and the total contributions" to charitable organization); *see also NAACP v. Alabama*, 357 U.S. 449, 462 (1958) (membership lists); *Buckley v. Valeo*, 424 U.S. 1, 64 (1976) (campaign contributions); *Am. Fed'n of Lab. & Cong. of Indus. Orgs. v. Fed. Election Comm'n*, 333 F.3d 168, 176 (D.C. Cir. 2003) (identities of employees and volunteers). Bailey has failed to demonstrate the "exacting scrutiny" and "scrupulous exactitude" required to obtain these types of materials. "It is contrary to the first principles of justice to allow a search through all the respondents' r[e]cords, relevant or irrelevant, in the hope that something will turn up." *Fed. Trade Comm'n v. Am. Tobacco Co.*, 264 U.S. 298, 306 (1924) (Holmes, J.). This Court has the power to enjoin enforcement of such a constitutionally infirm subpoena. *See*

AMERICAN OVERSIGHT

Local 1814, Int'l Longshoremen's Ass'n v. Waterfront Comm'n of N.Y. Harbor, 667 F.2d 267, 274 (2d Cir. 1981).

The Demand is also infirm because it seeks journalistic materials that are afforded significant constitutional protection. Bailey may not "rummage at large in newspaper files or [] intrude into or [] deter normal editorial and publication decisions" through his search. *Zurcher*, 436 U.S. at 566. In *Zurcher*, the officers lacked "any occasion or opportunity," *id.*, for such rummaging because a judicially approved search warrant provided the necessary "exactitude" regarding the "First Amendment interests [that] would be endangered by the search," *id.* at 565. Bailey has not satisfied any such standard here, yet nonetheless seeks categories of notes and files on draft articles and communications with potential sources—clearly protected materials. *See Lacey v. Maricopa County*, 693 F.3d 896, 917 (9th Cir. 2012) (quashing "broad, invalid subpoenas demanding that the paper reveal its sources [and] disclose its reporters' notes"). The Demand is not "carefully tailored to avoid unnecessary interference with protected activities." *Pebble Ltd. P'ship*, 310 F.R.D. at 582 (quashing subpoena). Fundamentally, Bailey's investigation is targeted at speech and press activities that are afforded broad constitutional protection. Such "investigations premised solely upon *legal* activity are the very type of 'fishing expeditions' that were the target of Justice Holmes's assault in *American Tobacco.*" *Major League Baseball v. Crist*, 331 F.3d 1177, 1187–88 (11th Cir. 2003) (concluding that CID violated Fourth Amendment and "that an investigation predicated solely upon legal activity does not pass muster under *any* standard"). And there is no question that Bailey means to enforce his Demand, because he has already taken steps to do so.

Plaintiffs are therefore likely to prevail on their claim that the Demand and Petition amount to an unlawful fishing expedition in violation of the First and Fourth Amendments.

AMERICAN OVERSIGHT

D.C. & Maryland Shield Laws. The Missouri Demand seeks information protected by the District of Columbia's shield law. D.C. Code §§ 16-4702, -4703. The D.C. shield law provides absolute protection against compelled disclosure of sources, *id.* § 16-4703(b), and qualified protection against compelled disclosure of other information, including "any news or information procured . . . in the course of pursuing [] professional activit[ies]," including notes, to the extent such information is not publicly disclosed, *id.* § 16-4702. *See also Grunseth v. Marriott Corp.*, 868 F. Supp. 333, 336 (D.D.C. 1994). The shield law protects media organizations and their employees acting within the scope of a contract in any "news gathering or news disseminating capacity." D.C. Code § 16-4702. The Demand also seeks information protected by Maryland's analogous shield law. *See* Md. Cts. & Jud. Proc. Code Ann. § 9-112(b)(1), (c)(2). The shield laws are grounds to quash or limit a subpoena. *Grunseth*, 868 F. Supp. at 336–37 (quashing subpoenas under the D.C. shield law); *see also Equitable Tr. Co. v. State Comm'n on Human Relations*, 411 A.2d 86, 99 (Md. 1980) ("It is well established that an enforcing court may limit through modification or partial enforcement subpoenas it finds to be unduly burdensome." (quoting *Fed. Trade Comm'n v. Texaco, Inc.*, 517 F.2d 137, 149–50 (D.C. Cir. 1975)); *Bice v. Bernstein*, No. 93-CA-22258, 1994 WL 555379, at *1 (Md. Cir. Ct. Apr. 20, 1994) (quashing subpoena even where qualified disclosure test met).

Permitting attorneys general like Bailey to skirt another state's shield laws by misusing their statutory authority to issue administrative subpoenas violates basic principles of federalism and would make a mockery of state shield laws. The District of Columbia and Maryland both have a profound interest in protecting their residents from being made to answer outside their home jurisdictions—by states that obviously lack personal jurisdiction over such residents—and made to divulge documents protected by D.C. and Maryland law. Missouri may not "enact [] a policy

AMERICAN OVERSIGHT

for the entire Nation" by issuing CIDs that trample over another state's shield laws and deprive foreign residents of the benefits of such laws. *See BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 571 (1996).

Plaintiffs are therefore likely to prevail on their claim under the D.C. and Maryland shield laws.

C. Plaintiffs are likely to establish that the legal process against them in Missouri violates due process due to a lack of contact with that state.

The Due Process Clause of the Fourteenth Amendment "recognizes and protects an individual liberty interest" against being subjected to legal process in a jurisdiction with which one lacks meaningful contact. *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982). Simply put, due process guards against forcing parties like Plaintiffs to "submit[] to the coercive power of a State that may have little legitimate interest in the claims in question." *Bristol-Myers*, 582 U.S. at 263. Such arbitrary imposition of a "State's coercive power" is "subject to review for compatibility with the Fourteenth Amendment's Due Process Clause." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 918 (2011). Plaintiffs are likely to show that they are not within the personal jurisdiction of Missouri, and thus not lawfully subject to Bailey's retaliatory investigation and attempts to coerce compliance with that investigation in Missouri state court.

Two flavors of personal jurisdiction exist: general and specific. *See Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 352 (2021) (citing *Goodyear*, 564 U.S. at 919). Plaintiffs are plainly not subject to general jurisdiction in Missouri—neither is domiciled or "fairly regarded as at home" in Missouri. *Goodyear*, 564 U.S. at 924; *see supra* Background, Section V.

Specific jurisdiction is lacking as well. Such jurisdiction requires "an affiliation[n] between the forum and the underlying controversy, principally, [an] activity . . . that takes place in the forum

AMERICAN OVERSIGHT

State and is therefore subject to the State's regulation." *Goodyear*, 564 U.S. at 919 (first alteration in original). Mere "foreseeability of causing *injury* in another State" is not a "'sufficient benchmark' for exercising personal jurisdiction." *Rudzewicz*, 471 U.S. at 474 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980)). "Instead, 'the foreseeability that is critical to due process analysis . . . is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.'" *Id.* (quoting *World-Wide Volkswagen*, 444 U.S. at 297). The controversy here arises out of Plaintiffs' reporting and publishing on political extremism on X—work that occurred exclusively in D.C. and Maryland. No element of this work occurred in Missouri, required interaction with Missouri, or was purposefully directed towards—or intended to have an effect—in Missouri. *See* Second Padera Decl. ¶¶ 17–25; Third Hananoki Decl. ¶ 8. Indeed, Media Matters is exempt even from registering in Missouri, as Bailey's own office long ago acknowledged. ECF No. 39-11. Bailey's actions alone are what connects Plaintiffs to Missouri, but Bailey "cannot be the only link between" his chosen forum and Plaintiffs—"[r]ather, it is [Plaintiffs'] conduct that must form the necessary connection with the forum State" for that state to exercise jurisdiction. *Fiore*, 571 U.S. at 285.

Plaintiffs are likely to prevail on their claim that Bailey's investigation and premature attempt to enforce his Demand in state court violate due process.

III. Plaintiffs will suffer irreparable harm absent an order restraining Bailey's investigation and efforts to enforce his Demand.

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." PI Op. at 38 (quoting *Pursuing Am.'s Greatness*, 831 F.3d at 511). In granting Plaintiffs a preliminary injunction against Paxton, this Court credited Plaintiffs evidence that Paxton's CID had cause them "to self-censor when making research and publication decisions, adversely affected the relationships between editors and reporters, and restricted

AMERICAN OVERSIGHT

communications with sources and journalists." *Id.* Bailey's Demand and Petition, which arrived on Media Matters's doorstep shortly before this Court's order (and likely in anticipation of it, as a failsafe for getting at Plaintiffs' sensitive and privileged materials), has perpetuated and will continue to inflict those injuries absent this Court's intervention. *See* Third Hananoki Decl. ¶¶ 6–14; Second Padera Decl. ¶¶ 10–16; Second Dimiero Decl. ¶¶ 4–9; *see also supra* Background, Section V. And Bailey's service of abusive discovery in Missouri confirms what was already plain to see from his Demand and Petition: Plaintiffs' option to defend their rights in a foreign forum with which they have no meaningful ties does not cure or even significantly mitigate their injury. The Court should not let Paxton and Bailey—who, according to Bailey, are coordinating with one another—circumvent this Court's orders by means of sequencing tricks.

IV. The remaining equitable factors strongly favor granting preliminary relief.

The remaining equitable factors favor Plaintiffs. Both "factors [are] established when there is a likely First Amendment violation." *Centro Tepeyac v. Montgomery County*, 722 F.3d 184, 191 (4th Cir. 2013); *see also Karem v. Trump*, 960 F.3d 656, 668 (D.C. Cir. 2020) ("enforcement of an unconstitutional law is always contrary to the public interest" (quoting *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013))). "The public's interest in protecting First Amendment rights" is beyond dispute: "there is always a strong public interest in the exercise of free speech rights otherwise abridged by an unconstitutional" state action. *Pursuing Am.'s Greatness*, 831 F.3d at 511–12. That interest is heightened where, as here, First Amendment protections serve both Plaintiffs and the general public; "[a]n untrammeled press is a vital source of public information, and an informed public is the essence of working democracy." *Minneapolis Star & Tribune Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 585 (1983) (cleaned up). Granting temporary relief will ensure that Plaintiffs may continue to participate in the "unfettered interchange of ideas for the bringing about of political and social changes desired by the people," *Roth*, 354 U.S. at 484, and

AMERICAN OVERSIGHT

further serves the public interest against government fishing expeditions, *Leaders of a Beautiful Struggle v. Baltimore Police Dep't*, 2 F.4th 330, 346 (4th Cir. 2021) (en banc); *see also Klayman v. Obama*, 142 F. Supp. 3d 172, 196 (D.D.C. 2015) ("Given . . . that plaintiffs are likely to succeed on the merits of their Fourth Amendment claim, the public interest weighs heavily in their favor.").

In contrast, granting preliminary relief will not harm Bailey. Because his investigation lacks any legitimate basis or connection to Missouri, he lacks any legitimate interest in continuing his investigation. Bailey "cannot legitimately claim to be 'harmed' as a result of being restrained from illegal conduct." *Prysmian Cables & Sys. USA, LLC v. Szymanski*, 573 F. Supp. 3d 1021, 1044 (D.S.C. 2021) (collecting cases). "If anything, the system is improved by such an injunction." *Giovani Carandola, Ltd. v. Bason,* 303 F.3d 507, 521 (4th Cir. 2002).

CONCLUSION

For the reasons set forth above, the Court should grant Plaintiffs' motion for a temporary restraining order and a preliminary injunction. A proposed temporary restraining order is filed herewith.

AMERICAN OVERSIGHT

Dated: April 25, 2024

Respectfully submitted,
/s/ Aria C. Branch

ELIAS LAW GROUP LLP
Aria C. Branch (DC 1014541)
Christopher D. Dodge (DC 90011587)
Elena A. Rodriguez Armenta* (DC 90018798)
Samuel T. Ward-Packard* (DC 90005484)
250 Massachusetts Ave. NW, Suite 400
Washington, DC 20001
T: (202) 968-4652
abranch@elias.law
cdodge@elias.law
erodriguezarmenta@elias.law
swardpackard@elias.law

Abha Khanna*
1700 Seventh Ave. Suite 2100
Seattle, WA 98101
T: (206) 656-0177
akhanna@elias.law

GIBSON, DUNN & CRUTCHER LLP
Theodore J. Boutrous, Jr. (DC 420440)
333 South Grand Avenue
Los Angeles, CA 90071
Telephone: (213) 229-7000
Email: tboutrous@gibsondunn.com

Amer S. Ahmed (DC 500630)
200 Park Avenue
New York, New York 10166
Telephone: (212) 351-4000
Email: aahmed@gibsondunn.com

*Admitted *pro hac vice*

Counsel for Plaintiffs Media Matters for America and Eric Hananoki

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001187

CERTIFICATE OF SERVICE

I hereby certify that this document will be served on the Defendant in accordance with Federal Rule of Civil Procedure 5(a).

/s/ Aria C. Branch
Aria C. Branch

AMERICAN OVERSIGHT

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

MEDIA MATTERS FOR AMERICA, ERIC HANANOKI,

Plaintiffs,

v.

WARREN KENNETH PAXTON JR., in his official capacity as Attorney General of the State of Texas,

ANDREW BAILEY, in his official capacity as Attorney General of the State of Missouri

Defendants.

No. 24-cv-147
Oral Hearing Requested

MISSOURI ATTORNEY GENERAL ANDREW BAILEY'S OPPOSITION TO TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

AMERICAN OVERSIGHT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... **ii**

INTRODUCTION **1**

BACKGROUND **3**

I. Factual background 3

II. The Missouri Attorney General launched an investigation based on well-established statutory authority. 5

III. Media Matters began exercising its legal rights in Missouri state court. 7

SUMMARY OF ARGUMENT **7**

ARGUMENT **10**

I. *Younger* Abstention Applies and Dismissal is Required **10**

A. The second *Younger* category applies. 11

B. The third *Younger* category also applies. 14

C. The ongoing proceeding in Missouri state court implicates important state interests and affords Media Matters an adequate opportunity to raise its federal claims. 16

D. Media Matters has waived the issue whether any exception to abstention applies, and in any event, no exception applies. 18

E. Media Matters consented to personal jurisdiction in Missouri state court. 22

F. Fundamental limits on federal equity reinforce the need to abstain. 23

II. There is No Personal Jurisdiction and, Therefore, the Case Should Be Dismissed. **23**

A. Plaintiffs have not satisfied the long-arm statute. 24

B. Personal jurisdiction here would violate the Due Process Clause. 26

C. Media Matters' jurisdictional argument is self-defeating. 28

III. Media Matters Cannot Establish a Justiciable, Ripe Injury, Nor the Absence of an Adequate Remedy at Law. **29**

IV. There Is No Likelihood of Success on the Merits. **32**

A. Media Matters is unlikely to succeed on its retaliation claim. 32

B. Media Matters' other claims are likewise unlikely to succeed. 34

V. Media Matters Will Not Suffer Irreparable Harm. **36**

VI. The Balance of Equities and Public Interest Decisively Favor Missouri. **37**

CONCLUSION **38**

CERTIFICATE OF COMPLIANCE **39**

CERTIFICATE OF SERVICE **39**

AMERICAN OVERSIGHT

TABLE OF AUTHORITIES

Page(s)

Cases

Aaron v. Target Corp., 357 F.3d 768 (8th Cir. 2004) 16, 19

ADR Tr. Corp. v. Thornton, 41 F.3d 1539 (D.C. Cir. 1994) 35

AMAF Int'l Corp. v. Ralston Purina Co., 428 A.2d 849 (D.C. 1981) 25

Americans for Prosperity Found. v. Bonta, 141 S. Ct. 2373 (2021) 35

Arpaio v. Obama, 797 F.3d 11 (D.C. Cir. 2015) 31

Associated Producers, LTD v. Vanderbilt U., 76 F. Supp. 3d 154 (D.D.C. 2014) 27

**Backpage.com, LLC v. Hawley*, No. 4:17-CV-1951, 2017 WL 5726868 (E.D. Mo. Nov. 28, 2017) 1, 13, 14, 15

Belle Fourche Pipeline Co. v. United States, 751 F.2d 332 (10th Cir. 1984) 31

Berrada Properties Mgt. Inc. v. Romanski, 608 F. Supp. 3d 746 (E.D. Wis. 2022) 14, 18

Bland v. IMCO Recycling, Inc., 67 S.W.3d 673 (Mo. App. S.D. 2002) 22

Cameron v. Johnson, 390 U.S. 611 (1968) 34

Cedar Rapids Cellular Tel., L.P. v. Miller, 280 F.3d 874 (8th Cir. 2002) 13, 16

Chaplaincy of Full Gospel Churches v. England, 454 F.3d 290 (D.C. Cir. 2006) 36

CityFed Fin. Corp. v. Office of Thrift Supervision, 58 F.3d 738 (D.C. Cir. 1995) 36

Credit One Bank, N.A. v. Hestrin, 60 F.4th 1220 (9th Cir. 2023) 16

Dyson v. Dutko Ragen Homes & Investments, No. 21- CV-02280 (APM), 2022 WL 1294484 (D.D.C. Apr. 27, 2022) 26

Everett v. Vance, 685 S.W.3d 495 (Mo. App. W.D. 2023) 22

Ex parte Young, 209 U.S. 123 (1908) 23

Exponential Biotherapies, Inc. v. Houthoff Buruma N.V., 638 F. Supp. 2d 1 (D.D.C. 2009) 27

Food & Water Watch, Inc. v. Vilsack, 808 F.3d 905 (D.C. Cir. 2015) 10

AMERICAN OVERSIGHT

Ford Motor Co. v. Montana Eighth Jud. Dist. Ct., 141 S. Ct. 1017 (2021) 27

Forras v. Rauf, 812 F.3d 1102 (D.C. Cir. 2016) 26

Geier v. Missouri Ethics Comm'n, 715 F.3d 674 (8th Cir. 2013) 17

Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915 (2011) 26

Google, Inc. v. Hood, 822 F.3d 212 (5th Cir. 2016) 14, 31

GTE New Media Servs. Inc. v. BellSouth Corp., 199 F.3d 1343 (D.C. Cir. 2000) 23

Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408 (1984) 27

Holder v. Haarman & Reimer Corp., 779 A.2d 264 (D.C. 2001) 24

Houston Community College System v. Wilson, 595 U.S. 468 (2022) 32, 34

Huffman v. Pursue, Ltd., 420 U.S. 592 (1975) ..... passim

Int'l Shoe Co. v. State of Wash., Off. of Unemployment Comp. & Placement, 326 U.S. 310 (1945) 24

J. & W. Seligman & Co. Inc. v. Spitzer, No. 05CIV.7781, 2007 WL 2822208 (S.D.N.Y. Sept. 27, 2007) 10, 14

JMM Corp. v. District of Columbia, 378 F.3d 1117 (D.C. Cir. 2004) 10, 16

Johnson v. TheHuffingtonPost.com, Inc., 21 F.4th 314 (5th Cir. 2021) 5

Jones v. District of Columbia, 177 F. Supp. 3d 542 (D.D.C. 2016) 36

**Juidice v. Vail*, 430 U.S. 327 (1977) 14, 15, 17, 20

Kim v. Fin. Indus. Regul. Auth., Inc., No. 1:23-CV-02420 (ACR), 2023 WL 6538544 (D.D.C. Oct. 6, 2023) 37

Lewis v. Mutond, 62 F.4th 587 (D.C. Cir. 2023) 27

Lupin Pharmaceuticals, Inc. v. Richards, No. 15-1281, 2015 WL 4068818 (D. Md. July 2, 2015) 15

Mazurek v. Armstrong, 520 U.S. 968 (1997) 10

Middlesex Cnty. Ethics Comm. v. Garden State B. Ass'n, 457 U.S. 423 (1982) 13

Missouri v. Media Matters, 24AC-CC02291 (Apr. 18, 2024) 7

AMERICAN OVERSIGHT

Moncrief v. Lexington Herald-Leader Co., 807 F.2d 217 (D.C. Cir. 1986) 26, 27

Moore v. Sims, 442 U.S. 415 (1979) 18

Mouzavires v. Baxter, 434 A.2d 988 (D.C. Cir. 1981) 23

Music Makers Holdings v. Sarro, No. RWT-09-cv1836,
2010 WL 2807805 (D. Md. July 15, 2010) 28

Natl. Farmers Union Ins. Companies v. Crow Tribe of Indians, 471 U.S. 845 (1985) 29, 31

Natl. Park Hosp. Ass'n v. Dept. of Int., 538 U.S. 803 (2003) 29

New Eng. Carpenters Pension Fund v. Haffner, 391 S.W.3d 453 (Mo. App. S.D. 2012) 7

Nieves v. Bartlett, 139 S. Ct. 1715 (2019) 9, 32

PDX N., Inc. v. Commr. New Jersey Dept. of Lab. and Workforce Dev.,
978 F.3d 871 (3d Cir. 2020) 13

**Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987) 17, 20, 30

Perez v. Ledesma, 401 U.S. 82 (1971) 19

Ports Petroleum Co., Inc. of Ohio v. Nixon, 37 S.W.3d 237 (Mo. 2001) 6

Potrero Hills Landfill, Inc. v. Cnty. of Solano, 657 F.3d 876 (9th Cir. 2011) 17

Power Co. of Am., L.P. v. FERC, 245 F.3d 839 (D.C. Cir. 2001) 19

Reisman v. Caplin, 375 U.S. 440 (1964) 9, 29

Rollins Burdick Hunter of Utah, Inc. v. Bd. of Trustees of Ball State U.,
665 N.E.2d 914 (Ind. App. 1996) 22

Safari Club Int'l v. Salazar, 852 F. Supp. 2d 102 (D.D.C. 2012) 38

Save Jobs USA v. U.S. Dep't of Homeland Sec., 105 F. Supp. 3d 108 (D.D.C. 2015) 36

Slate v. Kamau, No. 20-CV-3732 (BAH), 2021 WL 3472438 (D.D.C. Aug. 6, 2021) 26

**Sprint Commun., Inc. v. Jacobs*, 571 U.S. 69 (2013) ..... passim

State ex rel. Ashcroft v. Goldberg, 608 S.W.2d 385 (Mo. 1980) 17, 34

State ex rel. Koster v. Charter Communications, Inc.,
461 S.W.3d 851 (Mo. App. W.D. 2015) 7, 12, 15

AMERICAN OVERSIGHT

State ex rel. Nixon v. Telco Directory Pub., 863 S.W.2d 596 (Mo. 1993) 20

State ex rel. Rogers v. Cohen, 262 S.W.3d 648 (Mo. 2008) 3

State v. Shaw, 847 S.W.2d 768 (Mo. 1993) 20

Steel Co. v. Citizens for a Better Envt., 523 U.S. 83 (1998) 10

Stroman Realty v. Wercinski, 513 F.3d 476 (5th Cir. 2008) 28

State ex rel. Antoine v. Sanders, 724 S.W.2d 502 (Mo. 1987) 22

**Twitter, Inc. v. Paxton*, 56 F.4th 1170 (9th Cir. 2022) 9, 30, 31

United States v. Kulukundis, 329 F.2d 197 (2d Cir. 1964) 31

United States v. Morton Salt Co., 338 U.S. 632 (1950) 3

Walden v. Fiore, 571 U.S. 277 (2014) 25, 26, 28

Weitzel v. Div. of Occupational and Prof. Licensing of Dept. of Com. of State of Utah, 240 F.3d 871 (10th Cir. 2001) 18

Whole Woman's Health v. Jackson, 595 U.S. 30 (2021) 23

Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7 (2008) 10, 37

Wisc. Gas Co. v. FERC, 758 F.2d 669 (D.C. Cir. 1985) 37

X Corp. v. Media Matters for America, No. 4:23-cv-1175 (N.D. Tex. Nov. 20, 2023) 4, 33

Yelp Inc. v. Paxton, No. 23-CV-04977-TLT, 2024 WL 413464 (N.D. Cal. Feb. 1, 2024) 14, 16, 21

**Younger v. Harris*, 401 U.S. 37 (1971) 1, 10, 19

Other Authorities

Todd Spangler, *DoubleVerify Apologizes for Misreporting X/Twitter's Brand-Safety Rates for More Than Four Months*, Variety (Apr. 15, 2024) 4, 33

Vesper Henry & Ari Drennen, *Seen but not heard: The New York Times Failed to Quote Trans People in Two-Thirds of Stories on Anti-Trans Legislation in a One-Year Period* (March 26, 2024) 34

Wright & Miller, Federal Practice and Procedure 10, 19

AMERICAN OVERSIGHT

INTRODUCTION

How shocking it would be if the Missouri Attorney General asked a state court to issue an order preventing *this* Court from hearing this case. Yet Media Matters seeks exactly that extreme remedy, just in reverse. Media Matters does not dispute that it can raise all its claims and defenses in the ongoing proceeding in Missouri state court. It has already begun doing so. It filed a motion to exercise legal rights guaranteed by Missouri law, which the state court granted. Nevertheless, Media Matters now asks a federal court in the District of Columbia to enter an order that would force the courts of the State of Missouri to stop adjudicating an ongoing case. That is not only a transparent attempt to get two bites at the apple; it is also an astonishing attack on federalism.

The Supreme Court has not minced words, saying that the very thing Media Matters tries here imposes "evils" on federal courts. *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 608 (1975). It is thus no wonder that other federal courts regularly reject attempts by parties like Media Matters to challenge state subpoenas in federal court when a state proceeding is already ongoing. *E.g.*, *Backpage.com, LLC v. Hawley*, No. 4:17-CV-1951, 2017 WL 5726868 (E.D. Mo. Nov. 28, 2017) (citing *Younger v. Harris*, 401 U.S. 37 (1971)). And rightly so. As the Supreme Court has long made clear, including recently, federal courts lack equity jurisdiction to issue orders that have the effect of shutting down existing state court proceedings. Media Matters can raise every one of its arguments in Missouri state court.

Nor can Media Matters prevail on any of the four traditional factors for equitable relief to obtain a temporary restraining order or preliminary injunction.

First, Media Matters' contention that it will be harmed if the civil investigative demand for information and materials is enforced fails because there is no immediate enforcement right now. There is only an enforcement *proceeding*. The civil investigative demand—with which Media

AMERICAN OVERSIGHT

Matters has refused to comply—will not be enforced until Media Matters has had a full and fair opportunity to raise all its claims in state court. Unlike Media Matters' attempt to litigate here at breakneck speed, the Missouri Attorney General has not filed any emergency motion. There is no current injury at all, much less one imminently impending.

No better is Media Matters' assertion that it is injured by having to litigate the questions at all. Media Matters is going to litigate these questions in one forum or another. The only question is where. Media Matters asserts that Missouri courts "obviously lack personal jurisdiction" over Media Matters, and so any lawsuit filed in Missouri harms Media Matters. ECF 49-1 at 35. But Media Matters has already consented to personal jurisdiction in Missouri state court by seeking (and obtaining) relief under state law. And Media Matters' argument is self defeating. In insists that *this* Court has jurisdiction over the Missouri Attorney General simply because he mailed something into the District. *Id.* at 23. Yet Media Matters does much more than that in Missouri. It writes articles about events in Missouri and circulates those articles in Missouri. *Id.* at 12 n.11. It distributes newsletters to the email addresses of residents of Missouri. And it solicits donations from residents of Missouri. If this Court has jurisdiction over the Attorney General because he mailed one document, then Missouri courts have jurisdiction over Media Matters ten times over.

Even stranger is Media Matters' retaliation claim. Media Matters bases its lawsuit on its contention that the Attorney General decided to "retaliat[e]" against Media Matters because Media Matters wrote one single article criticizing him. *Id.* at 12. That allegation is not just wrong; it is not even plausible. Like other statewide officials, the Missouri Attorney General is regularly criticized by other media outlets, and Media Matters cannot identify even a single instance where the Missouri Attorney General has responded with a civil investigative demand for information and materials. The reason is simple: the Attorney General filed the civil investigative demand not

AMERICAN OVERSIGHT

because Media Matters criticized him once, but to investigate whether Media Matters committed fraud or deception in soliciting donations from residents of Missouri. There is nothing illegal about investigating business deception or fraud, something the Attorney General does routinely as authorized by law. If Media Matters thinks otherwise, it is free to raise its arguments in the ongoing state court proceeding, rather than asking this Court to enter an extreme order preventing the State of Missouri, statutorily represented by the Attorney General, from litigating in its own courts.

BACKGROUND

I. Factual background

Although Media Matters presents itself as a charitable news organization, there is reason to believe it has engaged in fraud and deception to solicit donations from Missourians. Ex. A, Declaration of Steven Reed ¶¶ 6–11. Because investigations necessarily require some level of secrecy, the State of Missouri is not required to show its hand. As the Supreme Court has long held, the point of a pre-complaint investigation is to seek "information from those who best can give it and who are most interested in not doing so." *United States v. Morton Salt Co.*, 338 U.S. 632, 642 (1950). So courts routinely stress the need for investigations to "be conducted in secret"; indeed, the "person being investigated may not be aware of the proceedings." *State ex rel. Rogers v. Cohen*, 262 S.W.3d 648, 652–53 (Mo. 2008). Nevertheless, the State is able to discuss accusations and evidence that have already been made public.

Media Matters is credibly accused of defaming the social media platform X (formerly Twitter) by falsely representing that X routinely populates advertisements for brands like Apple, IBM, and Xfinity next to extremist, fringe content. Reed decl. ¶¶ 6–11. According to a lawsuit filed by X, Media Matters' statements were entirely and maliciously false. "Media Matters knowingly and maliciously manufactured side-by-side images depicting advertisers' posts on X Corp.'s social media platform beside Neo-Nazi and white-nationalist fringe content and then

AMERICAN OVERSIGHT

portrayed these manufactured images as if they were what typical X users experience on the platform." Complaint, *X Corp. v. Media Matters for America*, No. 4:23-cv-1175, ECF 1 ¶ 1 (N.D. Tex. Nov. 20, 2023). Media Matters did this by "manipulat[ing] the algorithms … to bypass safeguards." *Id.* ¶¶ 7–8. While Media Matters insisted that paid advertisements regularly "appeared alongside the fringe content," in fact that was true "for *only one* viewer (out of more than 500 million) on all of X: *Media Matters*." *Id.* ¶ 13 (emphasis in original); Reed decl. ¶¶ 8–10. Yet Media Matters' false "reporting" had the desired effect: advertisers withdrew from X in droves.

The brand-safety organization DoubleVerify recently debunked Media Matters' assertion, confirming that the allegation that X was regularly populating advertisements next to fringe content is false. The organization, "which provides brand-safety measurement ratings for digital platforms to major advertisers," recently stated that X's "Brand Safety Rates" were nearly perfect—99.99%—during the very time when Media Matters accused X of regularly posting brand advertisements next to fringe content. Todd Spangler, *DoubleVerify Apologizes for Misreporting X/Twitter's Brand-Safety Rates for More Than Four Months*, Variety (Apr. 15, 2024);[1] Reed decl. ¶ 10.

Similarly, the federal district court overseeing the X lawsuit against Media Matters recently previewed that the court believes X's lawsuit should proceed toward trial. In rejecting Media Matters' request to stay discovery, the court held that, on a preliminary view, "it appears that Plaintiff [X Corp.] sufficiently pleads facts supporting its claims." *X Corp.*, Order denying motion

[1] https://variety.com/2024/digital/news/x-twitter-brand-saftey-rate-doubleverify-apology-1235971603/

AMERICAN OVERSIGHT

to stay discovery, ECF 54 at 8.[2] The court further noted that Media Matters' argument on the merits was the "weakest" argument it had presented. *Id.*

II. The Missouri Attorney General launched an investigation based on well-established statutory authority.

Media Matters has substantial connections with Missouri. As Media Matters acknowledges, it writes articles about events in Missouri. ECF 49-1 at 12 n.11. It distributes a newsletter to thousands of readers in Missouri. *Cf. Johnson v. TheHuffingtonPost.com, Inc.*, 21 F.4th 314, 318 (5th Cir. 2021) (prohibiting exercising jurisdiction when a website is merely available in a venue, but permitting exercising jurisdiction when a media organization does more, such as "interact[ing] with its visitors" in that venue). And though it denies "specifically targeting Missouri" in its nationwide fundraising drives, it implicitly concedes that it solicits donations from Missourians. ECF 49-3 ¶¶ 24–25.

"The Missouri Attorney General's Office discovered that Media Matters not only distributes its newsletter in Missouri, but engages in internet and email solicitations, phone solicitations, and in-person solicitations for fundraising." Reed decl. ¶ 7. In its public financial disclosures, Media Matters identifies Missouri "as a state in which it 'is registered or licensed to solicit contributions or has been notified it is exempt from registration.'" *Id.* (quoting Form 990, Media Matters (2021)).[3] Because of Media Matters' extensive activities in Missouri, it "specifically communicated with the Missouri Attorney General's Office to seek an exemption from registration for its fundraising in Missouri." Reed decl. ¶ 7. Missouri law permits 501(c)(3) organizations to solicit donations without registering. Mo. Rev. Stat. § 407.456.2(6).

---

[2] https://storage.courtlistener.com/recap/gov.uscourts.txnd.383454/gov.uscourts.txnd.383454.54.0.pdf

[3] https://cloudfront.mediamatters.org/static/D8File/2023/11/20/fy21-mmfa-form-990-public-disclosure.pdf?VersionId=7yQZc6sgNQflOrjdO1GHlsPMHmzi6HWD

AMERICAN OVERSIGHT

The Missouri Attorney General grew concerned about the representations that Media Matters provides to Missourians as it solicits donations and whether those representations are unlawfully deceptive. For example, if Media Matters misrepresents what it intends to do with donations or misrepresents the nature of the company as it solicits donations, that is a hand-in-glove violation of Missouri's consumer protection statute, which forbids "[t]he act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose." Mo. Rev. Stat. § 407.020. This statute is broad. Its words "cover every practice imaginable and every unfairness to whatever degree." *Ports Petroleum Co., Inc. of Ohio v. Nixon*, 37 S.W.3d 237, 240 (Mo. 2001).

So the State of Missouri, through the Attorney General, launched an investigation into whether Media Matters violated Missouri law when soliciting donations from Missourians. Reed decl. ¶ 11. The Missouri Attorney General "routinely" investigates potential violations of Missouri's consumer protection statutes, and begins those investigations with a civil investigative demand for information and materials "dozens" of times each year. *Id.* ¶¶ 4, 11. Missouri's statute gives the State authority to investigate (1) whenever "it appears to the attorney general that a person has engaged in or is engaging in any method, act, use, practice or solicitation declared to be unlawful by this chapter" or (2) whenever "he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in or is engaging in any such method, act, use, practice or solicitation." Mo. Rev. Stat. § 407.040.

Using this authority, the State issued a "civil investigative demand, or "CID" to Media Matters by mail. *Id.* ¶ 12. A CID is an administrative subpoena. *State ex rel. Koster v. Charter*

AMERICAN OVERSIGHT

Communications, Inc., 461 S.W.3d 851, 855–57 (Mo. App. W.D. 2015). Then, because Media Matters had already made its position clear that it would not comply with any CID related to its in-state solicitations and false statements about X unless forced by a court to do so, the State of Missouri filed an enforcement action in state court. *Id.* ¶ 14. Missouri law permits a party in litigation to avoid waiting to take action when doing so would be futile. *E.g.*, *New Eng. Carpenters Pension Fund v. Haffner*, 391 S.W.3d 453, 460 (Mo. App. S.D. 2012).

III. Media Matters began exercising its legal rights in Missouri state court.

Media Matters has already begun defending itself in Missouri state court. For example, Missouri law grants any party the legal right to exercise one peremptory strike against a judge. *State ex rel. Manion v. Elliott*, 305 S.W.3d 462, 464 (Mo. 2010) ("Rule 51.05 grants a party the absolute right to disqualify a judge once without cause or any showing of prejudice."). The very first thing Media Matters chose to do in the litigation in state court was not to contest personal jurisdiction, but instead to exercise this legal right. On the same day an attorney for Media Matters entered its appearance in state court, the company moved to transfer the case to a new judge in state court. Motion, *Missouri v. Media Matters*, 24AC-CC02291 (Apr. 18, 2024).[4] Then Media Matters scheduled a hearing on the motion.[5] The motion was granted.

SUMMARY OF ARGUMENT

I. The Court should abstain under *Younger* and dismiss. *Younger* is jurisdictional and, except in extraordinary circumstances, requires federal courts to dismiss federal lawsuits that would have the practical effect of enjoining state court proceedings. Here, there is an ongoing enforcement proceeding in state court. Binding Supreme Court precedent requires this Court to

[4] https://www.courts.mo.gov/fv/c/Application%20for%20Change%20of%20Judge.PDF?courtCode=19&di=3131776

[5] https://www.courts.mo.gov/fv/c/Notice%20of%20Hearing.PDF?courtCode=19&di=3131778

AMERICAN OVERSIGHT

presume that forum is adequate, and Media Matters does not deny that it will receive a full and fair opportunity to present its defenses in state court. Indeed, Media Matters has already consented to personal jurisdiction in state court. Missouri law requires a defendant to object to personal jurisdiction at the "first opportunity." Media Matters declined, instead opting to first exercise other legal rights. It has already filed, and received, legal relief in the ongoing enforcement proceeding.

The Supreme Court has said there are some (exceedingly narrow) exceptions to *Younger*, but Media Matters does not plead or argue that those apply here. As Media Matters bears the burden, the issue is waived. In any event, the "bad-faith" exception applies only to accusations of bad faith about state court judges, not prosecutors. Similarly, Media Matters does not and cannot contend that Missouri's statute is "patently invalid." It has been in place for 60 years and has repeatedly survived legal challenges under federal law. No exception to *Younger* applies.

II. Media Matters has not established personal jurisdiction over the Missouri Attorney General. The D.C. long-arm statute does not extend to merely using a process-server to serve a lawsuit. And personal jurisdiction here would violate the Due Process Clause. Courts regularly conclude that a defendant does not "purposefully avail" themselves of a forum merely by sending mail into that forum. Media Matters' argument is also deeply ironic. It contends that merely sending mail into D.C. subjects the Missouri Attorney General to personal jurisdiction, but then it flatly states that Missouri courts "obviously" lack jurisdiction over Media Matters even though Media Matters' contacts with Missouri are far more substantial. Media Matters admits, for example, that it solicits donations from residents in Missouri.

III. Other jurisdictional issues similarly doom Media Matters' case. Media Matters seeks prospective injunctive relief, but to do that, it must establish that it lacks an adequate remedy other than an injunction by this Court. It cannot do so. The Supreme Court has already held that there

AMERICAN OVERSIGHT

exists an adequate remedy when a party is able to challenge a request for documents in state court. *Reisman v. Caplin*, 375 U.S. 440 (1964). Unlike under Texas law, which this Court determined did not permit Media Matters to challenge the CID, Missouri law expressly authorizes Media Matters to challenge the CID in state court.

Media Matters also has not established ripeness. As the Ninth Circuit concluded, where a CID is not self-executing and a party can raise its defenses in state court, an action in federal court challenging the CID is not ripe. *Twitter, Inc. v. Paxton*, 56 F.4th 1170 (9th Cir. 2022).

IV. Media Matters is unlikely to succeed on the merits. Under binding Supreme Court precedent, a retaliation claim can proceed only if the government action could not be justified by any legitimate motive. For example, the existence of probable cause necessarily defeats a claim of retaliatory arrest—no matter the arresting officer's motive. *Nieves v. Bartlett*, 139 S. Ct. 1715 (2019). Here, there is probable cause that Media Matters has been deceptive. Moreover, the Supreme Court has held that adverse actions are not actionable if they are "immaterial." Merely having to litigate in state court instead of federal is not a material injury.

The other claims by Media Matters—which this Court declined to accept with respect to Texas—are similarly meritless. The First Amendment case law cited by Media Matters expressly *permits* using subpoenas to seek this kind of information; the state shield laws do not apply extraterritorially; and while a court's alleged inability to exercise personal jurisdiction is grounds for a motion to dismiss, a plaintiff does not commit a constitutional tort by suing somebody in that venue. Media Matters has also failed to develop many of these arguments. They are thus waived.

V. Media Matters has no irreparable harm because it has an adequate remedy in state court.

VI. The balance of equities favors Missouri. Media Matters' harms are self-inflicted, and its attempt to enjoin state courts from proceeding would impose grave harms to federalism.

AMERICAN OVERSIGHT

ARGUMENT

"[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (quoting 11 Wright & Miller, Federal Practice and Procedure § 2948, pp. 129–130 (2d ed. 1995)). The preliminary injunction factors are well established: plaintiffs must show (1) they are "likely to succeed on the merits"; (2) they are "likely to suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of equities tips in [their] favor"; and (4) "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (citations omitted). The first factor—success on the merits—includes demonstrating a likelihood of establishing jurisdiction. *See Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 913–14 (D.C. Cir. 2015). Here, Media Matters cannot establish jurisdiction or any of the other factors for a preliminary injunction.

I. *Younger* Abstention Applies and Dismissal is Required.

The claim against the Missouri Attorney General is crucially different from the claim against the Texas Attorney General in a dispositive respect: there is an ongoing proceeding to enforce the CID in state court. When a public official initiates a proceeding in state court, federal courts must, "except in extraordinary circumstances," abstain from suits that would interfere with that ongoing state proceeding. *JMM Corp. v. District of Columbia*, 378 F.3d 1117, 1120 (D.C. Cir. 2004). This doctrine is "treated as jurisdictional." *Steel Co. v. Citizens for a Better Envt.*, 523 U.S. 83, 100 n.3 (1998) (citing *Younger v. Harris*, 401 U.S. 37 (1971)). And "[w]here the *Younger* requirements are met, the appropriate remedy is dismissal." *J. & W. Seligman & Co. Inc. v. Spitzer*, No. 05CIV.7781, 2007 WL 2822208, at *3 (S.D.N.Y. Sept. 27, 2007).

The reason for abstention is both practical and compelled by foundational concepts of federalism. On the practical side, when a state proceeding is already ongoing, abstention "avoid[s]

AMERICAN OVERSIGHT

a duplication of legal proceedings." *Sprint Commun., Inc. v. Jacobs*, 571 U.S. 69, 77 (2013). More importantly, abstention ensures "a proper respect for state functions." *Id.* "[I]nterference with a state judicial proceeding prevents the state not only from effectuating its substantive policies, but also from continuing to perform the separate function of providing a forum competent to vindicate any constitutional objections interposed against those policies." *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975). This interference also "can readily be interpreted 'as reflecting negatively upon the state courts' ability to enforce constitutional principles.'" *Id.* (citation omitted).

Although the doctrine originally was announced in the criminal context, it has been clear for 50 years that a lawsuit in federal court that would interfere with a civil action in state court also poses a "threat to our federal system," so *Younger* "is thus applicable to a civil proceeding such as this quite as much as it is to a criminal proceeding." *Id.* at 604; *see also id.* ("offense to the State's interest"). The most recent Supreme Court case on *Younger* abstention identified three categories of state proceedings warranting abstention. "First, *Younger* precluded federal intrusion into ongoing state criminal prosecutions. Second, certain civil enforcement proceedings warranted abstention. Finally, federal courts refrained from interfering with pending civil proceedings involving certain orders uniquely in furtherance of the state courts' ability to perform their judicial functions." *Sprint*, 571 U.S. at 78 (internal citations and quotation marks omitted). Here, the enforcement action in Missouri state court fits within both the second and third categories.

A. The second *Younger* category applies.

The enforcement proceeding in Missouri is a "civil enforcement proceeding[ ]" within the scope of *Younger* abstention. *Sprint* defines the subset of civil enforcement proceedings that satisfy *Younger* as those civil proceedings that are "'akin to a criminal prosecution' in 'important respects.'" *Id.* at 79. The "important respects" are that the ongoing proceeding is initiated by the State (rather than a private party) and seeks to enforce state law against a private actor. *Id.*

AMERICAN OVERSIGHT

Specifically, "[i]n cases of this genre, a state actor is routinely a party to the state proceeding and often initiates the action," "[i]nvestigations are commonly involved," and "[s]uch enforcement actions are characteristically initiated to sanction the federal plaintiff, *i.e.*, the party challenging the state action, for some wrongful act." *Id.* The ongoing action in Missouri meets these indicia.

First, the enforcement action was "initiated by 'the State in its sovereign capacity.'" *Id.* at 80 (citation omitted). The caption of that case is *State of Missouri, ex rel. Andrew Bailey v. Media Matters*. ECF 39-6. The Missouri Attorney General is authorized by state law to "institute, in the name and on the behalf of the state, all civil suits and other proceedings at law or in equity requisite or necessary to protect the rights and interests of the state, and enforce any and all rights, interests or claims against any and all persons, firms or corporations." Mo. Rev. Stat. § 27.060. The Missouri Attorney General has done so on behalf of the State here.

Second, Media Matters acknowledges that the case initiated by the State involves an investigation. Missouri law specifically authorizes "the AG to issue CIDs in its investigation of possible violations of the Missouri Merchandising Practices Act." *Charter Communications*, 461 S.W.3d at 856 (citing Mo. Rev. Stat. § 407.040); *see also* Reed decl. ¶ 4.

And third, the enforcement action was brought to enforce state law against "the party challenging the state action, for some wrongful act." Specifically, Media Matters, as a company that solicits donations from residents of Missouri, is required to "comply with the terms [of the CID] unless otherwise provided by an order of a court" in Missouri. Mo. Rev. Stat. § 407.080. The enforcement action was undertaken to force Media Matters to abide by its legal duty and reverse its illegal refusal to comply.

Other courts have abstained in similar circumstances. For example, the Supreme Court invoked *Younger* "to bar a federal court from entertaining a lawyer's challenge to a New Jersey

AMERICAN OVERSIGHT

state ethics committee's pending investigation of the lawyer." *Sprint*, 571 U.S. at 81 (citing *Middlesex Cnty. Ethics Comm. v. Garden State B. Ass'n*, 457 U.S. 423, 433–35 (1982)). Similarly, the Supreme Court invoked *Younger* when Ohio opened a proceeding to enforce a state nuisance law. *Huffman*, 420 U.S. at 595. Lower courts also regularly apply *Younger* when a party files a federal lawsuit to challenge application of a state's consumer-protection law. *E.g.*, *Cedar Rapids Cellular Tel., L.P. v. Miller*, 280 F.3d 874, 882 (8th Cir. 2002) (abstaining from a lawsuit seeking to "enjoin the Attorney General from taking any action ... to enforce" Iowa consumer-protection law); *cf. PDX N., Inc. v. Commr. New Jersey Dept. of Lab. and Workforce Dev.*, 978 F.3d 871, 881–82 (3d Cir. 2020) ("The trial court correctly dismissed PDX's case but erred in dismissing SLS's case because, for SLS, there was no ongoing judicial proceeding.").

Even more on point, courts regularly abstain when a state has issued CIDs or other subpoenas and then opened a state court proceeding to enforce the subpoena. The *Backpage* case, which involved the Missouri Attorney General, is on all fours with this one. There, the Missouri Attorney General served a CID on a company, Backpage, and then filed a state lawsuit to enforce the CID. Just like here, Backpage filed a federal lawsuit several weeks later, "asking the Court to 'enjoin and declare unlawful' AG Hawley's efforts to investigate." *Backpage*, 2017 WL 5726868, at *3. And just like here, Backpage argued that the investigation violated the First, Fourth, and Fourteenth Amendments, as well as Missouri's consumer-protection statute (the MMPA). *Id.* The court ruled that abstention was required because of the existing proceeding in state court, so the court dismissed the case. *Id.* at *1, 13.

Many other cases apply the same analysis and abstain. While Texas did not initiate a proceeding to enforce its CID this time, when Texas does so, courts abstain. A court did so just three months ago in a suit brought against the Texas Attorney General, because Texas initiated a

AMERICAN OVERSIGHT

proceeding in state court, meaning that "federal action would have the practical effect of enjoining the state proceedings." *Yelp Inc. v. Paxton*, No. 23-CV-04977-TLT, 2024 WL 413464, at *3 (N.D. Cal. Feb. 1, 2024); *see also, e.g.*, *Berrada Properties Mgt. Inc. v. Romanski*, 608 F. Supp. 3d 746, 750 (E.D. Wis. 2022) (abstaining in action "to quash the CIDs" even though state court action was filed later than the federal action); *Seligman*, 2007 WL 2822208, at *6 ("*Younger*'s 'ongoing proceeding' requirement was 'clearly satisfied' when a state agency charged with investigating and administratively prosecuting violations of New York's lobbying laws issued subpoenas").

The critical fact is whether a state enforcement proceeding exists. For example, in *Google, Inc. v. Hood*, the Fifth Circuit determined that *Younger* abstention was improper largely because Mississippi CIDs are "non-self-executing" and yet the Mississippi Attorney General had "*not* moved to enforce the administrative subpoena in any state court." 822 F.3d 212, 223 (5th Cir. 2016) (emphasis added). Missouri CIDs also "are not self-enforcing," *Backpage*, 2017 WL 5726868, at *6, but unlike in *Google*, the Missouri Attorney General has filed an action in state court to enforce the CID. *Younger* abstention thus applies. *Sprint*, 134 S. Ct. at 593.

B. The third *Younger* category also applies.

The Missouri state court action also falls within the third category identified by *Sprint*. Citing its prior decision in *Juidice v. Vail*, 430 U.S. 327 (1977), the *Sprint* Court explained that *Younger* abstention applies to state proceedings that "touch on a state court's ability to perform its judicial function." *Sprint*, 134 S. Ct. at 592. *Vail* involved a federal action challenging a state-court proceeding to enforce a subpoena. 430 U.S. at 329–30. The Supreme Court held that the federal district court was required to abstain under *Younger* because the plaintiff, by challenging the ability of a state court to enforce a subpoena, attacked the "process[ ] through which [the state] vindicates the regular operation of its judicial system." *Id.* at 335. "Moreover," the Court

AMERICAN OVERSIGHT

explained, a federal-court lawsuit challenging such proceedings "unduly interferes with the legitimate activities of the State." *Id.* at 336 (quotation and brackets omitted).

So too here. Like in *Vail*, Media Matters attacks the ability of Missouri courts to enforce subpoenas. The state-court action here involves an attempt to enforce a subpoena issued under state law. *See Charter Communications*, 461 S.W.3d at 855–57 (explaining that CIDs constitute administrative subpoenas). Indeed, this case strikes closer to the core concerns of *Younger*, because while the subpoena in *Vail* was issued by a private litigant, 430 U.S. at 329, the subpoena here was issued by the State acting in its sovereign law-enforcement capacity.

The federal court in *Backpage* squarely held that federal actions seeking to block Missouri CIDs fall within the third *Younger* category. *Backpage*, 2017 WL 5726868, at *6. As the court there recognized, Missouri "state courts play a significant role in the investigation and prosecution of unlawful merchandising practices." *Id.* at *7. In Missouri, "CIDs are not self-enforcing." *Id.* at *6. Instead, the Attorney General must rely on courts to enforce CIDs. *Id.* at *7 ("If the recipient of a CID fails to comply with its demands, the attorney general may file in state court a petition 'for an order of such court for the enforcement' of the CID,' .... Mo. Rev. Stat. § 407.090."). Because a "request that the Court enjoin AG [Bailey]'s efforts to investigate and prosecute potential violations of the MMPA necessarily affects functions performed by the state court ... the third *Sprint* category also requires this Court to abstain." *Id.* at *8.

Similarly, *Lupin Pharmaceuticals, Inc. v. Richards*, No. 15-1281, 2015 WL 4068818 (D. Md. July 2, 2015), is directly on point. In *Lupin*, the target of a CID served by the Alaska Attorney General filed a federal-court action challenging the CID. *Id.* at *2. The Alaska Attorney General, in turn, filed a state-court action to enforce the CID under Alaska Stat. § 45.50.592(g), which is nearly identical to Mo. Rev. Stat. § 407.090. *Id.* Applying the *Sprint* framework, the district court

AMERICAN OVERSIGHT

concluded that the state-court enforcement proceeding "clearly" warranted abstention under *Younger*. *Id.* at *3.

C. The ongoing proceeding in Missouri state court implicates important state interests and affords Media Matters an adequate opportunity to raise its federal claims.

Once a court has determined that one of the three *Younger* categories applies, the Supreme Court has said the court may consider three "additional factors": whether there is "(1) an ongoing state judicial proceeding, which (2) implicates important state interests, and (3) provides an adequate opportunity to raise federal challenges." *Sprint*, 571 U.S. at 81 (alterations accepted; internal quotation marks and emphasis omitted). All three are met here.

The first factor is obviously met. Media Matters brought this suit to *stop* the ongoing state-court proceeding. The state-court matter was filed before Media Matters sued the Missouri Attorney General, but even if Media Matters had sued first, the D.C. Circuit has concluded that a state action need not be filed first. *JMM*, 378 F.3d at 1126 (abstaining under *Younger* even though the local action was filed "two months after" the federal action); *see also Aaron v. Target Corp.*, 357 F.3d 768, 775 (8th Cir. 2004) ("no fixed requirement in the law that a state judicial proceeding must have been initiated before the federal case was filed for abstention to be appropriate").

The second factor similarly is met. It is well recognized that a state "has an important interest in enforcing its consumer protection statutes." *Cedar Rapids Cellular*, 280 F.3d at 879–80; *Credit One Bank, N.A. v. Hestrin*, 60 F.4th 1220, 1232 (9th Cir. 2023) ("Hestrin's state action seeks to enforce the state's consumer protection laws, undoubtedly an important interest."); *Yelp*, 2024 WL 413464, at *3 ("Texas has an interest in protecting its consumers from 'deceptive trade practices.'"). In addition, "[w]here the state is in an enforcement posture in the state proceedings, the 'important state interest' requirement is easily satisfied, as the state's vital interest in carrying out its executive functions is presumptively at stake." *Potrero Hills Landfill, Inc. v. Cnty. of*

AMERICAN OVERSIGHT

Solano, 657 F.3d 876, 883–84 (9th Cir. 2011). The State is both "in an enforcement posture" and is "enforcing its consumer protection statutes," so the second factor is "easily satisfied." *Id.* The ongoing proceeding also "implicates important state interests" because enforcing CIDs is part of "a state court's ability to perform its judicial function." *Sprint*, 134 S. Ct. at 592; *see also Vail*, 430 U.S. at 335 ("the regular operations of its judicial system … is surely an important interest").

Likewise, the third factor is easily met: Media Matters has "an opportunity to present [its] federal claims in the state proceedings." *Vail*, 430 U.S. at 337. Media Matters "carries the burden of demonstrating that the Missouri proceedings do not provide 'an adequate o pportunity' for it to raise constitutional claims." *Geier v. Missouri Ethics Comm'n*, 715 F.3d 674, 678–79 (8th Cir. 2013). But Media Matters has not disputed that it has that opportunity. In fact, it has already successfully moved in state court to exercise its legal rights under Missouri law. And "a federal court should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 15 (1987).

The Missouri Merchandising Practices Act specifically provides Media Matters an opportunity to petition "to modify or set aside the civil investigative demand." Mo. Rev. Stat. § 407.070. The deadline to do so was April 15, 2024. ECF 39-6 at 8. The statute also gives Media Matters the opportunity to seek extension of that deadline. Mo. Rev. Stat. § 407.070. And of course, Media Matters can assert its claims defensively in response to the State's enforcement action. CID recipients routinely raise challenges under federal law in proceedings involving Missouri's consumer protection statute. *E.g.*, *State ex rel. Ashcroft v. Goldberg*, 608 S.W.2d 385, 388 (Mo. 1980) (Fourth, Fifth, and Fourteenth Amendments).

Abstention is especially necessary "to avoid unwarranted determination of federal constitutional questions." *Pennzoil*, 481 U.S. at 11. Media Matters disputes the Missouri Attorney

AMERICAN OVERSIGHT

General's interpretation of Missouri law. Supp. Compl. ¶¶ 27, 30. If Media Matters prevails, it would render the federal constitutional claims moot. "*Younger* abstention in situations like this 'offers the opportunity for narrowing constructions that might obviate the constitutional problem and intelligently mediate federal constitutional concerns and state interests.'" *Pennzoil*, 481 U.S. at 12 (citation omitted). In other words, if Media Matters prevails on its statutory arguments, constitutional issues would disappear. Failure to abstain, in contrast, might result in "a reading of the statute that is not binding on state courts and may be discredited at any time—thus essentially rendering the federal-court decision advisory." *Moore v. Sims*, 442 U.S. 415, 428 (1979); *see also Berrada Properties*, 608 F. Supp. 3d at 751 (federal intervention is "doubly offensive" because "it requires the Court to make the first pass at several Wisconsin statutory provisions"). Because the controversy between the State of Missouri and Media Matters involves disputed issues of state law, state courts should have the first opportunity to adjudicate the controversy.

D. Media Matters has waived the issue whether any exception to abstention applies, and in any event, no exception applies.

The Supreme Court has recognized "narrow exceptions to the doctrine that federal courts should not interfere with state" proceedings. *Huffman*, 420 U.S. at 602. But "[i]t is the plaintiff's 'heavy burden' to overcome the bar of *Younger* abstention." *Weitzel v. Div. of Occupational and Prof. Licensing of Dept. of Com. of State of Utah*, 240 F.3d 871, 877 (10th Cir. 2001).[6] Media Matters, however, tellingly has not even mentioned *Younger* abstention, much less pleaded or argued that an exception applies, even though Texas, in its opposition to Media Matters' motion to supplement the complaint, explained that "adding Attorney General Bailey as a defendant in

[6] *See also Diamond "D" Const. Corp. v. McGowan*, 282 F.3d 191, 198 (2d Cir. 2002); *Gates v. Strain*, 885 F.3d 874, 881 (5th Cir. 2018); *FreeEats.com, Inc. v. Indiana*, 502 F.3d 590, 596 (7th Cir. 2007); *Plouffe v. Ligon*, 606 F.3d 890, 893 (8th Cir. 2010); *Leonard v. Alabama State Bd. of Pharm.*, 61 F.4th 902, 908 (11th Cir. 2023).

AMERICAN OVERSIGHT

this case would require this Court to consider the relevance of the existing Missouri proceedings. *Cf. Younger v. Harris*, 401 U.S. 37 (1971)." ECF 40 at 3. Media Matters has thus waived this issue. *Power Co. of Am., L.P. v. FERC*, 245 F.3d 839, 845 (D.C. Cir. 2001) ("This argument was not raised in PCA's opening brief and is therefore waived.").

In any event, Media Matters could not establish any exception. *Younger* recognized that there might be narrow exceptions to abstention in criminal cases for "bad faith, harassment, or a patently invalid state statute." *Sprint*, 571 U.S. at 77. But these are very "narrow exceptions." *Huffman*, 420 U.S. at 602. And none applies here.

Consider "bad faith" and "harassment." Courts and treatises typically treat these together as one exception, not two. *E.g.*, *Perez v. Ledesma*, 401 U.S. 82, 97 (1971) (Brennan, J., concurring) ("bad-faith harassment"); Wright & Miller, 17B Fed. Prac. & Proc. Juris. § 4255 (3d ed.) (same); *id.* n.6 ("one cannot readily imagine either good-faith harassment or bad-faith without harassment" (citation omitted)). This exception is incredibly narrow. So narrow, in fact, that "the universe of bad-faith harassment claims that can be established is virtually empty." *Id.* § 4255 (citation omitted). "There is no case since *Younger* was decided in which the [Supreme] Court has found that the exception for bad faith or harassment was applicable." *Id.* It is not even clear the exception applies in civil cases at all. "While the Supreme Court has not ruled out use of the bad faith exception in civil cases, it has never directly applied the exception in such a case and we have only recognized it in the criminal context." *Aaron*, 357 F.3d at 778 (internal citation omitted).

One reason it is narrow is because it "requires a showing of bad faith on the part of the *state court judges*," not the state officials who brought the enforcement action. Wright & Miller, § 4255 n.11 (emphasis added). Specifically, the Supreme Court in *Vail* held that the bad-faith harassment exception did not apply even though "some paragraphs of the complaint could be

AMERICAN OVERSIGHT

construed to make such allegations as to the" parties who brought the state action. *Vail*, 430 U.S. at 338. The reason, the Supreme Court said, is because "there are no comparable allegations with respect to [the state court] justices" in that state court proceeding. *Id.* The Supreme Court immediately went on to say, "This exception *may not be utilized* unless it is alleged and proved that they [state judges] are enforcing the contempt procedures in bad faith or are motivated by a desire to harass." *Id.* (emphasis added).

The requirement that the "bad-faith harassment" exception is triggered only when *judges* act in bad faith makes sense. Our federalist system presumes that state courts are adequate to the job, *Pennzoil*, 481 U.S. at 15, so even if an executive official could be shown to have brought an action in bad faith, our system presumes that state courts will be able to adjudicate all defenses to that action just as well as if the action were brought in federal court, *see id.* Media Matters has not, and cannot, establish bad faith by Missouri court judges—who have so far made no rulings in the ongoing state court proceeding other than to *grant* Media Matters' motion to change judges.

The same is true with the "patently invalid statute" exception. Media Matters has not alleged, and cannot allege, that Missouri's consumer-protection statute is "patently invalid." The statute has been in place for 60 years and has repeatedly survived constitutional challenge. *E.g.*, *State ex rel. Nixon v. Telco Directory Pub.*, 863 S.W.2d 596, 600 (Mo. 1993); *State v. Shaw*, 847 S.W.2d 768, 776 (Mo. 1993). In any event, even "facial invalidity of a statute is not itself an exceptional circumstance justifying federal interference." *Huffman*, 420 U.S. at 602. The statute must "be flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it." *Id.* (citation omitted). Media Matters plainly cannot satisfy this arduous standard.

AMERICAN OVERSIGHT

The closest Media Matters gets to asserting any exception is to assert that the CID was not issued for "any good-faith investigative reason" because the CID and the lawsuit "apparently" do not "identif[y] any new facts" discovered since November. ECF 49-1 at 11–12 (emphasis omitted). But as Media Matters acknowledges right before that, state law does not require a CID to state these things. *Id.* at 10 ("[T]he Missouri Attorney General is not required by statute to show probable cause or establish jurisdiction before issuing a civil investigative demand.").

Similarly, Media Matters asserts there is no "good-faith investigative purpose" because Missouri moved to enforce the CID on the same day that Missouri issued the CID. *Id.* at 12–13. But that was permitted by Missouri law because waiting would have been futile; Media Matters had already made clear in its public statements and position in the lawsuit against Texas that it would not comply with any CID served by Missouri. Reed decl. ¶ 14. Media Matters' actions since have proven Missouri correct. In any event, the timing of Missouri's complaint in state court is irrelevant to the validity of the underlying investigation.

Neither of these accusations is against the courts of Missouri, and so even if the Court credited them, they would fail as a matter of law. But even setting aside that issue, other courts have repeatedly stressed that the "burden" of establishing bad faith "is heavy, as these exceptions are narrow." *Yelp*, 2024 WL 413464, at *4 (quotation omitted). In *Yelp*, for example, the court abstained even after determining that "Yelp's allegations of bad faith tell a persuasive story": the State had conducted only a "thin investigation," had entirely flipped its position, and was pursuing an enforcement action over a statement "even though it conceded that the [statement] is accurate." *Id.* at *5–6. The court said it was "not convinced that Paxton acted entirely in good faith," but all the evidence of bad faith was still insufficient to meet the arduous, narrow exception to *Younger*—so narrow that the Supreme Court has never found the exception satisfied.

AMERICAN OVERSIGHT

E. Media Matters consented to personal jurisdiction in Missouri state court.

Abstention is especially warranted here because Media Matters already consented to personal jurisdiction in Missouri courts. Media Matters asserts repeatedly that Missouri courts "obviously lack personal jurisdiction" over it. *E.g.*, ECF 49-1 at 35. That was always wrong, but it is especially wrong following Media Matters' filings in that case.

Missouri law is clear that a defendant waives personal jurisdiction if the defendant does "not immediately raise any objection to personal jurisdiction." *Everett v. Vance*, 685 S.W.3d 495, 502 (Mo. App. W.D. 2023). "Personal jurisdiction 'is waived if not raised at the *first* opportunity.'" *Id.* (citation omitted) (emphasis added). The only exceptions are for entries of appearance and motions for extensions of time. *E.g.*, *State ex rel. Antoine v. Sanders*, 724 S.W.2d 502, 505 (Mo. 1987).

Media Matters did not challenge personal jurisdiction at its "first opportunity." Instead, it exercised its legal right under Missouri law to exercise a peremptory strike against a state court judge. It filed a motion to do so, which was granted, and it scheduled a court hearing on that motion. Media Matters was of course entitled to avail itself of that legal right under Missouri law, but its decision to do so before challenging personal jurisdiction necessarily waived the issue because it is well settled that a party "waive[s] its right to contest personal jurisdiction by seeking affirmative relief from the trial court." *Bland v. IMCO Recycling, Inc.*, 67 S.W.3d 673, 678 (Mo. App. S.D. 2002). As relevant here, "[t]he filing of a motion for change of judge constitutes seeking affirmative relief from the court," so Media Matters "has voluntarily submitted himself to the court's jurisdiction and is estopped from challenging the lack of personal jurisdiction." *Rollins Burdick Hunter of Utah, Inc. v. Bd. of Trustees of Ball State U.*, 665 N.E.2d 914, 919 (Ind. App. 1996).

AMERICAN OVERSIGHT

F. Fundamental limits on federal equity reinforce the need to abstain.

Failure to abstain would run headlong into foundational limits on federal court equity jurisdiction. As the Supreme Court reiterated recently, equity "does not normally permit federal courts to issue injunctions against state-court judges or clerks." *Whole Woman's Health v. Jackson*, 595 U.S. 30, 39 (2021). "As *Ex parte Young* put it, 'an injunction against a state court' or its 'machinery' 'would be a violation of the whole scheme of our Government.'" *Id.* (quoting *Ex parte Young*, 209 U.S. 123, 163 (1908)). Abstention is required because granting Media Matters relief would have the same effect as an injunction against the state courts of Missouri.

To be sure, Media Matters has not named a state court as a party, but the effect is the same. No abstention case the Supreme Court has decided has involved a suit against a court, and yet the Supreme Court has repeatedly stressed that abstention is necessary to avoid federal interference with a state court's "function of providing a forum competent to vindicate any constitutional objections." *Huffman*, 420 U.S. at 604. Regardless of who the party is, the effect is the same: Media Matters seeks an order here that would shut down the courts of Missouri.

II. There is No Personal Jurisdiction and, Therefore, the Case Should Be Dismissed.

This Court also lacks personal jurisdiction over the Missouri Attorney General. For personal jurisdiction, the court "must first examine whether jurisdiction is applicable under the state's long-arm statute and then determine whether a finding of jurisdiction satisfies the constitutional requirements of due process." *GTE New Media Servs. Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1347 (D.C. Cir. 2000). "The District of Columbia 'long-arm statute' enumerates the various acts of a nonresident defendant which support the assertion of personal jurisdiction." *Mouzavires v. Baxter*, 434 A.2d 988, 990 (D.C. Cir. 1981). Personal jurisdiction comports with due process only when the defendant has "minimum contacts with the forum state such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"

AMERICAN OVERSIGHT

Int'l Shoe Co. v. State of Wash., Off. of Unemployment Comp. & Placement, 326 U.S. 310, 316 (1945).

A. Plaintiffs have not satisfied the long-arm statute.

Here, Plaintiffs have not met the personal jurisdiction threshold under the District of Columbia long-arm statute. The applicable long-arm statute, D.C. Code § 13-423, provides in relevant part:

> (a) A District of Columbia court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's –
> . . .
> (1) transacting any business in the District of Columbia;
> . . .
> (3) causing tortious injury in the District of Columbia by an act or omission in the District of Columbia[.]

Id. Plaintiffs assert personal jurisdiction under both (a)(1) and (a)(3).[7]

Subsection (a)(1) does not support jurisdiction. Missouri, acting through its Attorney General, has not transacted business in the District merely by hiring a process server to *serve a lawsuit*. If that were the case, then parties, including sovereign states, could never sue an out-of-state entity with sufficient minimum contacts but without a registered agent in the state, without subjecting themselves to a corresponding retaliatory lawsuit filed in the state of service. This is not purposefully engaging in "some type of commercial or business-related activity directed at District residents." *Holder v. Haarman & Reimer Corp.*, 779 A.2d 264, 270–71 (D.C. 2001). Nor

[7] The State of Missouri, like Texas, asserts that the State does not fall under the D.C. long-arm statute, because it is not a "person," as provided in the statute.

Media Matters briefly suggests that another provision, subsection (a)(4), is also satisfied because the Missouri Attorney General is a party to a proceeding in the D.C. Circuit, but Media does not press that argument "for present purposes." ECF 49-1 at 18 n.13. In any event, it is wrong. The Missouri Attorney General does not subject himself to permanent jurisdiction in D.C. merely by participating in an unrelated lawsuit that is required to be filed in the D.C. Circuit.

AMERICAN OVERSIGHT

is it "any continuing corporate presence in the forum state directed at advancing the corporation's objectives." *AMAF Int'l Corp. v. Ralston Purina Co.*, 428 A.2d 849, 851 (D.C. 1981).

There is also no personal jurisdiction under subsection (a)(3) because Plaintiffs fail to establish that the Missouri Attorney General's alleged tortious conduct occurred in D.C. The CID was prepared in Missouri and relates to conduct of Media Matters in Missouri. Missouri did not hire a process server in D.C. for the CID, but instead mailed it from Missouri. And the Missouri lawsuit served in D.C. is merely the statutorily-authorized process provided for seeking enforcement because of Media Matters' refusal to respond to a request for information. Further, the investigation is occurring in Missouri and is inquiring into potential violations of *Missouri consumers'* rights. That is not alleged tortious conduct in D.C., but an investigation of unlawful conduct in Missouri.

Media Matters cannot get around these stubborn facts by misrepresenting state law and Supreme Court precedent. Media Matters says that Missouri's law simply authorizes "inspection" of documents and asserts that the Attorney General "would likely need to travel to the District of Columbia for such inspection." ECF 49-1 at 19. But Missouri law says that documents shall be "produce[d]," not inspected, and must be produced at the "place as may be stated in the civil investigative demand," which is Missouri. Mo. Rev. Stat. § 407.040. Media Matters also misstates Supreme Court precedent as holding that any mailing satisfies personal jurisdiction. ECF 49-1 at 23. But the case cited merely states that sending something through the mail is "a relevant contact," not a sufficient contact. *Walden v. Fiore*, 571 U.S. 277, 285 (2014). A mail-order business may satisfy sufficient contacts, but D.C. courts have repeatedly held that merely "mailing a letter or other material into Washington, DC from outside of the District does not qualify as an 'act . . . in the District of Columbia within the meaning of subsection (a)(3)." *Slate v. Kamau*, No.

AMERICAN OVERSIGHT

20-CV-3732 (BAH), 2021 WL 3472438, at *6 (D.D.C. Aug. 6, 2021) (internal citations omitted); *accord Moncrief v. Lexington Herald-Leader Co.,* 807 F.2d 217, 219–22 (D.C. Cir. 1986) (holding that "no act occurred within the District of Columbia" when "the libelous article was printed, and the newspapers were mailed, outside of the District of Columbia.").

Media Matters suggests there is a chill caused by receiving a CID in the mail inquiring about conduct in another state. Not so. The D.C. Circuit explicitly rejects the theory that the "injury is part of the tort" for the purpose of the long-arm statute "because such a theory would obliterate subsection (3)'s careful distinction between injury' and act." *Forras v. Rauf*, 812 F.3d 1102, 1107 (D.C. Cir. 2016) (internal quotation marks omitted); *see also Dyson v. Dutko Ragen Homes & Investments*, No. 21- CV-02280 (APM), 2022 WL 1294484, at *4 (D.D.C. Apr. 27, 2022) (noting that "limited communications initiated from outside the District of Columbia to a District resident do not qualify as an act 'in the District' for purposes of § 13-423(a)(3)").

Media Matters' "chilling" argument also proves far too much. Under that argument, Media Matters could sue in D.C. even if the State of Missouri had served the CID and lawsuit on Media Matters *outside* D.C. Media Matters has not provided any support for its idea that there is personal jurisdiction against the defendant wherever the allegedly injured *plaintiff* might reside. That would turn personal jurisdiction on its head. "[T]he plaintiff cannot be the only link between the defendant and the forum." *Walden*, 571 U.S. at 286.

B. Personal jurisdiction here would violate the Due Process Clause.

Personal jurisdiction in this case also does not meet the requirements of Due Process because the Missouri Attorney General, on behalf of the State of Missouri, does not have minimum contacts. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923 (2011). There is neither general jurisdiction—where a defendant is "essentially at home" in the forum state—nor specific jurisdiction, based on the contacts between the defendant, the forum state, and the

AMERICAN OVERSIGHT

controversy. *See Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 415–16 (1984); *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024–25 (2021). Media Matters does not contend that the Court has general jurisdiction.

Nor is there specific jurisdiction. Missouri did not "purposefully direct" conduct at the forum state "such that [it] should reasonably anticipate being haled into court there." *Lewis v. Mutond*, 62 F.4th 587, 591 (D.C. Cir. 2023) (citation omitted). "[A] plaintiff's claims must "aris[e] out of or relat[e] to the defendant's contacts with the forum." *Id.* (citation omitted). But Media Matters alleges no such thing.

Indeed, Media Matters alleges even *fewer* contacts by Missouri than the already minimal contacts alleged of Texas. While this Court found it meaningful that Texas delivered its CID through a process server, ECF 37 at 26, Missouri delivered its CID through the mail. If "email and telephone communications sent into the District of Columbia are not sufficient" for personal jurisdiction, *Associated Producers, LTD v. Vanderbilt U.*, 76 F. Supp. 3d 154, 165 (D.D.C. 2014), then neither is snail mail. *E.g.*, *Exponential Biotherapies, Inc. v. Houthoff Buruma N.V.*, 638 F. Supp. 2d 1, 9 (D.D.C. 2009) ("HB's telephone calls, emails, facsimiles and mailings, including invoices, to EBI's D.C. office are insufficient to subject it to this Court's personal jurisdictio n."). To be sure, Missouri used a process server for its state enforcement action, but Media Matters challenges much more than that. And if using a process server to serve a lawsuit is sufficient (it is not), then Media Matters has subjected itself to personal jurisdiction in Missouri by using a process server to serve its complaint on the Missouri Attorney General. ECF 48.

First Amendment concerns do not change or even enter into the personal jurisdiction analysis. *See Moncrief*, 807 F.2d at 222–24. To the extent Media Matters believes it experienced a heightened chill because the State of Missouri exercised its sovereign authority, that similarly

AMERICAN OVERSIGHT

does not affect the personal jurisdiction analysis. The default rule is that state agencies should not "have to defend [their] attempt to enforce [state] laws"—much less mere investigations under those laws—"in courts throughout the nation." *Stroman Realty v. Wercinski*, 513 F.3d 476, 487 (5th Cir. 2008); *accord Music Makers Holdings v. Sarro*, No. RWT-09-cv1836, 2010 WL 2807805, at *5 (D. Md. July 15, 2010) ("[R]ecent out-of-circuit court of appeals decisions have analyzed the issue in a variety of contexts and have uniformly held that cease-and-desist letters alone do not establish personal jurisdiction."). For these reasons, there is no personal jurisdiction.

C. Media Matters' jurisdictional argument is self-defeating.

A critical lynchpin of Media Matters' entire lawsuit is its bold assertion that Missouri courts "obviously lack personal jurisdiction" over Media Matters. ECF 49-1 at 35. Yet Media Matters' arguments for jurisdiction over the Missouri Attorney General would necessarily subject Media Matters to jurisdiction in Missouri. Media Matters contends, for example, that merely mailing something into D.C. subjects the Missouri Attorney General to jurisdiction. Yet Media Matters regularly emails newsletters to countless residents of Missouri. Jurisdiction is proper when an organization "circulat[es] magazines to deliberately exploit a market in the forum state." *Walden*, 571 U.S. at 285 (quotation marks omitted; brackets adopted). Media Matters also solicits (and receives) donations from Missourians. *E.g.*, Reed decl. ¶ 7. And Media Matters admits it writes articles about public figures in Missouri.

Media Matters' sole response to all this is to assert that the Missouri Attorney General—nearly 20 years ago—responded to a Media Matters inquiry and opined that the organization was exempt from registering under Missouri law. ECF 49-1 at 37; ECF 39-11. But Media Matters neglects to mention that under Missouri law, *all* 501(c)(3) organizations are exempt from registration. Mo. Rev. Stat. § 407.456.2(6). That law states that an organization seeking to solicit donations in Missouri must register with the Secretary of State unless the organization is, for

AMERICAN OVERSIGHT

example, religious, educational, or a 501(c)(3). *Id.* Exemption from registration says nothing about the organization's contacts with Missouri.

In fact, Media Matters' 2007 outreach to the Missouri Attorney General undermines Media Matters' contentions. Media Matters would not have reached out to the Missouri Attorney General in the first place unless it were soliciting donations in the State. (Its most recent public financial disclosure shows that it is still soliciting donations from Missouri. Reed decl. ¶ 7.) And the letter confirms Media Matters was in fact engaging in substantial contacts with Missouri, which is why the Attorney General's Office at the time invited Media Matters "to be included on the Missouri Attorney General's Office charity web page." ECF 39-11.

III. Media Matters Cannot Establish a Justiciable, Ripe Injury, Nor the Absence of an Adequate Remedy at Law.

To establish a justiciable controversy, Media Matters must establish not only the regular three elements of standing, but also that the dispute is "ripe" and—because Media Matters seeks a prospective injunction—that there is no adequate remedy at law. *Natl. Park Hosp. Ass'n v. Dept. of Int.*, 538 U.S. 803, 807 (2003) (ripeness); *Natl. Farmers Union Ins. Companies v. Crow Tribe of Indians*, 471 U.S. 845, 856 n.22 (1985) (adequate remedy). Media Matters has not done so.

The Supreme Court's decision in *Reisman v. Caplin*, 375 U.S. 440 (1964), makes clear that Media Matters cannot establish the lack of an adequate remedy at law. There, the Supreme Court held that an agency's non-self-executing request for documents is not reviewable until the agency tries to enforce it. The recipient of an administrative request for documents was not obligated to produce anything until after the agency brought an "enforcement action" where the recipient would be afforded "a judicial determination" of the lawfulness of the request and the viability of any of his defenses. *Id.* at 446. That "opportunity for judicial review before any coercive sanctions may be imposed" was an adequate "remedy"; and the court would not permit the recipient of the request

AMERICAN OVERSIGHT

to short-circuit this process by preemptively seeking an injunction in federal court. *Id.* at 450. That is exactly the opportunity being afforded Media Matters in Missouri state court, and it is taking advantage of that opportunity.

In granting a preliminary injunction against the Texas Attorney General, this Court concluded that *Reisman* did not apply because, unlike in *Reisman*, "[t]he Texas Code contains no equivalent remedies for a non-resident challenging a CID" as Texas law refers only to *in-state* defendants contesting a CID in state court. ECF 37 at 30. But Missouri law is different. Missouri law *does* include an equivalent remedy and expressly states that a person may challenge a CID in the "county where the parties reside *or* in the circuit court of Cole County." Mo. Rev. Stat. § 407.070 (emphasis added). Cole County contains Missouri's capital city, is an open venue for all out-of-state parties, and is the venue for the existing state proceeding. *Id.* Similarly, this Court faulted Texas for not citing "any authority holding that an exclusive remedy in foreign state court is an adequate remedy at law." ECF 37 at 30. But Missouri has cited relevant authority. The Supreme Court has repeatedly held that federal courts must presume that a state's courts are an adequate forum. *E.g.*, *Pennzoil*, 481 U.S. at 15 ("[A] federal court should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary.").

This Court also noted that *Reisman* did not involve the First Amendment, ECF 37 at 30, but that makes no difference because Media Matters seeks prospective relief. This Court noted that where a party asserts a First Amendment chill, an injury may have already occurred, unlike in *Reisman*. *Id.* (citing *Twitter, Inc. v. Paxton*, 56 F.4th 1170, 1178 (9th Cir. 2022)). But Media Matters has not sought any relief to rectify a *past* injury; Media Matters instead seeks relief to enjoin "*further* action to enforce" the CID. ECF 39-2 (supplemental complaint) ¶ 74 (emphasis

AMERICAN OVERSIGHT

added). It is axiomatic that when a plaintiff "seeks prospective declaratory and injunctive relief, he must establish an ongoing or future injury that is 'certainly impending'; he may not rest on past injury." *Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015). *Reisman* forecloses Media Matters from suing because Media Matters' ability to raise its defenses to future injury in state court means Media Matters has an adequate remedy at law, and "[i]t is a fundamental principle of long standing that a request for an injunction will not be granted as long as an adequate remedy at law is available." *Natl. Farmers Union*, 471 U.S. at 856 n.22.

Media Matters also cannot establish ripeness. Even if there were no adequate remedy at law, the *Twitter* case holds that where a recipient of a CID "can raise its First Amendment defense" in state court, then a federal challenge is not ripe. *Twitter*, 56 F.4th at 1177. "[U]nlike the analysis of *Reisman*, [the] ripeness analysis does not rely on the lack of an adequate remedy at law," and so it serves as an independent bar to judicial relief. *Id.* at 1179. Here, there is an enforcement action in Missouri state court and Media Matters is not only participating but will also have a full opportunity to raise its federal claims. As such, this case should be dismissed for ripeness.

These decisions are consistent with the routine conclusion by courts that "pre-enforcement review of investigative subpoenas" is strongly disfavored. *See, e.g., Belle Fourche Pipeline Co. v. United States*, 751 F.2d 332, 334 (10th Cir. 1984); *see also United States v. Kulukundis*, 329 F.2d 197, 199 (2d Cir. 1964) (Friendly, J.) (explaining *Reisman* "seems to destroy the basis underlying decisions of this court which authorized applications to vacate [non-self-executing subpoenas] (and appeals from their denial) in advance of any judicial proceeding by the Government for their enforcement"). This is true even if there is an assertion of First Amendment claims. *See, e.g., Google*, 822 F.3d at 226 (concluding, in the First Amendment context, that "administrative subpoena is not ripe for review" because it is not "self-executing").

AMERICAN OVERSIGHT

IV. There Is No Likelihood of Success on the Merits.

In addition to the foregoing reasons, the extraordinary relief Plaintiffs seek against the State of Missouri and its judicial proceedings should be denied because there is no likelihood of success on the merits.

A. Media Matters is unlikely to succeed on its retaliation claim.

To assert a First Amendment retaliation claim, Media Matters "must show, among other things, that the government took an 'adverse action' in response to [its] speech that 'would not have been taken absent the retaliatory motive.'" *Houston Community College System v. Wilson*, 595 U.S. 468, 477 (2022) (quoting *Nieves v. Bartlett*, 139 S. Ct. 1715, 1722 (2019)).

This is an exceptionally heavy burden, which requires Media Matters to prove there was no legitimate ground to investigate at all. In *Nieves*, the Supreme Court concluded that a plaintiff must also establish that "non-retaliatory grounds are in fact insufficient to provoke the adverse consequences." *Nieves*, 139 S. Ct. at 1722. Specifically, the Supreme Court concluded that a retaliatory-arrest claim automatically fails if there is probable cause for the arrest, regardless of the individual officer's subjective motivation. *Id.* at 1728 ("Because there was probable cause to arrest Bartlett, his retaliatory arrest claim fails as a matter of law."). That rule is necessary because of the "presumption of regularity underlying the prosecutor's [enforcement] decision—a presumption [courts] 'do not lightly discard.'" *Id.* at 1723 (citation omitted).

Media Matters cannot establish that there was no probable cause at all to launch an investigation. Here, X Corp.'s lawsuit lays out a fact pattern that shows conduct not only "likely" to deceive consumers, but deliberately designed to do so. DoubleVerify, "which provides brand-safety measurement ratings for digital platforms to major advertisers," recently debunked the allegations that X was regularly populating advertisements next to fringe content, concluding instead that X's "Brand Safety Rates" were nearly perfect—99.99%—during the very time when

AMERICAN OVERSIGHT

Media Matters accused X of regularly posting brand advertisements next to fringe content. Todd Spangler, *DoubleVerify Apologizes for Misreporting X/Twitter's Brand-Safety Rates for More Than Four Months*, Variety (Apr. 15, 2024). And the district court overseeing that lawsuit has preliminarily concluded that X's allegations are likely sufficient to overcome a motion to dismiss. *X Corp.*, ECF 54 at 8.

A mere investigation is of course much less intrusive and disruptive than an arrest. Just as probable cause defeats a retaliatory arrest claim as a matter of law, so too probable cause for an investigation must defeat Media Matters' claim here. That is especially true because Media Matters' assertion is implausible on its face. It asserts that the Missouri Attorney General chose to retaliate because Media Matters wrote a single article criticizing him. ECF 49-1 at 12 ("Bailey has, like Paxton, been the subject of critical reporting from Media Matters. Bailey's Demand, much like Paxton's, thus reeks of opportunistic retaliation.') (citing a single article). But the Missouri Attorney General is regularly criticized by other media outlets, and Media Matters has not identified a single example of any other outlet receiving a CID at all—much less after writing a critical article. Contrary to Media Matters' distorted reality, the Attorney General filed the civil investigative demand to assess whether Media Matters has been dishonest with Missourians when soliciting donations from Missourians.

Media Matters also cannot establish any chill. Declarations notwithstanding, Media Matters' website reveals no chill at all. Media Matters identifies one article critical of the Missouri Attorney General published last August. *Id.* But on March 26 of this year—the day *after* the Missouri Attorney General publicly filed suit—Media Matters wrote a story criticizing the Missouri Attorney General. Vesper Henry & Ari Drennen, *Seen But Not Heard: The New York Times Failed to Quote Trans People in Two-Thirds of Stories on Anti-Trans Legislation in a One-*

AMERICAN OVERSIGHT

Year Period (March 26, 2024).[8] And a quick search reveals that Media Matters has published at least 20 articles about Elon Musk since its allegedly defamatory November 2023 article.[9]

Media Matters' retaliation claim fails for yet another reason: as a matter of law, "immaterial adverse actions" do not violate the First Amendment. *Houston Community College System*, 595 U.S. at 477 (courts "distinguish material from immaterial adverse actions"). Media Matters does not dispute that it is going to have to litigate its claims in one forum or another: either this one or Missouri state court. But it repeatedly states that it is "injured" by the prospect of litigating in Missouri. *E.g.*, ECF 49-1 at 36–37. That is not a material adverse action. This Court must presume that the state courts in Missouri are adequate, and Media Matters litigating there is simply the same "injury incidental to every proceeding." *Cameron v. Johnson*, 390 U.S. 611, 618 (1968).

B. Media Matters' other claims are likewise unlikely to succeed.

In the lawsuit against Texas, this Court rightly declined to grant Media Matters relief on any of its other counts. The Court should do the same here.

First and Fourth Amendments. At the outset, there is nothing "imminent" about the argument that the CID seeks information beyond what is permitted by the First and Fourth Amendments. Media Matters can litigate that issue under a standard timeline because no documents will be turned over until Media Matters has a full and fair chance to raise its defenses. Courts in Missouri regularly address these claims through ordinary litigation. *State ex rel. Ashcroft v. Goldberg*, 608 S.W.2d 385, 388 (Mo. 1980) (Fourth, Fifth, and Fourteenth Amendments).

In any event, Media Matters' claims easily fail. On the First Amendment, Media Matters asserts that the CID falls afoul of *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373

[8] https://www.mediamatters.org/new-york-times/seen-not-heard-new-york-times-failed-quote-trans-people-over-60-2023-stories-anti

[9] https://www.mediamatters.org/search?search=%22elon+musk%22

AMERICAN OVERSIGHT

(2021), but that case involved a California mandate for every nonprofit organization to disclose donor information automatically each year, without judicial process, rather than in response to a subpoena. Indeed, the Supreme Court expressly rejected California's mandate because there were "alternative means of obtaining [the] information—such as a subpoena." *Id.* at 2386.

On the Fourth Amendment issue, it is well settled that "the Fourth Amendment generally presents little obstacle to the enforcement of administrative subpoenas." *ADR Tr. Corp. v. Thornton*, 41 F.3d 1539, 1548 (D.C. Cir. 1994). Media Matters makes no attempt to develop its Fourth Amendment argument, other to say that it "often overlap[s]" with First Amendment concerns. ECF 49-1 at 32. Media Matters' argument is thus both waived and wrong.

State shield laws. No stronger is the contention that the CID violates Maryland and DC law. Those laws do not apply extraterritorially to Media Matters' conduct in Missouri. Media Matters also again fails to develop its argument. It notes, for example, that the statutes provide only "qualified protection against compelled disclosure" but makes no effort to state why that "qualified" protection applies here. *Id.* at 35. This issue, too, is waived.

Due Process. Finally, Media Matters strangely tries to escalate a jurisdictional issue into its own § 1983 violation. Media Matters asserts that the "legal process against them in Missouri violates due process." ECF 49-1 at 36. If in fact Media Matters were correct, that would be a good argument for the Missouri courts to dismiss the CID enforcement action. But it is not an independent constitutional tort for a party to sue somebody else in a forum that ultimately concludes it lacks personal jurisdiction, and Media Matters fails to cite any authority otherwise. Indeed, it is the state courts of Missouri, not the Missouri Attorney General, that exercise coercive power in the context of Due Process challenges. Media Matters' argument also proves way too much. Under that logic, Media Matters will have committed a tort against the State of Missouri if

AMERICAN OVERSIGHT

this Court (or the D.C. Circuit) concludes that *Younger* abstention is appropriate or the Court lacks personal jurisdiction here.

The Due Process argument is especially unavailing because, as discussed in more depth above, Media Matters has already consented to personal jurisdiction in Missouri. Rather than comply with Missouri requirements to object to personal jurisdiction in the first instance, Media Matters has filed a motion (which was granted) availing itself of legal rights in Missouri.

V. Media Matters Will Not Suffer Irreparable Harm.

"The basis of injunctive relief in the federal courts has always been irreparable harm." *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 747 (D.C. Cir. 1995). Accordingly, the "failure to show any irreparable harm is ... grounds for refusing to issue a preliminary injunction, even if the other three factors entering the calculus merit such relief." *Jones v. District of Columbia*, 177 F. Supp. 3d 542, 545 (D.D.C. 2016) (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006) and citing *Save Jobs USA v. U.S. Dep't of Homeland Sec.*, 105 F. Supp. 3d 108, 112 (D.D.C. 2015) ("the movant must always show irreparable harm or injury, and if a party makes no showing of irreparable injury, the court may deny the motion for injunctive relief without considering the other factors")). Here, there cannot be irreparable harm because there is an avenue for relief—an avenue Media Matters is engaged in—before any supposed harm is ever experienced.[10]

The D.C. Circuit "'has set a high standard for irreparable injury.'" *Id.* (quoting *Chaplaincy*, 454 F.3d at 297). "[T]he injury 'must be both certain and great; it must be actual and not theoretical.' " *Id.* (quotations omitted). Indeed, the "injury must also be 'of such imminence that

[10] Plaintiffs suggest they are experiencing an irreparable chilling effect. But, as Texas pointed out, Media Matters has continued its same criticisms and coverage. And in any event, it would have no application with respect to the State of Missouri's CID, which came months after the supposed harm was experienced. The chill is at best "theoretical." *Jones*, 177 F. Supp. 3d at 545.

AMERICAN OVERSIGHT

there is a 'clear and present' need for equitable relief to prevent irreparable harm." *Id.* (quoting *Wisc. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). Moreover, the injury must be "beyond remediation." *Id.* (quoting *Chaplaincy*, 454 F.3d at 297). As has been said many times, there is a remedy in this case; there is alternative relief before any supposed harm. And it is a remedy or relief that Plaintiffs have already engaged in—the State of Missouri's enforcement action in state court.

Even setting that issue aside, there is no imminent—much less irreparable—injury at all because Media Matters will not have to hand over any documents until it has had a full and fair opportunity to raise its defenses. Missouri's CIDs are not self-executing. Nothing will happen to Media Matters until resolution of judicial proceedings.

VI. The Balance of Equities and Public Interest Decisively Favor Missouri.

Finally, in *Winter v. NRDC, Inc.*, 555 U.S. 7, 24, (2008), the Supreme Court "held that 'proper consideration' of the balance of equities and public interest 'factors alone [would have] require[d] denial of the requested injunctive relief,' 'even if [the] plaintiffs [had] shown irreparable injury' and a likelihood of success on the merits." *Kim v. Fin. Indus. Regul. Auth., Inc.*, No. 1:23-CV-02420 (ACR), 2023 WL 6538544, at *16 (D.D.C. Oct. 6, 2023). "Importantly, this body of case law shows that a court can deny preliminary injunctive relief solely on the balance of equities and public interest factors even in cases, like this, involving constitutional claims." *Id.*

In this case, the balance of equities and public interest decisively favor the State of Missouri. The importance and need to protect consumers is indisputable. Missouri consumer protections laws have been in force for decades and have provided the legal and regulatory backbone of tens of thousands of actions, enforcements, and investigations to protect consumers. Further, the ability of a sovereign state, through its constitutionally and statutorily authorized Attorney General, to conduct investigations into potential violations of consumer protections laws

AMERICAN OVERSIGHT

is paramount—as is the ability of state courts in Missouri to resolve disputes over the exercise of that authority. If, at every turn, a federal court injunction is sought for routine investigations of potential violations of state law, then vital public interests and federalism will be defeated.

Because Media Matters not only has the opportunity, but has invoked the right, to challenge the investigation in Missouri courts, the balance of equities and the public interest unquestionably favor the denial of a TRO or preliminary injunction.

The equities especially disfavor Media Matters (and Media Matters also lacks standing) because it could have avoided any harm. "It is well-settled that a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted." *Safari Club Int'l v. Salazar*, 852 F. Supp. 2d 102, 123 (D.D.C. 2012) (quotations omitted). "In analogous circumstances, plaintiffs who decline the opportunity to avail themselves of a regulatory scheme to avoid the very harm for which they seek injunctive relief have been denied the [injunctive] relief." *Id.* Media Matters here has run to federal court rather than take advantage of the availability of relief in Missouri state court.

CONCLUSION

For the foregoing reasons, the motion for a TRO and a Preliminary Injunction should be denied.

AMERICAN OVERSIGHT

Date: May 8, 2024

Respectfully submitted,

ANDREW BAILEY
Attorney General of Missouri

/s/ *Joshua M. Divine*
JOSHUA M. DIVINE, #69875MO
Solicitor General

JEREMIAH J. MORGAN, #50387MO
Deputy Attorney General – Civil

OFFICE OF THE ATTORNEY GENERAL
Supreme Court Building
207 West High Street
P.O. Box 899
Jefferson City, Missouri 65102
Tel. (573) 751-1800
Fax (573) 751-0774
josh.divine@ago.mo.gov
jeremiah.morgan@ago.mo.gov

Counsel for Defendant Missouri Attorney General

CERTIFICATE OF COMPLIANCE

I certify that the foregoing document contains 38 pages, exclusive of matters designated for omission, and satisfies the typesetting requirements.

/s/ *Joshua M. Divine*
Counsel for Missouri Attorney General

CERTIFICATE OF SERVICE

I certify that on May 8, 2024, a true and accurate copy of the foregoing document was electronically filed through the Court's CM/ECF System and that a copy of the foregoing will be sent via email to all parties by operation of the Court's electronic filing system, all consistent with Federal Rule of Civil Procedure 5(b).

/s/ *Joshua M. Divine*
Counsel for Missouri Attorney General

AMERICAN OVERSIGHT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MEDIA MATTERS FOR AMERICA, ERIC HANANOKI, Plaintiffs, v. WARREN KENNETH PAXTON JR., in his official capacity as Attorney General of the State of Texas, ANDREW BAILEY, in his official capacity as Attorney General of the State of Missouri, Defendants.	Civil Action No. 24-cv-147 **(EXPEDITED HEARING REQUESTED)**

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AND BRIEF IN OPPOSITION TO BAILEY'S MOTION TO DISMISS

AMERICAN OVERSIGHT

TABLE OF CONTENTS

INTRODUCTION 1
ARGUMENT 3
I. The Court should decline to abstain under *Younger*. 3
A. The state court proceeding is not a "civil enforcement proceeding." 3
B. The state court proceeding does not involve "orders uniquely in furtherance of the state courts' ability to perform their judicial functions." 9
C. There were proceedings on the merits in this case before the CID Proceeding was filed. 11
D. Bailey issued the CID and commenced the CID Proceeding in bad faith. 14
E. Media Matters has not consented to jurisdiction in Missouri. 18
II. This Court has personal jurisdiction over Bailey. 20
A. This Court has long-arm jurisdiction over Bailey 20
B. Exercising personal jurisdiction over Bailey is consistent with Due Process. 22
III. Plaintiffs' injuries are ripe and they lack an adequate remedy elsewhere. 23
IV. Media Matters and Hananoki are likely to prevail on the merits of their claims. 27
A. Plaintiffs are likely to prevail on their First Amendment retaliation claim. 27
B. Plaintiffs are likely to prevail on their remaining claims. 30
V. The equities weigh strongly in favor of preliminary relief. 32
CONCLUSION 33

AMERICAN OVERSIGHT

TABLE OF AUTHORITIES

Page(s)

Cases

Alden v. Maine,
527 U.S. 706 (1999).....33

State ex rel. Antoine v. Sanders,
724 S.W.2d 502 (Mo. 1987).....20

Backpage.com, LLC v. Hawley,
No. 4:17-CV-1951 PLC, 2017 WL 5726868 (E.D. Mo. Nov. 28, 2017).....6, 7, 8, 10

Banner Health v. Sebelius,
905 F. Supp. 2d 174 (D.D.C. 2012).....15

Berrada Properties Management, Inc. v. Romanski,
608 F. Supp. 3d 746, 750, 753 (E.D. Wis. 2022).....9

Bland v. IMCO Recycling, Inc.,
67 S.W.3d 673 (Mo. Ct. App. 2002).....20

Cedar Rapids Cellular Telephone, L.P. v. Miller,
280 F.3d 874 (8th Cir. 2002).....6, 7, 8

Constantine v. Rectors & Visitors of George Mason Univ.,
411 F.3d 474 (4th Cir. 2005).....29

Council of & for the Blind of Delaware Cnty. Valley, Inc. v. Regan,
709 F.2d 1521 (D.C. Cir. 1983) (en banc) (Spottswood, C.J., concurring).....25

Cover v. Robinson,
224 S.W.3d 36 (Mo. Ct. App. 2007).....19

Cullen v. Fliegner,
18 F.3d 96 (2d Cir. 1994).....15, 16, 18

Def. Distributed v. Grewal,
971 F.3d 485 (5th Cir. 2020).....23

Derma Pen, LLC v. 4EverYoung Ltd.,
No. 2:13-CV-00729-DN-EJF, 2015 WL 791595 (D. Utah Feb. 25, 2015).....12, 14

Everett v. Vance,
685 S.W.3d 495 (Mo. Ct. App. 2023).....20

Fitzgerald v. Peek,
636 F.2d 943 (5th Cir. 1981).....16, 18

AMERICAN OVERSIGHT

For Your Eyes Alone, Inc. v. City of Columbus, Ga.,
281 F.3d 1209 (11th Cir. 2002) 12

Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.,
592 U.S. 351 (2021) 22, 23

Google, Inc. v. Hood,
822 F.3d 212 (5th Cir. 2016) 9

Grunseth v. Marriott Corp.,
868 F. Supp. 333 (D.D.C. 1994) 31

Gullemard-Ginorio v. Contreras-Gomez,
585 F.3d 508 (1st Cir. 2009) 8

Haw. Hous. Auth. v. Midkiff,
467 U.S. 229 (1984) 11, 13

Hill v. Snyder,
878 F.3d 193 (6th Cir. 2017) 12, 13, 14

Hill v. Snyder,
No. 2:10-cv-14568-MAG_RSW (E.D. Mich. June 20, 2016) 12

Houston Cmty. Coll. Sys. v. Wilson,
595 U.S. 468 (2022) 30

Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee,
456 U.S. 694 (1982) 32

J. & W. Seligman & Co. Inc. v. Spitzer,
No. 05 Civ. 7781 (KMW), 2007 WL 2822208 (S.D.N.Y. Sept. 27, 2007) 9

JMM Corp. v. District of Columbia,
378 F.3d 1117 (D.C. Cir. 2004) 11

Juidice v. Vail,
430 U.S. 327 (1977) 9, 10, 16

State ex rel. Koster v. Charter Commc'ns, Inc.,
461 S.W.3d 851 (Mo. Ct. App. 2015) 5

Lewellen v. Raff,
843 F.2d 1103 (8th Cir. 1988) 2, 16

Lupin Pharmaceuticals, Inc. v. Richards,
No. RDB-15-1281, 2015 WL 4068818 (D. Md. July 2, 2015) 11

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001237

Major League Baseball v. Crist,
331 F.3d 1177 (11th Cir. 2003) 31

Moore v. Crocker,
674 S.W.3d 146 (Mo. Ct. App. 2023).....24, 26

Mouzavires v. Baxter,
434 A.2d 988 (D.C. 1981) 20

Mulholland v. Marion Cnty. Election Bd.,
746 F.3d 811 (7th Cir. 2014) 8

Music Makers Holdings, LLC v. Sarro,
No. 09-cv-1836 (RWT), 2010 WL 2807805 (D. Md. July 15, 2010).....23

Nationwide Biweekly Admin., Inc. v. Owen,
873 F.3d 716 (9th Cir. 2017) 12, 13

Netflix, Inc. v. Babin,
88 F.4th 1080 (5th Cir. 2023) 15, 17

New England Carpenters Pension Fund v. Haffner,
391 S.W.3d 453 (Mo. Ct. App. 2012).....17

New Orleans Pub. Serv., Inc. v. Council of City of New Orleans,
491 U.S. 350 (1989).....7

Nieves v. Bartlett,
587 U.S. 391 (2019).....27

Pennzoil Co. v. Texaco, Inc.,
481 U.S. 1 (1987).....27

Perez v. Ledesma,
401 U.S. 82 (1971).....14, 18

Phelps v. Hamilton,
59 F.3d 1058 (10th Cir. 1995) 15, 18

Planned Parenthood of the St. Louis Region v. Bailey,
No. 2322-CC00637 (St. Louis Cir. Ct. Oct. 31, 2023) 25, 26

Reed Enters. v. Corcoran,
354 F.2d 519 (D.C. Cir. 1965) (Skelly Wright, J.) 26

Reisman v. Caplin,
375 U.S. 440 (1964).....24

AMERICAN OVERSIGHT

Rollins Burdick Hunter of Utah, Inc. v. Bd. of Trustees of Ball State Univ.,
665 N.E.2d 914 (Ind. Ct. App. 1996).....19

Shaw v. Garrison,
467 F.2d 113 (5th Cir. 1972) 15, 18

Smith & Wesson Brands, Inc. v. Att'y Gen. of N.J.,
27 F.4th 886 (3d Cir. 2022) ..... *passim*

Sprint Commc'ns, Inc. v. Jacobs,
571 U.S. 69 (2013)..... *passim*

Steffel v. Thompson,
415 U.S. 452 (1974).....8

Stroman Realty v. Wercinski,
513 F.3d 476 (5th Cir. 2008) 23

TitleMax of Del., Inc. v. Weissman,
24 F.4th 230 (3d Cir. 2022) 1, 5

Tokyo Gwinnett, LLC v. Gwinnett County,
940 F.3d 1254 (11th Cir. 2019) 11, 12, 13

Twitter, Inc. v. Paxton,
56 F.4th 1170 (9th Cir. 2022) 24

Walden v. Fiore,
571 U.S. 277 (2014).....21

Wilson v. Thompson,
593 F.2d 1375 (5th Cir. 1979) 15

Yelp, Inc. v. Paxton,
No. 23-cv-4977-TLT, 2024 WL 413464 (N.D. Cal. Feb. 1, 2024) 8, 9

Younger v. Harris,
401 U.S. 37 (1971).....1, 3

Zurcher v. Stanford Daily,
436 U.S. 547 (1978).....30

Statutes & Rules

D.C. Code § 13–423(a)(1) 20

Mo. Stat. § 407.040.....4

Mo. Stat. § 407.070.....17, 25

AMERICAN OVERSIGHT

Mo. Sup. Ct. R. 51.05 19

Mo. Sup. Ct. R. 55.27 19

N.J. Stat. § 56:8-3 4

N.J. Stat. § 56:8-4 4

Other Authorities

@AGAndrewBailey, X.com (May 8, 2024, 5:18 PM), https://twitter.com/AGAndrewBailey/status/1788317466986172648.....18

@AGAndrewBailey, X.com (May 8, 2024, 5:26 PM), https://twitter.com/AGAndrewBailey/status/1788319713119875446.....18

11A Wright & Miller Fed. Prac. & Proc. Civ. § 2944 (3d ed.) 25, 26

17B Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. Juris. § 4255 (3d ed.) 16

Elon Musk, Media Matters for America, https://www.mediamatters.org/elon-musk (last visited May 20, 2024) 29

Eric Hananoki, Media Matters for America https://www.mediamatters.org/author/eric-hananoki (last visited May 20, 2024) 30

AMERICAN OVERSIGHT

INTRODUCTION

Bailey does not and cannot point to a single piece of evidence even plausibly suggesting that Plaintiffs Media Matters and Eric Hananoki are subject to jurisdiction in Missouri or have violated any Missouri law. His response renders the alleged basis for his civil investigative demand ("CID") an afterthought, focusing instead on a host of meritless procedural arguments in an effort to evade this Court's scrutiny. The reason he does this is obvious—his investigation is baseless, and his conduct toward Plaintiffs is flagrant and unlawful retaliation against their exercise of constitutionally-protected rights. This Court already considered and rejected nearly all of Bailey's arguments when it granted Plaintiffs' motion for a preliminary injunction against Texas Attorney General Paxton. The sole exception is Bailey's attempt to invoke abstention under *Younger v. Harris*, 401 U.S. 37 (1971), but that doctrine does not apply here for a host of reasons.

First, *Younger* does not apply to Bailey's strategically timed lawsuit to enforce the Missouri CID ("CID Proceeding") because it neither is a "civil enforcement proceeding" nor involves "orders uniquely in furtherance of the state courts' ability to perform their judicial functions." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 78 (2013) (cleaned up). Several recent appellate decisions—all ignored by Bailey—confirm that an action to enforce an administrative subpoena like the Missouri CID does not trigger *Younger* abstention because it does not charge the recipient with a substantive violation of law. *See Smith & Wesson Brands, Inc. v. Att'y Gen. of N.J.*, 27 F.4th 886, 896 (3d Cir. 2022); *TitleMax of Del., Inc. v. Weissman*, 24 F.4th 230, 237 (3d Cir. 2022). Here, Bailey has not charged Media Matters with a substantive violation of the Missouri Merchandising Procedures Act ("MMPA"), and the CID Proceeding concerns only *Bailey's* efforts to perform his *executive* function, not the "state courts' ability to perform their judicial functions," *Smith & Wesson*, 27 F.4th at 895–96 (quoting *Sprint*, 571 U.S. at 78).

AMERICAN OVERSIGHT

Second, even if the CID Proceeding fell within a *Younger* category, abstention would be inappropriate because substantial proceedings occurred in this case before Bailey commenced the CID Proceeding in Missouri court. It does not matter that Bailey was not yet a party to these proceedings. He has admitted that he was well aware of this case, Pet. for Order to Enforce Civil Investigative Demand, ECF No. 36-2 ("CID Petition") ¶ 20, that he "coordinated" with Paxton in launching his investigation, Order Granting Pls.' Mot. to Suppl. Compl. 3, ECF No. 44, and that the Missouri CID is "virtually identical" to the Texas CID that is the subject of the Court's existing injunction, *id.* at 2. Indeed, this case not only pre-dated Bailey's initiation of the CID Proceeding, it is by Bailey's admission the reason *why* he filed the CID Petition before giving Media Matters the opportunity to respond to the CID in the first place. Extensive authority—and basic notions of judicial efficiency and fairness—make clear that *Younger* does not require Plaintiffs to proceed in this Court against Paxton, in Missouri court against Bailey, and in some undetermined forum or forums against any other state officials who may answer Defendants' call to punish Plaintiffs for their speech.

Third, there is overwhelming evidence that Bailey has acted in bad faith and brought the Missouri action to harass Plaintiffs in retaliation for their exercise of constitutionally protected rights and specifically in order to invoke *Younger* abstention. Bailey asks the Court to ignore this evidence, insisting that the bad faith exception to *Younger* only applies when the state court *judges* overseeing the parallel state proceeding are acting in bad faith. Half a century of case law proves otherwise. *See Lewellen v. Raff*, 843 F.2d 1103, 1112 n.10 (8th Cir. 1988) (collecting examples). Bailey severely misreads the Supreme Court's holding in *Juidice v. Vail*, where the state court judges accused of bad faith *were the named federal defendants*, just like Bailey is here.

AMERICAN OVERSIGHT

Bailey's remaining objections retread arguments already made by Paxton and already rejected by this Court. This Court has personal jurisdiction over Bailey because he hired an agent in D.C. to further his harassment against Media Matters here—just like Paxton. Plaintiffs' claims are ripe and justiciable because Bailey—like Paxton—is chilling their speech *now*, causing severe, irreparable harm. And prompt injunctive relief is both necessary and appropriate because Plaintiffs are likely to succeed on the merits and lack any other adequate legal remedy.

ARGUMENT

I. The Court should decline to abstain under *Younger*.

Federal courts have a "virtually unflagging" duty to decide cases within their jurisdiction. *Sprint*, 571 U.S. at 77 (quotation omitted). *Younger* is a narrow, judge-made exception that can only apply where a federal case relates to one of three categories of ongoing state proceedings: (1) "state criminal prosecutions," (2) "certain civil enforcement proceedings," and (3) "civil proceedings involving certain orders uniquely in furtherance of the state courts' ability to perform their judicial functions." *Id.* at 78 (cleaned up). The CID Proceeding is none of these things. Moreover, *Younger* does not apply because proceedings of substance on the merits took place in this case before the CID Proceeding commenced. Finally, the Court should decline to apply *Younger* in any case because the CID Proceeding was brought in bad faith.

A. The state court proceeding is not a "civil enforcement proceeding."

The CID Proceeding is not a "civil enforcement" proceeding under *Younger*. The *Younger* doctrine was originally developed to keep federal courts from interfering with ongoing state *criminal* prosecutions, and has been extended only to those "civil enforcement proceedings" that are "akin to a criminal prosecution in important respects." *Id.* at 78–79 (cleaned up). Since then, "[t]he Supreme Court has . . . consistently narrowed abstention doctrines, including *Younger*, because they conflict with federal courts' virtually unflagging obligation to exercise their

AMERICAN OVERSIGHT

jurisdiction." *Smith & Wesson*, 27 F.4th at 890 (cleaned up). To trigger *Younger*, "the state civil enforcement proceeding must be quasi-criminal in nature." *Id.* at 891 (cleaned up). Three factors guide this inquiry: whether "(1) the action was commenced by the State in its sovereign capacity, (2) the proceeding was initiated to sanction the plaintiff for some wrongful act, and (3) there are other similarities to criminal actions, such as a preliminary investigation *that culminated with the filing of formal charges.*" *Id.* (emphasis added) (cleaned up); *see also Sprint*, 571 U.S. at 79–80. Because the second and third factors are not satisfied, this *Younger* category does not apply.

1. The CID Proceeding was not initiated to sanction Media Matters for a wrongful act.

Courts have regularly—and recently—held that proceedings to enforce an administrative subpoena are not "civil enforcement proceedings" under *Younger*. Indeed, just two years ago in a similar case, the Third Circuit held that a "subpoena enforcement action is not a suit initiated to punish wrongdoing," and thus is not a "civil enforcement action" for *Younger* purposes. *Smith & Wesson*, 27 F.4th at 892. In that case, the New Jersey Attorney General was "investigating Smith & Wesson for possible violations of the New Jersey Consumer Fraud Act." *Id.* at 889. Acting under statutory language nearly identical to the Missouri law relied upon by Bailey, the Attorney General issued an administrative subpoena to Smith & Wesson seeking certain documents. *Id.*; *compare* N.J. Stat. §§ 56:8-3, 56:8-4, *with* Mo. Stat. § 407.040. Instead of producing the requested documents, Smith & Wesson filed a complaint for declaratory and injunctive relief in federal court, alleging a violation of its federal rights. *Smith & Wesson*, 27 F.4th at 889. The New Jersey Attorney General then sought enforcement of the subpoena in state court, which ordered Smith & Wesson to show cause and threatened it with contempt and a total ban on sales in New Jersey. *Id.* at 889–90. The federal district court abstained under *Younger*, and the Third Circuit reversed, holding that the subpoena enforcement action was neither a "civil enforcement proceeding" nor a "civil

AMERICAN OVERSIGHT

proceeding[] involving certain orders uniquely in furtherance of the state courts' ability to perform their judicial functions." *Id.* at 891 (quoting *Sprint*, 571 U.S. at 78). As the Third Circuit explained, "*Sprint* teaches that a suit is meant to punish wrongdoing where the state court defendant (the federal plaintiff) violated a legal right or duty." *Id.* at 892 (citing *Sprint*, 571 U.S. at 79).

As in *Smith & Wesson*, the sole issue before the state court is whether Plaintiffs must produce documents in response to Bailey's CID. *Compare id.* at 892 (noting "the complaint alleged only violation of a subpoena"), *with* CID Petition at ¶¶ 21–26; *see also State ex rel. Koster v. Charter Commc'ns, Inc.*, 461 S.W.3d 851, 857 (Mo. Ct. App. 2015) ("CIDs issued by the AG are administrative subpoenas"); *TitleMax*, 24 F.4th at 237 ("While enforcement of the subpoena may require [the plaintiff] to produce information, it is not retributive in nature or imposed to punish some wrongful act." (cleaned up)). As in *Smith & Wesson*, Bailey's state court action "did not allege that [Media Matters] violated any substantive legal duty. To date, he has not accused [Media Matters] of violating the [MMPA]; he is *investigating possible violations*." 27 F.4th at 892 (emphasis added); *see also* CID Petition at 2 (noting CID was issued "to investigate possible violations of" the MMPA). And, as in *Smith & Wesson*, "[Media Matters] did nothing wrong, so the suit cannot be one initiated to sanction it for some wrongful act." 27 F.4th at 892 (cleaned up). "Instead of producing the documents . . . it petitioned a federal court to adjudicate its rights and obligations. Federal law authorizes just such a civil action (*i.e.*, one alleging that the Attorney General violated the company's constitutional rights)." *Id.* at 892–93.

If anything, the case against abstention here is even stronger. The New Jersey Attorney General at least alleged that Smith & Wesson had violated a procedural obligation to comply with the subpoena. Here, Media Matters *did not even have an opportunity* to comply because Bailey ran to state court to seek enforcement *at the same time* he issued the Missouri CID. Thus, even if

AMERICAN OVERSIGHT

noncompliance with the CID itself could be considered a "wrongful act," the CID Proceeding could not possibly be an action to "sanction" Media Matters for that conduct.

2. Bailey has not undertaken any investigation of Media Matters culminating in the filing of a formal complaint or charges.

The CID Proceeding is also not a "civil enforcement proceeding" within the meaning of *Younger* for another reason: there has been no preliminary investigation of Media Matters "culminating in the filing of a formal complaint or charges." *Sprint*, 571 U.S. at 80. Bailey could not have investigated Media Matters's alleged failure to comply with the CID because the CID Petition was filed the same day the CID was issued. That distinguishes this case from others like *Middlesex County* "where more robust preliminary investigations led to the filing of administrative complaints." *Smith & Wesson*, 27 F.4th at 891–92. Moreover, in cases where *Younger* applies, "the investigation and the charges concerned the same conduct." *Id.* at 892. By contrast, here "the substantive investigation concern[s] consumer fraud, yet the complaint allege[s] only violation of a [CID]." *Id.* The *only* relief sought in the CID Petition is compliance with the CID—it seeks no sanction for violations of the MMPA or any substantive provision of law.

3. Bailey's authorities are inapposite.

None of the authorities Bailey cites for his argument that the CID Proceeding is a "civil enforcement proceeding" offer him any help.

Bailey first points to *Backpage.com, LLC v. Hawley*, No. 4:17-CV-1951 PLC, 2017 WL 5726868 (E.D. Mo. Nov. 28, 2017), an unpublished district court decision that pre-dated the Third Circuit's analysis in *Smith & Wesson* and misunderstood the Eighth Circuit's decision in *Cedar Rapids Cellular Telephone, L.P. v. Miller*, 280 F.3d 874 (8th Cir. 2002), on which it principally relied. 2017 WL 5726868 at *6–7. In fact, *Cedar Rapids* is entirely consistent with *Smith &*

AMERICAN OVERSIGHT

Wesson, and its reasoning further demonstrates why the CID Proceeding here is *not* a "civil enforcement proceeding" under *Younger*.

In *Cedar Rapids*, the Eighth Circuit held that the underlying state action against one co-plaintiff (U.S. Cellular) was a "civil enforcement proceeding" because, unlike here, it sought injunctive relief for alleged violations of substantive consumer protection law. *See* 280 F.3d at 877 (explaining U.S. Cellular was formally alleged to be "violating numerous provisions of the Iowa Consumer Credit Code and the other provisions of Iowa law"). But the Eighth Circuit held that the Attorney General's administrative action against the other co-plaintiff (WWC), unlike its enforcement action against U.S. Cellular, "involve[d] nothing more than an attempt to obtain information about WWC's business practices," and "d[id] not give the Attorney General, or anyone else, the power to declare whether those practices violate state law." *Id.* at 882. The *Backpage* court mistakenly reasoned that the CID enforcement proceeding against Backpage was more akin to the enforcement proceedings against U.S. Cellular, simply because both were filed in state *court*. *See* 2017 WL 5726868 at *7. But that was wrong. Under *Cedar Rapids*, like *Smith & Wesson*, the relevant distinction was whether the action sought to sanction a violation of substantive law or merely sought information—not whether the action was an administrative proceeding or brought in state court. *See Cedar Rapids*, 280 F.3d at 882 (recognizing that "[a]dministrative proceedings" like the one against WWC "may be judicial for purposes of *Younger* if they declare and enforce liabilities between the parties" (quotations omitted)); *see also New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 371 (1989) (explaining that the "proper characterization" of a proceeding "depends not on the character of the body but upon the character of the proceedings" (quotations omitted)). The CID Proceeding here, like the administrative action against WWC in *Cedar Rapids*, seeks only information, not a

AMERICAN OVERSIGHT

declaration of Media Matters's liability under state law. *See Cedar Rapids*, 280 F.3d at 882 (holding *Younger* did not apply as to WWC).

The *Backpage* court also improperly concluded that it was sufficient that the "state-court action clearly involves an investigation with the *potential* to culminate in the filing of a formal complaint or charges." 2017 WL 5726868 at *6 (emphasis added). But "[t]he possibility that a state proceeding may lead to a future prosecution . . . is not enough to trigger *Younger* abstention; a federal court need not decline to hear a constitutional case within its jurisdiction merely because a state investigation has begun." *Mulholland v. Marion Cnty. Election Bd.*, 746 F.3d 811, 817 (7th Cir. 2014); *see also Steffel v. Thompson*, 415 U.S. 452, 454 (1974) (*Younger* does not prevent federal declaratory relief "when a state prosecution has been threatened, but is not pending"); *Gullemard-Ginorio v. Contreras-Gomez*, 585 F.3d 508, 519 (1st Cir. 2009) ("[R]equiring the commencement of 'formal enforcement proceedings' before abstention is required[] better comports with the Supreme Court's decisions in *Younger* and its progeny, in which an indictment or other formal charge had already been filed against the parties seeking relief at the time the federal action was brought." (collecting cases)). Indeed, *Cedar Rapids* itself clearly rejected that proposition as to WWC, which was not then facing any formal charges of violating state law. *See Cedar Rapids*, 280 F.3d at 882 ("Although the Attorney General's demand for information may ultimately result in a judicial proceeding, there is no indication that a judicial proceeding was imminent at the time this case was filed.").

The other cases relied on by Bailey only reinforce the distinctions between quasi-criminal proceedings and the CID Proceeding here. In *Yelp, Inc. v. Paxton*, the state proceedings were "quasi-criminal enforcement actions that involve sanctions, including civil penalties of up to $10,000 per violation of the [Texas Deceptive Trade Practices Act]." No. 23-cv-4977-TLT, 2024

AMERICAN OVERSIGHT

WL 413464, at *3 (N.D. Cal. Feb. 1, 2024).[1] In *Berrada Properties Management, Inc. v. Romanski*, the court similarly abstained in favor of a state proceeding where "the State s[ought] a judicial determination of fault" as well as "injunctive relief, restitution, and civil forfeitures for violations of [substantive Wisconsin law]." 608 F. Supp. 3d 746, 750, 753 (E.D. Wis. 2022). Finally, *J. & W. Seligman & Co. Inc. v. Spitzer* relied on a series of cases involving *criminal* grand jury subpoenas and search warrants to hold that the mere issuance of a *civil* subpoena (without enforcement) triggers *Younger*. No. 05 Civ. 7781 (KMW), 2007 WL 2822208, at *5 (S.D.N.Y. Sept. 27, 2007). As even Bailey acknowledges, *see* Bailey's Opp'n to TRO & Prelim. Inj. 14, ECF No. 56 ("Opp."), courts have since rejected that principle as to non-self-executing administrative subpoenas like the CID here. *Google, Inc. v. Hood*, 822 F.3d 212, 223, 224 n.7 (5th Cir. 2016) (rejecting *Seligman*).

B. The state court proceeding does not involve "orders uniquely in furtherance of the state courts' ability to perform their judicial functions."

For similar reasons, the CID Proceeding does not involve "orders uniquely in furtherance of the state courts' ability to perform their judicial functions." *Sprint*, 571 U.S. at 78 (cleaned up).

Bailey's reliance on *Juidice v. Vail*, 430 U.S. 327 (1977), demonstrates the flaw in his argument. In that case, a default judgment had been entered in state court against Vail, who was then served with a subpoena to give information relevant to the satisfaction of judgment. *Id.* at 329. When he failed to comply with the subpoena, the state court ordered him to show cause why he should not be punished for contempt. *Id.* And when he failed to appear for that hearing, the court held him in contempt. *Id.* Vail and other plaintiffs then filed a federal suit against the state court judges to enjoin the state court's future use of statutory contempt procedures. *Id.* at 330.

[1] Notably, "Yelp [did] not contest" this element of *Younger*. *Id.*

AMERICAN OVERSIGHT

Juidice does not stand for the blanket proposition that an action to enforce a subpoena—particularly an administrative subpoena like the CID at issue here—is "uniquely in furtherance of the state courts' ability to perform their judicial functions." *Sprint*, 571 U.S. at 78. As the Third Circuit has pointed out, "[t]he subpoenas in *Juidice* were 'court-sanctioned,' not administrative subpoenas, like the one at issue here. And both plaintiffs had violated court orders." *Smith & Wesson*, 27 F.4th at 894 (citation omitted). None of that is true here.

Furthermore, the "key thread" to *Juidice* and other cases under *Younger*'s third category is "the certainty of the state court's action." *Id.* In cases falling into this category, "the substantive outcome had occurred [in state court]; only enforcement remained, and the Supreme Court refused to impede that enforcement." *Id.* Thus, in *Juidice* the state court had already ordered the plaintiffs to show cause why they should not be held in contempt for ignoring the subpoena, and the plaintiffs had already violated that order. 430 U.S. at 328–29. What they sought to enjoin was the state court's enforcement of its contempt order. Here, by contrast, Plaintiffs seek to enjoin *Bailey* from enforcing the CID, and the state court proceedings he initiated to do so have not even commenced in substance. A judge was assigned just six days ago, and there is "much more for the state court to do than merely implement a predetermined outcome." *Smith & Wesson*, 27 F.4th at 894.

Again, Bailey relies on *Backpage*, but as discussed, that court misconstrued the nature of the underlying proceeding. It reasoned that a CID enforcement proceeding "necessarily affects functions performed by the state court" because Missouri law authorizes the Attorney General to seek a court order enforcing a CID. 2017 WL 5726868 at *7–8. Under that circular reasoning, *any* state court action would necessarily qualify under *Younger*'s third category, and federal courts "would have to abstain whenever there was a pending civil proceeding." *Smith & Wesson*, 27 F.4th at 895. "But that approach would run afoul of the Supreme Court's insistence that 'even in the

AMERICAN OVERSIGHT

presence of parallel state proceedings, abstention from the exercise of federal jurisdiction is the exception, not the rule.'" *Id.* (quoting *Sprint*, 571 U.S. at 81–82).[2]

C. There were proceedings on the merits in this case before the CID Proceeding was filed.

Even if the CID Proceeding fell into the categories of cases to which *Younger* applies, it would still be inappropriate to abstain because *Younger* applies only where "the state proceedings were initiated 'before any proceedings of substance on the merits have taken place in the federal court.'" *JMM Corp. v. District of Columbia*, 378 F.3d 1117, 1126 (D.C. Cir. 2004) (quoting *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 238 (1984)). Federal courts do not abstain where a case has moved beyond the "embryonic stage" prior to the state court action. *Midkiff*, 467 U.S. at 238 (citation omitted).

"In assessing whether abstention was proper, courts look to 'the time that the district court has spent considering the case, any motions ruled on, any discovery, the number of conferences [or hearings] held, and any change in the parties' position as a result of the federal litigation.'" *Tokyo Gwinnett, LLC v. Gwinnett County*, 940 F.3d 1254, 1272 (11th Cir. 2019) (alteration in original) (quoting *Nationwide Biweekly Admin., Inc. v. Owen*, 873 F.3d 716, 728–29 (9th Cir. 2017)). "Courts also consider the filing of motions, even if the district court did not rule on the motions." *Id.*

Here, the CID proceeding began well *after* substantive proceedings on the merits had taken place in this case, and each of the relevant considerations show that abstention would be inappropriate here. The original complaint in this federal action was filed on January 17, 2024. Since then, this Court has spent significant time assessing and even issuing rulings on the merits.

[2] *Lupin Pharmaceuticals, Inc. v. Richards*—which also predates *Smith & Wesson*—committed a similar error. No. RDB-15-1281, 2015 WL 4068818, at *4 (D. Md. July 2, 2015).

AMERICAN OVERSIGHT

Indeed, months before Bailey initiated the CID Proceeding on March 25, this Court took testimony and considered briefing and argument on Plaintiffs' motion for a preliminary injunction against Paxton for the same conduct, as well as on Paxton's motion to dismiss. The Court held a hearing on the preliminary injunction motion on February 15, and ordered supplemental briefing. These developments constituted "proceedings of substance on the merits." *Nationwide*, 873 F.3d at 728 (cleaned up); *see also For Your Eyes Alone, Inc. v. City of Columbus, Ga.*, 281 F.3d 1209, 1218 (11th Cir. 2002) (finding abstention improper after filing of a complaint, motion to dismiss, answer, and summary judgment motion and the court held an evidentiary hearing and denied a motion for a temporary restraining order). There was also a "change in the parties' position" due to this litigation. *Tokyo Gwinnett*, 940 F.3d at 1272 (quoting *Nationwide*, 873 F.3d at 728–29). Namely, Paxton agreed not to enforce the Texas CID while the preliminary injunction motion was pending, leading the Court to deny Plaintiffs' motion for a temporary restraining order as moot. Def.'s Resp. to Order of the Ct., ECF No. 11; January 23, 2024 Minute Order. These "significant and substantial procedural steps" have moved this litigation beyond its "embryonic stage." *Tokyo Gwinnett*, 940 F.3d at 1272 (quotations omitted).

It does not matter that Bailey was added as a defendant after he commenced the CID Proceeding in Missouri. The filing of a supplemental complaint to account for these events does not make this a "new case." *Hill v. Snyder*, 878 F.3d 193, 206 (6th Cir. 2017). "That very concept is at odds with the idea of amending pleadings, a practice deliberately built in to our civil justice system." *Id.* That is true even where the amended pleading adds a new defendant. *See* 2d Am. Compl., *Hill v. Snyder*, No. 2:10-cv-14568-MAG_RSW (E.D. Mich. June 20, 2016), ECF No. 130 (adding Michigan Attorney General as a party); *see also Derma Pen, LLC v. 4EverYoung Ltd.*, No. 2:13-CV-00729-DN-EJF, 2015 WL 791595, at *7 (D. Utah Feb. 25, 2015) ("Proceedings of

AMERICAN OVERSIGHT

substance on the merits occurred in federal court before the State Action was filed, and it is of no consequence that [the defendant invoking *Younger*] was added as a party to this litigation later in time."). Simply put, "[w]hen federal litigation is beyond its embryonic stage, the addition of new claims is not controlled by *Younger* abstention[.]" *Tokyo Gwinnett*, 940 F.3d at 1270 n.6. "Neither the Supreme Court's precedent nor ours tells us that the door to *Younger* is reopened when a plaintiff—many months after a case has been filed—amends its complaint to bring additional claims related to the same controversy." *Id*. at 1270.

This rule makes sense, and its reasoning applies to this case. *Younger* recognizes that "significant expenditure of effort by the federal court counsels against abstaining in deference to subsequently-initiated state cases." *Nationwide*, 873 F.3d at 729. Those same "considerations of economy, equity, and federalism" still apply when a pleading has been amended or a defendant has been added. *Midkiff*, 467 U.S. at 238. As the Sixth Circuit explained: "Federalism is not a one-way street; it reflects a 'sensitivity to the legitimate interests of *both* State and National Governments.' The interests of the federal courts matter, too[.]" *Hill*, 878 F.3d at 206 (citation omitted) (quoting *Younger*, 401 U.S. at 44). For that reason, "[l]ater-filed state court proceedings do not require federal courts to wade into a *Younger* analysis when they and the parties have already expended significant resources to resolve the federal claims." *Id.*

Here, as in *Hill*, the Court has already "expended significant resources to resolve the federal claims," so "[t]o jump ship now would be to exhibit a callous disregard for the meaningful litigation that has already occurred in the federal court system." *Id.* As the Court has already explained, the Missouri and Texas investigations arise out of the "same transaction [or] occurrence." ECF No. 44 at 3. The Missouri CID is "virtually identical" to the Texas CID that is the subject of the injunction already in place. *Id.* at 2. Bailey has admitted that he "coordinated"

AMERICAN OVERSIGHT

with Paxton. *Id.* at 3. And the claims asserted against both Defendants are the same. Abstaining under *Younger* as to Bailey while this case moves forward against Paxton would result in parallel state and federal litigation over what is effectively a single investigation—or, at minimum, coordinated and overlapping investigations—led by two state attorneys general working in concert, raising identical federal issues. The considerations of judicial economy undergirding *Midkiff* and its progeny counsel strongly against such duplicative bifurcation of proceedings where this Court has already invested significant time and effort.

Moreover, abstaining would allow Defendants—and potentially other state actors—to skirt this Court's jurisdiction by acting in concert to file CID proceedings in other states. Both Paxton and now Bailey have encouraged peers to do just that. *See* Compl. ¶ 51; Suppl. Compl. ¶ 36. Bailey himself admits he commenced the CID Proceeding *in response* to this case. CID Petition ¶ 20; Suppl. Compl. ¶¶ 20, 24. The Sixth Circuit foresaw such mischief in *Hill*: "While litigants presumably know if they face state court prosecutions at the time they file related federal complaints, they cannot predict future prosecutions. Yet Defendants' approach would allow subsequent unforeseen prosecutions to cut the legs out from under long-running federal litigation." 878 F.3d at 205. "*Younger* stands for the proposition that in some instances a federal court should not interfere with a substantive state judicial proceeding. Here, the opposite situation exists." *Derma Pen*, 2015 WL 791595, at *7.

D. Bailey issued the CID and commenced the CID Proceeding in bad faith.

Abstention is also inappropriate where state officials commenced a state court action "in bad faith without hope of obtaining a valid conviction." *Perez v. Ledesma*, 401 U.S. 82, 85 (1971). This is because "a state cannot have a legitimate interest in discouraging the exercise of constitutional rights, or, equally, in continuing actions otherwise brought in bad faith, thereby

AMERICAN OVERSIGHT

reducing the need for deference to state proceedings." *Cullen v. Fliegner*, 18 F.3d 96, 104 (2d Cir. 1994) (citation omitted); *see also Netflix, Inc. v. Babin*, 88 F.4th 1080, 1091 (5th Cir. 2023).[3]

As Plaintiffs have shown, *see* Exs. 4, 6 & 7 to Pls.' Mot. to Suppl. Compl., ECF Nos. 39-4, 39-6 39-7, Bailey's *stated purpose* for investigating Media Matters is to "retaliate for or deter the exercise of constitutionally protected rights." *Netflix*, 88 F.4th at 1091 (quotations omitted). This makes out a textbook case for application of the bad faith exception. *Id.*; *see also Phelps v. Hamilton*, 59 F.3d 1058, 1064 n.12 (10th Cir. 1995) ("[I]f prosecutions are brought for the purpose of chilling or preventing a defendant from exercising his or her constitutional rights, this may constitute a harassing and/or bad faith prosecution, even though the charges are predicated on probable cause." (collecting cases)). For instance, the Second Circuit applied the bad faith exception where a teacher was disciplined after distributing leaflets opposing the re-election of school board members. *Cullen*, 18 F.3d at 104. The Fifth Circuit recently affirmed application of the exception where a prosecutor sought four new indictments to retaliate for the filing of a federal habeas corpus action. *Netflix*, 88 F.4th at 1091. Courts have also held that the exception applies where a prosecutor pursued charges against a plaintiff to gain publicity for himself, *Shaw v. Garrison*, 467 F.2d 113 (5th Cir. 1972), where the prosecution was motivated to deter the filing of a civil suit against state officers, *Wilson v. Thompson*, 593 F.2d 1375 (5th Cir. 1979), and where

[3] Media Matters did not "waive" the bad faith exception by failing to affirmatively raise it before the *Younger* doctrine was ever invoked. *See* Opp. 18–19. Bailey injected *Younger* into this litigation for the first time in his opposition brief. The bad faith exception thus "fall[s] within the scope of the matters the opposing party raised in opposition," and may appropriately be raised in a reply brief. *Banner Health v. Sebelius*, 905 F. Supp. 2d 174, 188 (D.D.C. 2012) (cleaned up). Plaintiffs were not required, in their preliminary injunction motion, to anticipate Bailey's invocation of a defense which, as explained above, plainly does not apply. Moreover, this brief is Plaintiffs' first opportunity to respond to arguments made in support of Bailey's motion to dismiss, and so the argument plainly is also not waived as to that motion.

AMERICAN OVERSIGHT

prosecution was brought as punishment for criticizing public officials, *Fitzgerald v. Peek*, 636 F.2d 943, 945 (5th Cir. 1981); *see also Lewellen*, 843 F.2d at 1112 n.10 (collecting examples).

As these cases demonstrate, Bailey is simply wrong that the bad faith exception applies only when the judges overseeing the state action act in bad faith; he invented that rule out of whole cloth. *None* of these cases applying the bad faith exception made such a finding, and there is no case supporting that rule. Bailey's argument badly distorts the only authority that he relies on for it. Opp. 19–20. Specifically, *Juidice* discussed the bad faith of judges in the state court proceeding because *they were the named defendants in the federal case*. 430 U.S. at 329–30. Bailey's carefully excerpted citation to *Wright & Miller*'s description of *Juidice* is no more helpful to him. The cited footnote explains: "In the light of [*Juidice*] it would be a truly incredible case in which the 'bad faith' exception could be satisfied *in private litigation*, since the bad faith *of the private plaintiff* would be irrelevant and the Younger exception, under *Juidice*, requires a showing a bad faith on the part of the state court judges." 17B Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. Juris. § 4255 n.11 (3d ed.) (emphasis added). The CID Proceeding is not "private litigation," and Attorney General Bailey is not a "private plaintiff."

Here, evidence of bad faith abounds. At every step, Bailey has made clear that he means to punish Media Matters for its speech and not to pursue any good faith investigation. He launched this investigation at the urging of online activists calling on state officials to retaliate against Media Matters. *See* Compl. ¶ 47; Suppl. Compl. ¶ 10. For months, Bailey took no meaningful steps to confer with Media Matters, choosing instead to make extreme and nakedly partisan accusations about them in public statements, all while this case was proceeding on the merits. Suppl. Compl. ¶¶ 11, 20, 26; *see also* Mem. Op. Granting Prelim. Inj. 38, ECF No. 37 ("PI Op.") (finding such remarks to be "evidence of retaliatory intent"); *cf. Cullen*, 18 F.3d at 104 (applying bad faith

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001256

exception based on "past history of personal conflict" and "ad hominem" attacks against the federal plaintiff). Bailey echoed Paxton in encouraging other state officials to join his "war" on Media Matters. Supp. Compl. ¶ 36; *see also* PI Op. 38 (finding such encouragement evidence of retaliation). Bailey has admitted that he has coordinated with Paxton, but notably waited until *after* the parties here fully briefed and argued a motion regarding the Texas CID before issuing his own CID and simultaneously filing the CID Petition. *Cf. Netflix*, 88 F.4th at 1092 (affirming application of bad faith exception where, after period of inactivity, there was "a burst of prosecutorial alacrity" shortly after habeas action was filed).

The timing of the CID Petition also smacks of a bad faith attempt to evade this Court's jurisdiction. Under Missouri law, when a CID is served, the recipient of the CID generally has 20 days to either (1) comply or (2) file "a petition to extend the return date for, or to modify or set aside the civil investigative demand, stating good cause." Mo. Stat. § 407.070. Bailey did not wait 20 days to allow Media Matters to comply; instead, he filed the CID Petition the *same day* he issued the CID, before Media Matters even *received* it.[4] The reason for this extraordinary behavior is obvious: as even Bailey appears to admit, CIDs are "non-self-executing," and thus their issuance alone does not trigger *Younger* abstention. Opp. 14 (citing *Google*, 822 F.3d at 223; *Backpage*, 2017 WL 5726868, at *6). Bailey pointed to this very litigation as the reason why he was ignoring this ordinary waiting period. *See* CID Petition ¶ 20; *see also* Ex. 7 to Pls.' Mot. to Suppl. Compl.,

[4] Bailey has cited no authority permitting him to simply ignore Missouri statutory law in rushing to preemptively file the CID Petition. The sole case he cites has nothing to do with the MMPA and relies upon a near-century old body of law concerning requirements for derivative shareholder suits under Missouri law. *See New England Carpenters Pension Fund v. Haffner*, 391 S.W.3d 453, 460 (Mo. Ct. App. 2012) (citing *Punch v. Hipolite Co.*, 100 S.W.2d 878, 885 (Mo. 1936)). He tellingly does not identify any past instances where he preemptively sued a CID recipient. Nor has he explained why such urgency can be justified, given that he sat on his hands for three months before serving a copy-and-paste CID that regurgitates Paxton's CID in nearly every way.

AMERICAN OVERSIGHT

ECF No. 39-7 at 3. Had Bailey waited 20 days consistent with the statute, he would have no colorable basis to invoke *Younger* to stave off Plaintiffs' inevitable request for emergency relief from Bailey's copycat CID. The Court should not sanction such procedural gamesmanship.[5]

Although a showing of harassment or retaliation "will justify an injunction regardless of whether valid convictions conceivably could be obtained," *Fitzgerald*, 636 F.2d at 945, abstention is *also* inappropriate because Bailey has "[no] hope of obtaining a valid conviction" for violation of Missouri consumer protection law. *Perez*, 401 U.S. at 85. The CID Petition itself confirms as much. In its scant eight pages, the Petition fails to (1) identify any serious basis for jurisdiction in Missouri; (2) identify any injury, or even any *effect*, that Media Matters has allegedly caused in Missouri; or (3) meaningfully explain how Media Matters has possibly violated any Missouri laws. But the purpose of Bailey's "investigation" is not to formulate a claim against Media Matters for violation of the MMPA, much less successfully pursue it to judgment. As his stream of partisan accusatory language and conduct towards Media Matters shows, Supp. Compl. ¶¶ 11, 19–20, 26, 36, his real purpose is "to retaliate for [and] to deter constitutionally protected conduct." *Cullen*, 18 F.3d at 103; *see also Phelps*, 59 F.3d at 1064 n.12.

E. Media Matters has not consented to jurisdiction in Missouri.

In a gambit to prop up his abstention argument, Bailey suggests Media Matters has waived its objection to personal jurisdiction in Missouri. Opp. 22–23. This Court need not resolve that

[5] Since being added as a Defendant, Bailey has continued to attack both Media Matters and this Court's authority to adjudicate this matter. *See* @AGAndrewBailey, X.com (May 8, 2024, 5:18 PM), https://twitter.com/AGAndrewBailey/status/1788317466986172648 ("Media Matters is attempting to shut down Missouri courts . . . D.C. courts have no say over Missouri courts. I have filed a motion to protect our ability to litigate in Missouri."); *see also* @AGAndrewBailey, X.com (May 8, 2024, 5:26 PM), https://twitter.com/AGAndrewBailey/status/1788319713119875446 ("Media Matters can't run to a DC court to evade Missouri law."). Bailey's publicity-seeking behavior and ad hominem attacks reinforce the bad faith nature of his investigation. *E.g.*, *Shaw*, 467 F.2d at 115–19; PI Op. 38 (explaining similar attacks are "evidence of retaliatory intent").

AMERICAN OVERSIGHT

question of Missouri law, but the argument is meritless regardless. Bailey's argument rests entirely on Media Matters's application for a change of judge under Missouri Rule 51.05. *See* Mo. Sup. Ct. R. 51.05. Contrary to Bailey's erroneous argument, applications for change of judge are not "motions." Opposing parties are not entitled to respond to such applications, and courts lack any discretion to deny them: "When a party files a proper, timely application for change of judge, the trial court has no jurisdiction to do anything in the case other than grant the application." *Cover v. Robinson*, 224 S.W.3d 36, 38 (Mo. Ct. App. 2007); *see also* Mo. Sup. Ct. R. 51.05(a) ("A change of judge *shall* be ordered in any civil action upon the timely filing of a written application therefor by a party." (emphasis added)).

A separate rule—Rule 55.27(a)(2)—provides for an affirmative defense based on lack of personal jurisdiction. *See* Mo. Sup. Ct. R. 55.27(a)(2). Rule 55.27(g) explains that a "defense of: (A) [l]ack of jurisdiction over the person . . . is waived if it is: (A) [o]mitted from a motion [under Rule 55.27(f)], or (B) [n]either made by a motion under this Rule 55.27 nor included in a responsive pleading." Mo. Sup. Ct. R. 55.27(g); *see also* Mo. Sup. Ct. R. 55.27(f) (similar). Media Matters has not yet made any Rule 55.27 motion or filed any responsive pleading in Missouri.

Tellingly, Bailey does not cite a *single* Missouri case holding that a Rule 51.05(a) application waives an affirmative defense under Rule 55.27(a). Instead, he cites a case from *Indiana* that concerned a "motion" to change judges under Indiana law, *Rollins Burdick Hunter of Utah, Inc. v. Bd. of Trustees of Ball State Univ.*, 665 N.E.2d 914, 919 (Ind. Ct. App. 1996), but not

AMERICAN OVERSIGHT

an "application" under Missouri law. Bailey's remaining case law only confirms the grasping nature of his argument.[6]

II. This Court has personal jurisdiction over Bailey.

This Court has personal jurisdiction over Bailey for substantially the same reasons it has jurisdiction over Paxton. *See* PI Op. 18–28.[7]

A. This Court has long-arm jurisdiction over Bailey.

Bailey is subject to subsection (a)(1). Bailey contends that (a)(1) does not apply because hiring a process server does not constitute "transacting any business in the District of Columbia." D.C. Code § 13–423(a)(1). But it is "well-settled that the 'transacting any business' provision embraces those contractual activities of a nonresident defendant which cause a consequence here." *Mouzavires v. Baxter*, 434 A.2d 988, 992 (D.C. 1981) (citation omitted). Even "a single act may be sufficient to constitute transacting business," so long as the contact is "voluntary and deliberate, rather than fortuitous." *Id.* at 992, 995. That is what Bailey did here—he contracted with an agent to cause harmful consequences within D.C. Like Paxton, his choice to hire an agent to retaliate against Plaintiffs was plainly voluntary and deliberate. *See* PI Op. 24.[8]

With no trace of irony, Bailey complains that finding jurisdiction under (a)(1) would mean a party "could never sue an out-of-state entity . . . without subjecting themselves to a corresponding retaliatory lawsuit filed in the state of service." Opp. 24. Under Bailey's view, Media Matters can

---

[6] *Everett v. Vance*, 685 S.W.3d 495, 502 (Mo. Ct. App. 2023) (personal jurisdiction waived by filing counterclaim and motion to dismiss); *Bland v. IMCO Recycling, Inc.*, 67 S.W.3d 673, 679 (Mo. Ct. App. 2002) (personal jurisdiction waived by filing crossclaim); *State ex rel. Antoine v. Sanders*, 724 S.W.2d 502, 504 (Mo. 1987) (venue waived by filing answer).

[7] Bailey does not dispute that he is a "person" under the long-arm statute. *See* PI Op. 10–18.

[8] Bailey suggests that hiring a process server does not establish a "continuing corporate presence in" in the District of Columbia. Opp. 24–25. He ignores that "an ongoing course of conduct is not necessary to satisfy § 13-423(a)(1)." PI Op. 24 (citation omitted).

AMERICAN OVERSIGHT

be forced into court in Cole County, Missouri—a jurisdiction with which Media Matters has not the faintest relevant connection—while Bailey may dispatch an agent into the District of Columbia to harass Media Matters without fear of appearing before a D.C. court. This Court has already properly rejected that argument, *see* PI Op. 19–22, and Bailey's own choice to hire an agent in the District of Columbia to cause an effect here suffices for (a)(1).

Bailey is subject to subsection (a)(3). Bailey puzzlingly suggests that none of his tortious conduct occurred in D.C. because he "mailed [the CID] from Missouri" and "did not hire a process server in D.C. for the CID." Opp. 25. But there is no dispute that Bailey "us[ed] a process server to serve" the petition to enforce the CID on Media Matters in D.C. *Id.* at 27. The CID Petition—personally served on Media Matters by Bailey's agent—attached the CID as an exhibit and is part and parcel of Bailey's broader retaliatory campaign against Plaintiffs. Media Matters did not even receive the Missouri CID as-issued by Bailey until April 1—five days after it was sued for not complying with it. The copy attached to the CID Petition was the first time Media Matters formally received the CID from Bailey. And, if anything, serving the CID Petition is even *more* tortious than serving the CID alone, not least of all because Bailey filed the former in a bad faith effort to preempt Media Matters's ability to vindicate its rights in this Court. *Supra* I.D. Bailey dispatched an agent into D.C. to commit "abusive service of process [that] causes injury within the forum," PI Op. 26, and thus satisfies (a)(3).[9]

[9] Bailey relies on *Walden v. Fiore*, 571 U.S. 277, 285 (2014), a case which concerned due process and not the long-arm statute. Opp. 25. Regardless, *Walden* recognized that jurisdiction is appropriate where a party "reach[es] out beyond" their State and, through "physical entry into [another state]" causes harm. *Walden*, 571 U.S. at 285. That is this case. This Court previously distinguished Bailey's remaining authority. *See* PI Op. 26 (distinguishing *Slate v. Kamau*, No. 20-cv-3732 (BAH), 2021WL 3472438 (D.D.C. Aug. 6, 2021)).

AMERICAN OVERSIGHT

Bailey repeats Paxton's argument that Plaintiffs may not rely upon their injury in D.C. to show that Bailey acted tortiously here. Opp. 26. This Court properly rejected that argument, finding that "principle has no application here" because there "is an identifiable act (physically serving the [Petition] on Media Matters) that is separate from the claimed injury (chilling of First Amendment rights)." PI Op. 27–28.

B. Exercising personal jurisdiction over Bailey is consistent with Due Process.

Bailey admits that he "used a process server for [his] state enforcement action" in D.C., but claims jurisdiction is improper because Media Matters "challenges much more than that." Opp. 27. That bare claim is irrelevant to the specific jurisdiction analysis, which asks whether Bailey has "tak[en] some act by which [he] purposefully avails [himself] of the privilege of conducting activities within the forum State." *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 359 (2021) (quotations omitted); *see also* Pls.' Mem. in Supp. of TRO & Prelim. Inj. Against Bailey 23–24, ECF No. 49-1 ("Mem."). Here, Plaintiffs' claims arise out of Bailey's retaliatory campaign directed towards them in D.C., of which Bailey's service of the CID Petition and CID are critical parts. As this Court explained, "it [is] reasonable to conclude that a lawyer who knowingly serves abusive process in a jurisdiction . . . is 'purposely avail[ing] himself of the privilege of conducting activities within the forum State.'" PI Op. 20 (quoting *Schleit v. Warren*, 693 F. Supp. 416, 422–23 (E.D. Va. 1988)). It was Bailey's "own choice" to "reach[] out beyond" Missouri to serve abusive process in D.C. *Ford Motor Co.*, 592 U.S. at 359 (quoting *Walden*, 571 U.S. at 285). Exercising jurisdiction over him thus accords with due process.

Bailey also claims the benefit of a so-called "default rule" that state agencies should not have to defend their enforcement of state laws in courts across the country. Opp. 28 (citing *Stroman Realty v. Wercinski*, 513 F.3d 476, 487 (5th Cir. 2008)). But Bailey has "projected himself across state lines and asserted a pseudo-national executive authority" to police conduct occurring in D.C.

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001262

and Maryland, without any apparent connection to Missouri. *Def. Distributed v. Grewal*, 971 F.3d 485, 493 (5th Cir. 2020). As this Court has already explained, the "Fifth Circuit's decision in *Grewal* provides a close analogy to this case." PI Op. 21 (citing *Def. Distrib.*, 971 F.3d 485). Bailey cannot explain why the Court was wrong to conclude that *Grewal*—which extensively distinguished *Wercinski*, 971 F.3d at 491–92—applies here.[10]

Finally, Bailey claims without explanation that if he is subject to jurisdiction in D.C., so too must Media Matters be subject to jurisdiction in Missouri. Opp. 27–28. Such a claim reveals a stark misunderstanding of basic personal jurisdiction principles. Plaintiffs' injury "arise[s] out of . . . [Bailey's] contacts" with D.C. *Ford Motor Co.*, 592 U.S. at 359 (cleaned up). Plaintiffs' service of their supplemental complaint, in contrast, is unrelated to any purported injury that Bailey claims Media Matters caused in Missouri. Indeed, Bailey has failed to identify *any* injury, or even impact, that Media Matters has caused in Missouri. There is thus no reciprocity of jurisdiction.[11]

III. Plaintiffs' injuries are ripe and they lack an adequate remedy elsewhere.

Plaintiffs' claims are ripe and justiciable for substantially the same reasons this Court already found as to Paxton. *See* PI Op. 28–35. Bailey's argument to the contrary is nonsensical given that he is already seeking to enforce his CID. Accordingly, Bailey primarily argues that Plaintiffs have an adequate remedy available in Missouri state court. For the reasons discussed below, he is incorrect on all scores.

---

[10] *Music Makers Holdings, LLC v. Sarro*, No. 09-cv-1836 (RWT), 2010 WL 2807805, at *5 (D. Md. July 15, 2010)—which involved a private party mailing a "cease-and-desist letter," rather than any compulsory process, to another private party—is irrelevant.

[11] Bailey's claim that Media Matters must have "substantial contacts" with Missouri because it obtained a charity exemption ignores that specific jurisdiction requires that claims "arise out of" such contacts. *Ford Motor Co.*, 592 U.S. at 359. Bailey has not even claimed—never mind shown—that Media Matters's alleged contacts with Missouri have anything to do with its reporting on X and Musk.

AMERICAN OVERSIGHT

Lack of adequate remedy. Bailey chooses, like Paxton, to place great reliance on *Reisman v. Caplin*, 375 U.S. 440 (1964), for the idea that Media Matters has an adequate remedy at law. *See* Opp. 29–30. But in *Reisman* there "had not yet been an injury" to the plaintiffs, PI Op. 30 (quoting *Twitter, Inc. v. Paxton*, 56 F.4th 1170, 1178 (9th Cir. 2022)), and no injury even *could* have been cognizable until the plaintiffs first availed themselves of an administrative remedy, *see Twitter*, 56 F.4th at 1178 (explaining "the injury in *Reisman* would only occur if the document request were satisfied" after the administrative process). In contrast, Plaintiffs' First Amendment injury "is ongoing" and they "cannot 'avoid'" it "by challenging the document request" in Missouri state court. PI Op. 30 (quoting *Twitter*, 56 F.4th at 1179).

Bailey acknowledges this Court has already set aside *Reisman* but insists that Missouri law affords Media Matters a remedy that Texas law lacks. Specifically, whereas the Texas statute contemplated a recipient seeking relief in their county of residence, the parallel provision in the Missouri statute identifies Cole County as a catchall venue for petitioners. *See* Opp. 30 (citing Mo. Rev. Stat. § 407.070). That is a distinction without a difference. Seeking affirmative, contested relief in Missouri state court would likely require Plaintiffs to waive personal jurisdiction, including potentially over any subsequent civil suits related to the subject matter of the Missouri CID. *E.g.*, *Moore v. Crocker*, 674 S.W.3d 146, 150 (Mo. Ct. App. 2023). Consenting to jurisdiction in Missouri is not a meaningful remedy given that the very relief Plaintiffs seek is for the Attorney General of that state to cease overstepping his jurisdiction to retaliate against Media Matters for exercising its constitutional rights here in D.C.

The procedure under the MMPA also suffers from similar deficiencies as its Texas equivalent. Bailey, like Paxton, has taken the view that he has sweeping powers to issue and enforce CIDs. He claimed in a similar proceeding that the MMPA grants him power "akin to that

AMERICAN OVERSIGHT

of a grand jury," permitting him to "investigate merely on suspicion that the law is being violated, or even just because [he] wants assurance that it is not."[12] At the same time, he asserts Media Matters has limited substantive and procedural rights in any Missouri proceeding. For example, he contends that the D.C. and Maryland reporter shield laws "do not apply extraterritorially" to Missouri, potentially stripping Plaintiffs of a privilege they enjoy here. Opp. 35. He also asserts that the MMPA does "not require[] [him] to show [his] hand," *id.* at 3, meaning Media Matters must defend itself in a proceeding where it is kept in the dark as to the claims being made against it. The Missouri statute provides only that CIDs may be set aside for "good cause," but fails to specify the substantive and procedural rights a petitioner enjoys under that provision. Mo. Rev. Stat. § 407.070. Bailey is plainly retaliating against Media Matters for its speech; the meager protections provided under Missouri law are not sufficient for Media Matters to protect itself.

Most critically, only this Court can grant Plaintiffs *complete* and *speedy* relief. *Cf. Council of & for the Blind of Delaware Cnty. Valley, Inc. v. Regan*, 709 F.2d 1521, 1550 n.76 (D.C. Cir. 1983) (en banc) (Spottswood, C.J., concurring) (explaining an alternative legal remedy must be "speedy and adequate"). After all, "an adequate remedy at law means a remedy which is plain and complete and as practical and efficient to the ends of justice and its prompt administration as a remedy in equity by injunction." 11A Wright & Miller Fed. Prac. & Proc. Civ. § 2944 (3d ed.) (quotations omitted).

Seeking relief in Missouri will not guarantee Media Matters a *complete* remedy. By his own admission, Bailey has "coordinated with Texas" and is "in talks with other states as well." Suppl. Compl. ¶ 36. Paxton is a party in this case but not in the Missouri CID Proceeding. It is

[12] *See* Resp't's Mot. for J. on Pleadings & Suggestions in Supp. at 1, 13, *Planned Parenthood of the St. Louis Region v. Bailey*, No. 2322-CC00637 (St. Louis Cir. Ct. Oct. 31, 2023) (attached as Ex. A).

AMERICAN OVERSIGHT

doubtful that Media Matters can obtain relief against Paxton—or any additional state officials—in Missouri court. The upshot of Bailey's argument is that Media Matters has an adequate remedy at law because it may race around the country to defend itself in different state courts. The D.C. Circuit has squarely rejected such a theory. *See Reed Enters. v. Corcoran*, 354 F.2d 519, 520 (D.C. Cir. 1965) (Skelly Wright, J.). The court in *Reed* explained that being forced to defend themselves in a "multiplicity of legal proceedings" filed "throughout the United States" provided the plaintiffs with "no adequate remedy at law." *Id.*; *accord* 11A Wright & Miller Fed. Prac. & Proc. Civ. § 2944 (3d ed.) (remedy not adequate where "effective legal relief can be secured only by a multiplicity of actions").

Proceeding in Missouri also fails to guarantee Media Matters a *speedy* remedy. Planned Parenthood recently filed a petition to set aside another CID issued by Bailey and—after Bailey cross-petitioned to enforce—it took nearly thirteen months for the petitions to be resolved. *See Planned Parenthood of St. Louis v. Bailey*, Case No. 2322-CC00637 (St. Louis Cir. Ct.). Media Matters cannot afford to wait that long. There is no reason to expect a different timeline here, particularly since any petition filed by Media Matters in state court would likely be consolidated with Bailey's preemptive strike against it in Cole County. Bailey has for all practical purposes already chosen the timing, venue, and terms of any state court contest over the Missouri CID's validity. In no way do such proceedings afford Plaintiffs an adequate remedy at law.[13]

Ripeness. Bailey's undeveloped ripeness claim is based entirely on his contention that "there is [already] an enforcement action in Missouri state court" where Media Matters can litigate. Opp. 31. But Media Matters cannot rely on the Cole County proceedings to vindicate its rights for

[13] Seeking any preliminary relief would also only further the claim that Media Matters has consented to jurisdiction in Missouri. *See Moore*, 674 S.W.3d at 150.

AMERICAN OVERSIGHT

the same reasons it cannot rely on filing a petition for relief in Missouri. It would also be perverse to hold that Media Matters has no choice but to vindicate its rights in proceedings that have been weaponized against it in a foreign venue for unlawful reasons (and improperly filed to evade this Court's jurisdiction). As this Court has already recognized, such a result would reward state officials for staggering their conduct in a manner intended to frustrate federal review of federal claims. *See* PI Op. 5 n.3; Pls.' Notice of Mo. Att'y Gen. CID & Pet. 2, ECF No. 36. That is a real concern here, where Bailey is coordinating with other state attorneys general, including Paxton. Suppl. Compl. ¶ 36. Bailey's reliance on *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987) is misplaced. There, the parties did not dispute that the Defendant—Texaco—was subject to personal jurisdiction in the Texas state courts. *See generally Pennzoil*, 481 U.S. at 4. Plaintiffs are under no duty here to seek "judicial relief in a foreign forum." PI Op. 30.[14]

IV. Media Matters and Hananoki are likely to prevail on the merits of their claims.

A. Plaintiffs are likely to prevail on their First Amendment retaliation claim.

Bailey's attempts to rebut Plaintiffs' claim of retaliatory chill fall short.

First, Plaintiffs have satisfied the causation standard for a First Amendment claim. There is no doubt that "but-for" Bailey's retaliatory animus, Plaintiffs would not be subject to his harassment and abuse. *See Nieves v. Bartlett*, 587 U.S. 391, 398–99 (2019). At every step, Bailey has made clear that he means to punish Media Matters's speech, not to pursue a good faith investigation. *See* Suppl. Compl. ¶¶ 10–11, 16–21, 24–37; ECF No. 36 at 1–3; 2d Suppl. Decl. of Eric Hanonoki ¶¶ 5-11, ECF No. 49-2 ("2d Suppl. Hananoki Decl."); Suppl. Decl. of Cynthia Padera ¶¶ 6–26, ECF No. 49-3 ("Suppl. Padera Decl."); Suppl. Decl. of Benjamin Dimiero ¶¶ 4–

[14] Bailey's reference to cases questioning pre-enforcement review of administrative subpoenas, *see* Opp. 31, is irrelevant both because Bailey *is* seeking to enforce the CID, and for the First Amendment-related reasons already identified by this Court. *See* PI Op. 28, 34–35.

AMERICAN OVERSIGHT

9, ECF No. 49-5; *see also supra* I.D. Bailey has had months to identify evidence that his investigation has any basis in fact but offers only a single brief declaration that echoes the threadbare and conclusory allegations in the CID Petition. *See* Decl. of Assistant Atty. Gen. Steven Reed, ECF No. 56-1. Bailey, just like Paxton before him, has boasted publicly about the reasons underlying his investigation of Media Matters making clear it is a textbook exercise in "retaliatory intent." PI Op. 37–38 (finding Paxton's motive was the but-for cause of Plaintiffs' injury where causation evidence included Paxton's public statements about the investigation and attacking Media Matters).

Bailey mischaracterizes Plaintiffs' retaliation claim by arguing that Plaintiffs' only evidence of Bailey's retaliatory motive is that Media Matters once published a single critical article of him. *See* Opp. 33. In reality, that article is only one small piece of evidence among overwhelming proof of retaliatory motive. *E.g.*, Mem. 9–15, 30–31; *see generally* ECF No. 36. Bailey also suggests that his office would have investigated Media Matters anyway based on the facts in "X Corp.'s lawsuit" in the Northern District of Texas. Opp. 32. But that assertion raises more questions than answers. Nowhere does Bailey explain what interest the Missouri Attorney General has in a civil suit filed in Texas by a Nevada-incorporated and California-based company against a D.C.-based media organization about reporting that was done from Maryland. Bailey's brazen assertion of near limitless jurisdiction to "investigate" such reporting only highlights the clear evidence of retaliation here.

Next, Bailey argues that Media Matters is not actually suffering any chill, *see id.* 33–34, but fails to dispute the broad evidence that has been presented on this point, including the facts in Plaintiffs' declarations. Instead, he points to an article that Media Matters wrote criticizing *The New York Times*, in which Bailey was passingly mentioned as a subject of *that* paper's coverage.

AMERICAN OVERSIGHT

And he claims, based on a "quick search," that Media Matters has published articles about Musk since November 2023. *Id.* Actually reviewing that search, however, reveals that the articles at issue either contain statements related to this litigation or only fleeting references to Musk. These passing references do not undermine Plaintiffs' substantial evidence of chill, and Plaintiffs "need not show that the government action led them to stop speaking 'altogether'" anyways. PI Op. 39 (quoting *Edgar v. Haines*, 2 F.4th 298, 310 (4th Cir. 2021)). Media Matters has not published articles focused on Musk since November.[15] That is consistent with the "uncontested evidence" in its declaration testimony, *e.g.*, 2d Suppl. Hananoki Decl. ¶ 12, upon which this Court relied in finding that Plaintiffs' "self-censorship in response" to Paxton's nearly identical investigation and CID "provides some evidence of the tendency of [Defendant's] conduct to chill First Amendment activity." PI Op. 37 (quoting *Hartley v. Wilfert*, 918 F. Supp. 2d 45, 54 (D.D.C. 2013)); *see also Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 500 (4th Cir. 2005).

Bailey's chill argument also ignores the reality of the injuries suffered by Plaintiff Hananoki, Media Matters's Senior Investigative Reporter. While Bailey's response does not *once* mention or acknowledge Hananoki, the Missouri CID expressly seeks documents directly related to Hananoki's investigative reporting, including confidential source information. *See* Mo. Civil Investigative Demand to Media Matters 4–5, ECF No. 39-5. As Hananoki has explained now in several declarations, his reporting on Musk's ownership of X has ceased because of the retaliation he is facing. *See* Decl. of Eric Hananoki ¶¶ 24–39, ECF No. 4-3; Suppl. Decl. of Eric Hananoki ¶¶ 2–6, ECF No. 28-1; 2d Suppl. Hananoki Decl. ¶¶ 10–14. He has described how, even when an article naturally lends itself to discussing Musk, he steers clear of the subject for fear of further

[15] *See generally Elon Musk*, Media Matters for America, https://www.mediamatters.org/elon-musk (last visited May 20, 2024).

AMERICAN OVERSIGHT

retaliation. 2d Suppl. Hananoki Decl. ¶¶ 10–14. The significant drop-off in his publication output confirms the harm that Bailey's lawless behavior is causing. *See* PI Op. 37.[16] Indeed, in rejecting Paxton's similar argument, this Court found that "potential punitive consequences, as well as possible judicial intervention to enforce the CID, make Plaintiffs' claim of chilled expression objectively reasonable." PI Op. 37.

Third, and finally, Bailey bizarrely claims that the actions he has taken against Plaintiffs are not "material adverse action[s]" because "Media Matters does not dispute that it is going to have to litigate its claims in one forum or another." Opp. 34. That is illogical. If Bailey had never retaliated against Plaintiffs to begin with, the parties would have no need to litigate at all. Bailey's retaliatory service of the Missouri CID and CID Petition are plainly "material adverse action." Such extreme conduct clearly would "chill a person of ordinary firmness" in the plaintiffs' position from engaging in "future First Amendment activity." *Houston Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 477 (2022) (quoting *Nieves*, 587 U.S. at 397) (explaining standard for material adverse action); *see also* PI Op. 35–37 (finding Paxton's similar conduct met this standard).

B. Plaintiffs are likely to prevail on their remaining claims.

First and Fourth Amendments. Bailey was required to exercise "scrupulous exactitude" in his CID because "the materials sought to be seized" are "protected by the First Amendment." *Zurcher v. Stanford Daily*, 436 U.S. 547, 564 (1978) (quoting *Stanford v. Texas*, 379 U.S. 476, 485 (1965)). He does not dispute that the documents he seeks are protected materials, nor that the Missouri CID is a sweeping and overbroad request for such documents. *See* Opp. 34–35.

[16] A review of Media Matters's website shows that Hananoki has only published seven articles this year. He published roughly five times as many articles during the same period last year. *See generally Eric Hananoki*, Media Matters for America https://www.mediamatters.org/author/eric-hananoki (last visited May 20, 2024).

AMERICAN OVERSIGHT

Bailey contends that Media Matters "can litigate [this] issue under a standard timeline." Opp. 34. But he has asserted sweeping powers—those "akin to that of a grand jury"—and is seeking to enforce them *now*. Absent prompt relief from this Court, Plaintiffs will be left to rely solely upon the limited procedures available to vindicate these rights in the foreign Missouri forum. *Supra* at 24-26. The Court should grant relief on this claim now. *See Major League Baseball v. Crist*, 331 F.3d 1177, 1187–88 (11th Cir. 2003) (quashing CID that violated the Fourth Amendment).

D.C. and Maryland Shield Laws. According to Bailey, the D.C. and Maryland shield laws "do not apply extraterritorially to Media Matters' conduct in Missouri." Opp. 35. But all of Plaintiffs' disputed reporting occurred in D.C. or Maryland. To the extent Bailey means these *laws* do not apply extraterritorially in Missouri, that is another reason why that forum offers no adequate remedy to Plaintiffs. *Supra* at 25.

Bailey also ignores that it is *his* burden to "establish[] by clear and convincing evidence that there is an 'overriding public interest in the disclosure'" of the materials he seeks. *Grunseth v. Marriott Corp.*, 868 F. Supp. 333, 336 (D.D.C. 1994). Absent such a showing, which Bailey has not even tried to make, the D.C. shield law provides "an absolute prohibition against compelling" disclosure of either "[t]he source of any news or information" and any "news or information procured . . . that is not itself communicated in the news media." *Id.* (quoting D.C. Code § 4702).

Due process. Bailey misconstrues this claim as applying solely to the CID Petition. To be sure, the Missouri courts lack personal jurisdiction over Media Matters and no waiver of that defense has occurred. *Supra* I.E; *see also* Suppl. Padera Decl. ¶¶ 16–25. But Media Matters's claim sweeps beyond the CID Petition and extends to Bailey's use of compulsory process against Media Matters, including his abuse of the CID provision in the MMPA. *See* Suppl. Compl. ¶¶ 58–62.

AMERICAN OVERSIGHT

Simply put, Bailey violates Plaintiffs' due process rights by deploying Missouri's investigative machinery against them, including by using the Missouri CID as a cudgel against Plaintiffs' constitutional rights. *See Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982).[17]

V. The equities weigh strongly in favor of preliminary relief.

Irreparable harm. Bailey suggests Plaintiffs are suffering no injury because they need not turn over any documents prior to a hearing. That fails to address the existing chill from Bailey's retaliation, which is "caus[ing] Plaintiffs to self-censor when making research and publication decisions, [has] adversely affected the relationships between editors and reporters, and restricted communications with sources and journalists." PI Op. 38; *see also* Mem. 37–38.

Balance of the equities and public interest. Bailey claims the equities cut in his favor because the "importance and need to protect consumers is indisputable." Opp. 37. But Bailey has failed to identify any Missouri consumer harmed—or at risk of harm—from Plaintiffs. Nor has he offered any theory as to how Plaintiffs are violating Missouri consumer protection law. Similarly baseless is his assertion that Plaintiffs' harms are self-inflicted, *id.* at 38, an argument already rejected by this Court when it was previously raised by Paxton. PI Op. 30–33 (finding given the ample evidence of injury presented by Plaintiffs, including of self-censorship resulting from Paxton's actions, "Defendant is wrong" in arguing that "any such injury is 'self-inflicted'"). The chill Plaintiffs are suffering is directly traceable to Bailey's conduct. *See* Mem. 27–30.

[17] Bailey disingenuously states that "[t]he other claims by Media Matters—which this Court declined to accept with respect to Texas—are similarly meritless." Opp. 9. The Court did no such thing. In its order granting Plaintiffs' motion for preliminary injunction against Paxton, this Court only addressed one claim—Plaintiffs' First Amendment retaliation claim—because the Court found Plaintiffs were likely to prevail on that claim. PI Op. 35. Nowhere did this Court "decline to accept" Plaintiffs' arguments on the merits of their remaining claims.

AMERICAN OVERSIGHT

Bailey also claims that "federalism will be defeated" if "a federal court injunction is sought for routine investigations of potential violations of state law." Opp. 38. But there is nothing routine about Bailey's assertion of nationwide jurisdiction to punish journalism that he—or those he seeks to curry favor with—deems "fraudulent." Permitting a state attorney general to so plainly overstep his jurisdiction in pursuit of a baseless and retaliatory investigation is the true threat to federalism here. *Cf. Alden v. Maine*, 527 U.S. 706, 714, (1999) (explaining "States form distinct" sovereigns but only "within their respective spheres" (quoting The Federalist No. 39 (James Madison)). The public interest *strongly* weighs against such a result, and accordingly "[t]he balance of equities and the public interest favor Plaintiffs" once more. PI Op. 40; *see also* Mem. 38–39.

CONCLUSION

For the reasons above, the Court should grant Plaintiffs' motion for a preliminary injunction against Bailey and, for the same reasons, deny Bailey's motion to dismiss.

Dated: May 20, 2024

Respectfully submitted,
/s/ Aria C. Branch

ELIAS LAW GROUP LLP
Aria C. Branch (DC 1014541)
Christopher D. Dodge (DC 90011587)
Elena A. Rodriguez Armenta* (DC 90018798)
Samuel T. Ward-Packard* (DC 90005484)
250 Massachusetts Ave. NW, Suite 400
Washington, DC 20001
T: (202) 968-4652
abranch@elias.law
cdodge@elias.law
erodriguezarmenta@elias.law
swardpackard@elias.law

Abha Khanna*
1700 Seventh Ave. Suite 2100
Seattle, WA 98101
T: (206) 656-0177
akhanna@elias.law

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001273

GIBSON, DUNN & CRUTCHER LLP
Theodore J. Boutrous, Jr. (DC 420440)
333 South Grand Avenue
Los Angeles, CA 90071
Telephone: (213) 229-7000
Email: tboutrous@gibsondunn.com

Amer S. Ahmed (DC 500630)
200 Park Avenue
New York, New York 10166
Telephone: (212) 351-4000
Email: aahmed@gibsondunn.com

*Admitted *pro hac vice*

Counsel for Plaintiffs Media Matters for America and Eric Hananoki

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001274

CERTIFICATE OF SERVICE

I hereby certify that this document will be served on the Defendants in accordance with Federal Rule of Civil Procedure 5(a).

/s/ Aria C. Branch
Aria C. Branch

AMERICAN OVERSIGHT

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

MEDIA MATTERS FOR AMERICA, ERIC HANANOKI, Plaintiffs, v. WARREN KENNETH PAXTON JR., in his official capacity as Attorney General of the State of Texas, ANDREW BAILEY, in his official capacity as Attorney General of the State of Missouri Defendants.	No. 24-cv-147

MISSOURI ATTORNEY GENERAL ANDREW BAILEY'S REPLY IN SUPPORT OF HIS MOTION TO DISMISS

AMERICAN OVERSIGHT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION AND SUMMARY OF ARGUMENT 1

ARGUMENT 2

I. Younger **Abstention Applies and Dismissal Is Required.** 2

A. The state court proceeding is a "civil enforcement proceeding." 2

B. The Missouri court proceeding "touch[es] on a state court's ability to perform its judicial function." 5

C. This Court's preliminary injunction against General Paxton is irrelevant to whether *Younger* applies in the suit against the Missouri Attorney General. 6

D. No court in this district has ever applied the exceptionally narrow "bad faith" exception, and it does not apply here. 9

II. Media Matters consented to personal jurisdiction in Missouri state court. 13

III. The Court Does Not Have Personal Jurisdiction Over the Missouri Attorney General. 15

A. Media Matters has not satisfied the long-arm statute. 15

B. Personal jurisdiction here would violate the Due Process Clause. 17

IV. Media Matters Has an Adequate Remedy at Law. 18

V. Media Matters Cannot Establish a Justiciable, Ripe Injury 20

VI. Media Matters Has Failed to State a Claim With Respect to its Four Counts. 21

A. The complaint fails to state a First Amendment retaliation claim. 21

B. Media Matters has failed to state a First or Fourth Amendment claim. 24

C. Media Matters has failed to state a claim under the DC or Maryland Shield Laws. 24

D. Media Matters has failed to state a Due Process claim. 25

CONCLUSION 25

CERTIFICATE OF COMPLIANCE 27

CERTIFICATE OF SERVICE 27

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001277

TABLE OF AUTHORITIES

Cases Page(s)

Aaron v. O'Connor,
914 F.3d 1010 (6th Cir. 2019) 6

Aaron v. Target Corp.,
357 F.3d 768 (8th Cir. 2004) 10

Alexander v. S.C. State Conf. of the NAACP,
144 S. Ct. 1221 (2024) 1, 10

Aljabri v. Saud,
No. CV 20-2146, 2022 WL 4598519 (D.D.C. Sept. 30, 2022) 16

Aponte v. Calderon,
284 F.3d 184 (1st Cir. 2002) 25

**Backpage.com, LLC v. Hawley*,
No. 4:17-CV-1951 PLC, 2017 WL 5726868 (E.D. Mo. Nov. 28, 2017) 1, 2, 4, 5

Ballard v. Wilson,
856 F.2d 1568 (5th Cir. 1988) 9

Brooks v. New Hampshire Supreme Ct.,
80 F.3d 633 (1st Cir. 1996) 13

Capel v. Capel,
272 F. Supp. 3d 33 (D.D.C. 2017) 16

Cedar Rapids Cellular Telephone, L.P. v. Miller,
280 F.3d 874 (8th Cir. 2002) 4

Chandler v. James,
783 F. Supp. 2d 33 (D.D.C. 2011) 8, 9

Columbia Brewery Co. v. Forgey,
120 S.W. 625 (Mo. App. 1909) 15

Council of & for the Blind of Delaware Cnty. Valley, Inc. v. Regan,
709 F.2d 1521 (D.C. Cir. 1983) 20

Cullen v. Fliegner,
18 F.3d 96 (2d Cir. 1994) 10

Derma Pen, LLC v. 4EverYoung Ltd.,
2015 WL 791595 (D. Utah Feb. 25, 2015) 8

Def. Distributed v. Grewal,
971 F.3d 485 (5th Cir. 2020) 18

**Doran v. Salem Inn, Inc.*,
422 U.S. 922 (1975) 6, 7, 8

Everett v. Vance,
685 S.W.3d 495 (Mo. App. W.D. 2023) 13

AMERICAN OVERSIGHT

Exponential Biotherapies, Inc. v. Houthoff Buruma N.V.,
638 F. Supp. 2d 1 (D.D.C. 2009) 17

Farah v. Esq. Mag.,
736 F.3d 528 (D.C. Cir. 2013) 22

Feedler v. Schroeder,
59 Mo. 364 (1875) 15

Fieger v. Cox,
524 F.3d 770 (6th Cir. 2008) 6

Forras v. Rauf,
812 F.3d 1102 (D.C. Cir. 2016) 16

Google, Inc. v. Hood,
822 F.3d 212 (5th Cir. 2016) 4, 20

Gravelin v. Porier,
250 P. 823 (Mont. 1926) 14

Great Lakes Comnet, Inc. v. FCC,
823 F.3d 998 (D.C. Cir. 2016) 16

GTE New Media Servs. Inc. v. BellSouth Corp.,
199 F.3d 1343 (D.C. Cir. 2000) 18

Hartman v. Moore,
547 U.S. 250 (2006) 10

Haw. Hous. Auth. v. Midkiff,
467 U.S. 229 (1984) 7

Hill v. Snyder,
878 F.3d 193 (6th Cir. 2017) 7

Holder v. Haarmann & Reimer Corp.,
779 A.2d 264 (D.C. 2001) 16

Houlahan v. World Wide Ass'n of Specialty Programs & Sch.,
677 F. Supp. 2d 195 (D.D.C. 2010) 17

IMAPizza, LLC v. At Pizza Ltd.,
334 F. Supp. 3d 95 (D.D.C. 2018) 16

In re S.M.H.,
160 S.W.3d 355 (Mo. 2005) 14

Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee,
456 U.S. 694 (1982) 25

JMM Corp. v. District of Columbia,
378 F.3d 1117, 1122 (D.C. Cir. 2004) 23

Kirschner v. Klemons,
225 F.3d 227 (2d Cir. 2000) 5

AMERICAN OVERSIGHT

Matter of Buford,
577 S.W.2d 809 (Mo. 1979) 14

Netflix, Inc. v. Babin,
88 F.4th 1080 (5th Cir. 2023) 11, 22

**Nieves v. Bartlett*,
139 S. Ct. 1715 (2019) 1, 21

Novack v. Nat'l Hot Rod Ass'n,
247 Md. 350 (1967) 16

**Pennzoil Co. v. Texaco, Inc.*,
481 U.S. 1 (1987) 2, 6, 19, 21, 24

Reed Enterprises v. Corcoran,
354 F.2d 519 (D.C. Cir. 1965) 20

Robb v. Connolly,
111 U.S. 624 (1884) 21

Roberson v. SSM Health St. Mary's Hosp.,
2023 WL 4743859 (Ill. App. 5 Dist., 2023) 14

Rockwell Cap. Partners, Inc. v. CD Int'l Enterprises, Inc.,
311 F. Supp. 3d 52 (D.D.C. 2018) 17

Rollins Burdick Hunter of Utah, Inc. v. Bd. of Trustees of Ball State U.,
665 N.E.2d 914 (Ind. App. 1996) 13

Smith & Wesson Brands, Inc. v. Atty. Gen. of New Jersey,
27 F.4th 886 (3d Cir. 2022) 2, 3

Spreadbury v. Bitterroot Pub. Libr.,
862 F. Supp. 2d 1054 (D. Mont. 2012) 25

Sprint Commun., Inc. v. Jacobs,
571 U.S. 69 (2013) 3

State ex rel. Manion v. Elliott,
305 S.W.3d 462 (Mo. 2010) 14

Steel Co. v. Citizens for a Better Envt.,
523 U.S. 83 (1998) 9

Steinberg v. Int'l Crim. Police Org.,
672 F.2d 927 (D.C. Cir. 1981) 16

Thorp v. D.C.,
325 F.R.D. 510 (D.D.C. 2018) 9

Tindall v. Wayne Cnty. Friend of Ct.,
269 F.3d 533 (6th Cir. 2001) 9

Trump v. Comm. on Ways & Means, United States House of Representatives,
415 F. Supp. 3d 98 (D.D.C. 2019) 16

AMERICAN OVERSIGHT

Trump v. Vance,
977 F.3d 198 (2d Cir. 2020) 12

United States v. Ferrara,
54 F.3d 825 (D.C.Cir.1995) 15

United States v. Morton Salt Co.,
338 U.S. 632 (1950) 22

United States v. Trayer,
898 F.2d 805 (D.C.Cir. 1990) 25

West v. Holder,
60 F. Supp. 3d 190 (D.D.C. 2014) 15, 16

Will v. Michigan Dep't of State Police,
491 U.S. 58 (1989) 15

Yelp, Inc. v. Paxton,
No. 23-cv-4977-TLT, 2024 WL 413464 (N.D. Cal. Feb. 1, 2024) 4

Other Authorities

Wright & Miller, Federal Practice and Procedure. 10

AMERICAN OVERSIGHT

INTRODUCTION AND SUMMARY OF ARGUMENT

Sweep away Media Matters' hyper-aggressive rhetoric, and what the brief *does not* say speaks volumes. Media Matters does not deny that it solicits donations from Missourians; does not deny that it sends newsletters directly to Missourians; does not deny that it has tremendous contacts with Missouri (so much so that it reached out to see whether it had to register in Missouri); and does not—because it cannot—deny that all these activities are governed under the Missouri Merchandising Practices Act ("MMPA"). Instead, Media Matters conjures an unsupported theory that the Missouri Attorney General's *motives* for instituting an investigation are improper. But that is both factually wrong and foreclosed by binding precedent.

The Supreme Court mandates that federal courts presume that government officials have acted in good faith, so motives are irrelevant if there is probable cause for government action. *Nieves v. Bartlett*, 139 S. Ct. 1715, 1722–23 (2019). Indeed, two weeks ago, the Supreme Court ruled that a presumption like this "directs district courts to draw the inference that cuts in the [official's] favor when confronted with evidence that could plausibly support multiple conclusions." *See Alexander v. S.C. State Conf. of the NAACP*, 144 S. Ct. 1221, 1235–36 (2024). Media Matters provides nothing to suggest there is no probable cause to investigate, nor that bad motives are the only plausible inference from the record. Media Matters has failed to state a claim. *E.g.*, Rule 12(b)(6).

More fundamentally, though, Media Matters' attack on federalism must fail. As the *Backpage* court determined, any federal lawsuit to block a state court proceeding involving a CID issued by the Missouri Attorney General necessarily triggers *Younger* abstention because of the specifics of Missouri law. *Backpage.com, LLC v. Hawley*, No. 17-CV-1951, 2017 WL 5726868, at *7 (E.D. Mo. Nov. 28, 2017). Media Matters relies on a Third Circuit case about New Jersey's different statute. But the Third Circuit stressed that failure to respond to a New Jersey CID was not a violation of that consumer protection law: "To date, he has not accused the company of violating the Consumer Fraud Act."

AMERICAN OVERSIGHT

Smith & Wesson Brands, Inc. v. Atty. Gen. of New Jersey, 27 F.4th 886, 892 (3d Cir. 2022). In contrast, failure to timely respond to a Missouri CID *is* a violation of Missouri's consumer protection act, and Missouri's lawsuit seeks a civil penalty against Media Matters for that violation.

To get around this, Media Matters asserts (for the first time in its reply brief) that the exceedingly narrow exception to *Younger* for bad faith applies. But it appears no judge in this federal district has ever found the exception to apply, nor has the D.C. Circuit. That makes sense given the very strong presumption of good faith. It is still an open question whether the bad-faith exception applies at all in civil cases. Media Matters is only able to cite *one* case applying the exception in the civil context—an out-of-circuit decision from 30 years ago.

Media Matters also asserts that Missouri courts are insufficient, but it makes no serious attempt to rebut with "unambiguous authority" the strong presumption that "state procedures will afford an adequate remedy." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 15 (1987). That is true for *every* issue that can be litigated, including personal jurisdiction.

ARGUMENT

I. Younger Abstention Applies and Dismissal Is Required.

Media Matters asks the Court to break new ground in the field of *Younger* and depart from the reasoned decisions of many other courts. They also ask this Court to be the first one ever in this circuit to find that the "bad-faith" exception to abstention applies. The Court should decline.

A. The state court proceeding is a "civil enforcement proceeding."

As the *Backpage* court determined, an action to enforce a Missouri CID is plainly a "civil enforcement proceeding" under *Younger*, as it seeks judicial remedy for a violation of the disclosure requirements of the MMPA. *Backpage.com*, 2017 WL 5726868, at *7.

1. Media Matters' principal response—that the proceeding does not seek legal relief "for a wrongful act"—is easily dispensed with. The operative complaint seeks a $1,000 civil penalty. Ex. A,

AMERICAN OVERSIGHT

Amended Complaint, *Missouri v. Media Matters*, No. 24AC-CC02291, at 1, 11–12 (May 24, 2024). Even absent the request for a monetary penalty, the proceeding would still seek judicial relief in response to an unlawful act. Under Missouri law, failure to comply with a CID or seek a court order before the due date for production is an independent violation of the consumer protection statute. Mo. Rev. Stat, § 407.080 ("shall comply with the terms [of the CID] unless otherwise provided by an order of a court"). Media Matters was obligated to produce documents or seek judicial relief by April 15. It did neither, so it violated Missouri law, and the State is entitled to a $1,000 penalty unless Media Matters prevails on an affirmative defense. *Id.* § 407.100. Media Matters is thus flat wrong to assert (at 13) that the ongoing proceeding "seeks no sanction for violations of the MMPA." Both complaints do.

That makes this case starkly different from *Smith & Wesson*, on which Media Matters principally relies. That court determined that *Younger* did not apply because the state court proceeding was "not a suit initiated to punish wrongdoing"; the New Jersey Attorney General "did not allege that Smith & Wesson violated any substantive legal duty. To date, he has not accused the company of violating the Consumer Fraud Act . . . ." 27 F.4th at 892. Unlike Missouri law, which treats failure to timely obey a CID as a violation of Missouri law, "failure to obey a subpoena issued by the [New Jersey] Attorney General may be addressed by the court to compel compliance but *it is not treated as a violation of the Consumer Fraud Act*." *Id.* at 893 (quoting *Grewal v. 22Mods4ALL, Inc.*, No. ESX-C-244-19, slip op. at *17 (N.J. Super. Ct. Ch. Div. May 24, 2021)) (brackets adopted) (emphasis added).[1]

Media Matters nonetheless asks the Court to read in a new exception, saying (at 12) it had no opportunity to comply with Missouri law because the Attorney General sued to enforce the CID

[1] Separately, *Smith & Wesson* applied a heightened standard not required by Supreme Court precedent and not adopted by other circuits. For example, while the Supreme Court in *Sprint* said that in proceedings triggering *Younger*, "[i]nvestigations are commonly involved, *often* culminating in the filing of a formal complaint or charges," *Sprint Commun., Inc. v. Jacobs*, 571 U.S. 69, 79–80 (2013) (emphasis added), the Third Circuit required "quasi criminal" proceedings and "a preliminary investigation that culminated with the filing of formal charges," 27 F.4th at 891. These are not required by *Sprint*.

AMERICAN OVERSIGHT

shortly after sending it. But Missouri law expressly permits the Attorney General to preemptively sue "[w]henever it appears to the attorney general that a person has engaged in, is engaging in, *or is about to engage* in any . . . act . . . declared to be unlawful by [the MMPA]." Mo. Rev. Stat. § 407.100 (emphasis added). The Attorney General properly sought relief at that time for production of documents. And the Attorney General did not amend the complaint to seek the monetary penalty until after Media Matters failed to comply or seek judicial relief before April 15.

2. Media Matters describes (at 13) the authorities cited by the Missouri Attorney General as "inapposite," but must misquote and mischaracterize the opinions to differentiate those rulings.

For example, Media Matters asserts that *Younger* abstention was held improper with respect to one party in *Cedar Rapids Cellular Telephone, L.P. v. Miller*, 280 F.3d 874 (8th Cir. 2002), simply because the Attorney General was doing nothing more than trying to obtain documents. But in fact, the crux of the Court's reasoning was that abstention did not apply because there was "not a judicial proceeding." *Id.* at 882. Indeed, the Court acknowledged that *Younger* abstention could be appropriate if the Attorney General brought an enforcement proceeding to obtain the documents. *Id.*

Media Matters next derides the *Backpage* opinion, saying (at 15) that it "improperly concluded that it was sufficient that the 'state-court action clearly involves an investigation with the potential to culminate in the filing of a formal complaint or charges.'" But *Backpage* simply noted this was "indicia" of a civil enforcement proceeding triggering *Younger*. *Id.* at *6; *see also Google, Inc. v. Hood*, 822 F.3d 212 (5th Cir. 2016) (abstention improper where the attorney general issued an administrative subpoena but had "not moved to enforce [it] in any state court"). And in any event, *Sprint* does not require that a state court proceeding seek formal sanctions; it simply notes that enforcement actions are *usually* "initiated to sanction the federal plaintiff." 571 U.S. at 79.

Media Matters finally attempts (at 8–9) to differentiate *Yelp, Inc. v. Paxton*, No. 23-cv-4977, 2024 WL 413464, at *3 (N.D. Cal. Feb. 1, 2024), arguing it is inapplicable because the Texas Deceptive

AMERICAN OVERSIGHT

Trade Practices Act "involve[d] sanctions, including civil penalties of up to $10,000 per violation." Yet the ongoing proceeding here seeks a (modest) monetary penalty for violation of the MMPA. If these factors supported the second factor in *Yelp*, they equally support the Missouri Attorney General.

B. The Missouri court proceeding "touch[es] on a state court's ability to perform its judicial function."

As the *Backpage* court properly found, an action to enforce a Missouri CID also falls within the third *Younger* category. 2017 WL 5726868, at *7–8.

In arguing otherwise, Media Matters disregards its burden and misstates the standard. It notes the general requirement that courts exercise their jurisdiction, but disregards that *Younger* abstention is recognized as a "far-from-novel" exception to this general rule, *Sprint*, 571 U.S. at 77, and once a federal defendant establishes availability of *Younger*, the burden flips to a plaintiff to show that an exception applies. *E.g.*, *Kirschner v. Klemons*, 225 F.3d 227, 236 (2d Cir. 2000) ("a plaintiff seeking to avoid *Younger* must affirmatively demonstrate the justification for application of an exception.").

Likewise, Media Matters stresses quoted language in *Sprint* saying that state proceedings must involve orders "uniquely in furtherance of the state courts' ability to perform their judicial functions," but omits that this quote came from case law before *Sprint* and that *Sprint* reformulated the rule: a state proceeding need only "touch on a state court's ability to perform its judicial function." 571 U.S. at 79. The state proceeding does here because, as *Backpage* properly determined, just like state courts provide a critical role in criminal investigations (through the grand jury), they serve an important function under Missouri law of facilitating civil investigations. *Backpage*, 2017 WL 5726868, at *7. This federal action touches on Missouri courts' ability to perform their judicial functions. (In any event, enforcing CIDs *is* "uniquely in furtherance" of those courts' ability to perform their functions.)

To evade this problem, Media Matters (at 16–17) asks this Court to hold that the third *Younger* category requires courts to have already issued an order. The Sixth Circuit has squarely rejected that argument: "we do not read the third category so narrowly as to preclude *Younger* abstention when the

AMERICAN OVERSIGHT

state court has not yet issued an order." *Aaron v. O'Connor*, 914 F.3d 1010, 1018 (6th Cir. 2019). Indeed, the Supreme Court held that a district court was required to abstain under the third category in a federal case filed "*before* the Texas court entered judgment." *Pennzoil*, 481 U.S. at 6 (emphasis added); *see also Fieger v. Cox*, 524 F.3d 770, 775 (6th Cir. 2008) (finding third category met where plaintiff "could have filed a motion to quash the search warrants").

C. This Court's preliminary injunction against General Paxton is irrelevant to whether Younger applies in the suit against the Missouri Attorney General.

No stronger is Media Matters' assertion (at 11–13) that this federal case is beyond the "embryonic" stage with respect to Paxton, so *Younger* is no longer appropriate. The parties agree the Missouri Attorney General "was added as a defendant *after* he commenced the CID Proceeding in Missouri." Resp. Br. 12 (emphasis added). Media Matters nonetheless insists that because *Younger* would be improper with respect to Paxton (because of the preliminary injunction against him), it is inappropriate with respect to the Missouri Attorney General as well. That is wrong on many levels.

For starters, the Supreme Court has expressly rejected that argument, holding instead that courts generally must analyze *Younger* separately for each respondent "as if that respondent stood alone." *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 929 (1975). *Doran*, which Media Matters does not cite, involved a challenge by three companies to an ordinance prohibiting topless dancing. *Id.* Like Media Matters argues here, the Court of Appeals said all respondents "should automatically be thrown into the same hopper for *Younger* purposes." *Id.* at 928. The Supreme Court disagreed: "each of the respondents should be placed in the position required by our [*Younger*] cases as if that respondent stood alone." *Id.* at 929. Where "no contested matter had been decided" between two specific parties, the issue was "squarely governed by *Younger*." *Id.* (dismissing suit under *Younger* with respect to one of three parties). It is thus irrelevant how far this case has progressed against Paxton. It is still embryonic against the Missouri Attorney General.

AMERICAN OVERSIGHT

Media Matters tries to evade this holding by arguing for judicial economy, noting that courts in some circumstances say abstention is inappropriate once decisions on the merits have been issued because there has been "significant expenditure of effort" by the federal court. *See Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 238 (1984) ("considerations of [judicial] economy"). But that is true only for parties whose issues have progressed. *Doran* rejected the idea that if *Younger* is inappropriate for one respondent, it is inappropriate for all: "efficient judicial administration," the Supreme Court said, "must of necessity be subordinated to the claims of federalism." 422 U.S. at 927.

In any event, *Younger* abstention would not disrupt any "expenditure of effort" by this Court. While the suit against Paxton might be beyond the embryonic stage, that dispute concerns a different defendant, different facts, a different timeline of investigation, and different state law. That is why Media Matters initially sued only Paxton and did not sue until more than four months later. Between Media Matters and Bailey, "no contested matter ha[s] been decided," so this issue is "squarely governed by *Younger*." *Doran*, 422 U.S. at 929. If this Court abstains under *Younger* with respect to the counts against Bailey, it will not disrupt *any* proceedings already instituted against Paxton.

Younger can be assessed in the aggregate, rather than on a respondent-by-respondent basis, only when the "parties are so closely related" that they are in privity. *See id.* at 928–29. That explains the few examples Media Matters cites. For example, *Hill v. Snyder* involved a challenge to a state statute initially brought against the Michigan Governor, Director of Corrections, and Chair of the Parole Board. 878 F.3d 193, 200 (6th Cir. 2017). Seven years later, plaintiffs added the Michigan Attorney General, who enforced the same challenged laws, as a defendant and the court declined to abstain. *Id.* at 207. Similarly, in *Derma Pen, LLC v. 4EverYoung Ltd.*, the court refused to abstain in a suit between

AMERICAN OVERSIGHT

two companies when a new party was added because that new party was "an insider and until very recently was the chairman" of one of the parties. 2015 WL 791595, at *6 (D. Utah Feb. 25, 2015).[2]

While the newly added parties in both those cases were "so closely related" that they were essentially in privity, *Doran*, 422 U.S. at 929, the same cannot be said of Paxton and Bailey. Media Matters simply asserts that both launched investigations near in time and vaguely "coordinated" with each other. But the parties in *Doran* coordinated much more closely. They all joined the same suit on the same day, were "represented by common counsel, and have similar business activities and problems." *Doran*, 422 U.S. at 928–29. And yet the Court held that *Younger* must be assessed separately with respect to each respondent because "they are apparently unrelated in terms of ownership, control, and management." *Id.* Paxton and Bailey are *not* represented by common counsel, have no common control or management, and do not enforce the same laws. That they may have "coordinated" to some limited degree—a common thing for litigants on the same side of the "v."—cannot create privity. And as explained further below, there are substantial differences between Paxton's and Bailey's investigations and cases.

Media Matters is unable to identify even one case that declined to abstain in circumstances remotely similar to this one. Indeed, under their theory, abstention would be inappropriate even if the Paxton case was final and Bailey were sued separately. That obviously cannot be correct.[3]

---

[2] *Hill* also differs from this case because the newly added Michigan Attorney General sought *Younger* abstention with respect to *all* defendants, including the original ones. 878 F.3d at 206. Bailey does not argue that *Younger* applies with respect to Paxton. And *Derma*'s entire analysis on *Younger* is dicta because the suit involved a proceeding over property, and the court concluded at the outset that, "[*i*]*n rem* proceedings are exceptions to the abstention doctrine." *Derma*, 2015 WL 791595, at *5; *see also id.* at *7 (no abstention because the state action "threatens to dispose of property" at issue in its substantive proceedings, which would "diminish the court's power to bring this litigation . . . to a natural conclusion").

[3] Media Matters' argument makes clear its decision to move to supplement its complaint was calculated to create this argument against *Younger* abstention, and it shows why consolidation was improper. Rule 15(d) does not permit "supplemental, unrelated claims against new defendants." *See Chandler v. James*, 783 F. Supp. 2d 33, 39 (D.D.C. 2011). "When considering such a request, the trial court is required

AMERICAN OVERSIGHT

D. No court in this district has ever applied the exceptionally narrow "bad faith" exception, and it does not apply here.

The "bad faith" exception does not apply here. The Supreme Court has never applied the "bad-faith" exception in the half century since *Younger* was decided. This exception is considered "exceedingly rare." *Tindall v. Wayne Cnty. Friend of Ct.*, 269 F.3d 533, 539 (6th Cir. 2001); *see also Ballard v. Wilson*, 856 F.2d 1568, 1571 (5th Cir. 1988) (describing bad faith exception as "very narrow").

1. Media Matters does not dispute that it failed to raise this issue in its opening brief. The issue is thus waived for the preliminary injunction motion. Media Matters had an obligation to establish jurisdiction in that motion, and *Younger* is "treated as jurisdictional." *Steel Co. v. Citizens for a Better Envt.*, 523 U.S. 83, 100 n.3 (1998). And Media Matters is wrong to assert (at 22 n.3) that "Bailey injected *Younger* into this litigation for the first time in his opposition brief." Texas expressly raised the issue in opposition to the Rule 15 motion. ECF 40 at 3. Media Matters cannot save its accusations of *Younger* bad faith for its reply brief, giving Bailey no opportunity to respond with respect to the preliminary injunction briefing. While the issue is not waived with respect to the motion to dismiss, it is waived with respect to the preliminary injunction motion.

2. As Bailey previously argued, the Supreme Court expressly held that the exception is triggered only when *judges* act in bad faith. Media Matters (at 23) accuses the Attorney General of "invent[ing] that rule out of whole cloth" but then *concedes* in the same paragraph that the most well-

---

to take into account any prejudice that the opposing party would suffer as a result. Indeed, the prejudice to the opposing party is among the most important reasons to deny leave to amend." *Thorp v. D.C.*, 325 F.R.D. 510, 513 (D.D.C. 2018) (cleaned up). "Prejudice may arise when the proposed complaint adds new parties or at least entails more than an alternate claim or a change in the allegations of a complaint." *Id.* (quotations and citation omitted). Here, the Court granted the motion, adding the Missouri Attorney General as a defendant on wholly distinct counts, related to wholly distinct actions, at a wholly distinct period of time. That created severe prejudice, as it has been levied as a shield and a sword by Media Matters to attack the CID and attack the Missouri state court proceedings. The court erred in granted leave to supplement the complaint, where Media Matters was "free to recast the arguments of [its] supplemental complaint as a complaint in a new, perhaps related, action before this court." *Id.* (quoting *Chandler*, 783 F. Supp. 2d at 39). This is yet another reason to dismiss.

AMERICAN OVERSIGHT

respect treatise on federal procedure, *Wright & Miller*, also concluded that the exception requires bad faith by judges. 17B Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. Juris. § 4255 n.11 (3d ed.). There is no accusation of bad faith on the part of Missouri judges, so the claim must fail.

3. Even if this Court considers bad faith beyond judges, as some courts in other circuits have, the exception is extraordinarily narrow. Media Matters (at 22) calls this "a textbook case for application of the bad faith exception," but has been unable to identify a single case in this circuit where a court has found the exception to apply. Indeed, most courts "have only recognized it in the criminal context." *See Aaron v. Target Corp.*, 357 F.3d 768, 778 (8th Cir. 2004). Media Matters cites just one case in the civil context, and it is both out of circuit and 30 years old. Resp. Br. 22 (citing *Cullen v. Fliegne*r, 18 F.3d 96, 104 (2d Cir. 1994)). Media Matters cites *no* case anywhere in the country involving a CID.

Older cases cited by Media Matters did not apply later-enacted Supreme Court doctrine requiring a presumption of good faith. In recent years, the Supreme Court has required federal courts to adopt a strong "presumption that a prosecutor has legitimate grounds for the action he takes" and to "not lightly discard" that presumption. *Hartman v. Moore*, 547 U.S. 250, 263 (2006) (quoted in *Nieves*, 587 U.S. at 400). Just two weeks ago, the Supreme Court placed firmer teeth into this doctrine, holding that the "presumption of legislative good faith directs district courts to draw the inference that cuts in the legislature's favor when confronted with evidence that could plausibly support multiple conclusions." *Alexander v. S.C. State Conf. of the NAACP*, 144 S. Ct. at 1235–36. Because the same presumption that applies to legislatures likewise applies to executive officials, the bad-faith exception is unavailable anytime an inference of good faith is possible. The single case Media Matters cites in the civil context predates this doctrine and does not apply the presumption of good faith.

The one recent case Media Matters cites—a criminal case—shows just how rare the exception is in light of the presumption of good faith. There, a local district attorney brought child pornography

AMERICAN OVERSIGHT

charges against Netflix. The DA withheld probative evidence from the grand jury, brought four superseding indictments immediately after Netflix asserted a First Amendment right, and brought the charges even though Netflix had proof that the only instance of nudity in the film at issue involved an actor older than 18. *Netflix, Inc. v. Babin*, 88 F.4th 1080, 1091–96 (5th Cir. 2023). So weak was the DA's case that he "d[id] not attempt to defend that indictment on the merits" before the federal court. *Id.* at 1095. Even with all this, the Fifth Circuit found the bad-faith question to be a close call given the mandate to presume good faith. *See id.* at 1096 ("Taken one by one, Babin's arguments are well taken."). Indeed, it seems unlikely the case would come out the same way after the Supreme Court's doctrine, announced in *Alexander*, to draw all inferences in favor of good faith.

This case is so far afield from any case finding bad faith that Media Matters' arguments cannot be taken seriously. Start with timing. Attorney General Bailey did not file a CID until four months after opening an investigation. Media Matters accuses Attorney General Bailey of doing no investigation during that time. But as already stated, his office used that time to look into Media Matters' contacts with Missouri and confirm what Media Matters does not now dispute: "that Media Matters not only distributes its newsletter in Missouri, but engages in internet and email solicitations, phone solicitations, and in-person solicitations for fundraising." ECF 56-1, First Reed decl. ¶ 7.

During that time, his office also acquired internal Media Matters documents that justify further investigation. The office acquired "internal Media Matters documents that are expressly marked not for circulation and which reveal plans by the organization to use solicited funds for activities contrary to those publicly disclosed to its Missouri donors." Ex. B, Second Declaration of Steven Reed ¶ 5.[4]

[4] "To protect the integrity of investigations as they progress, the Missouri Attorney General's Office as a general policy does not disclose or publicly discuss information about investigations under the MMPA—including documents and information that the Office collects. However, in rare instances, protecting the integrity of an investigation requires a very limited disclosure of information. This is one of those rare cases given Media Matters' decision to press incorrect allegations in an attempt to obtain an order to forcefully halt an investigation." *Id.* ¶ 4.

AMERICAN OVERSIGHT

"These materials explain that high-level officials within Media Matters use the organization and its funds not just to issue reports about perceived misinformation, but to actively interfere with and neutralize the operational infrastructure of certain 'target' companies." *Id.* ¶ 8. "For example, these documents reveal that Media Matters has entered into partnerships with Facebook and Google—competitors of X—and has developed strategic plans to interfere with the infrastructure systems used by 'target' companies to display advertisements." *Id.* ¶ 9. These secret documents are in sharp tension with the statements Media Matters makes to Missourians as it solicits donations from them.

Next, consider the subsequent information that has publicly come to light. The brand-safety organization DoubleVerify has confirmed that Media Matters' accusations last November were false (X in fact had a near-perfect record of avoiding populating advertisements next to fringe content), and the federal court in Texas has preliminarily concluded that X's allegations are likely sufficient to overcome a motion to dismiss. ECF 56 at 38–39.

Given the presumption of good faith that this Court must afford to the Attorney General, there is plenty in the record to infer that the Attorney General had a reasonable basis to issue the CID. Indeed, unlike the prosecutor in *Netflix*, who refused to defend the merits of his decision, the Attorney General is happy to defend the merits. It is *Media Matters* that has failed to defend the merits of its November statements in light of subsequent evidence that those statements were knowingly false.

Against all this, Media Matters offers nothing. It accuses the Attorney General of issuing a "copy and paste" CID (at 24 n.4), but ignores that the CID follows four months of investigation. *See also Trump v. Vance*, 977 F.3d 198, 215 (2d Cir. 2020) ("we simply do not see how the District Attorney's statement that he copied the Congressional subpoena for 'efficiency' allows us to infer bad faith."). Nor did the Attorney General "ignore Missouri statutory law" (at 17 n.4) in filing suit when he did. It is Media Matters who "ignores" that Missouri law expressly authorizes the Attorney General to sue "[w]henever it appears to the attorney general that a person has engaged in, is engaging in, or *is about*

AMERICAN OVERSIGHT

to engage in" a violation of the consumer protection statute, including a failure to timely comply with a CID. Mo. Rev. Stat. § 407.100 (emphasis added). Finally, Media Matters (at 25) faults the Attorney General for not pleading in the State's complaint that Media Matters has in fact engaged in deceptive behavior with respect to donors in Missouri. Media Matters confuses a CID *investigation* for a formal assertion of charges for deception. (And the Attorney General *has* alleged a violation of the duty to timely respond to the CID.) Where collection of additional documents may lead to further evidence that Media Matters has violated the MMPA, the bad faith exception does not apply. *See Brooks v. New Hampshire Supreme Ct.*, 80 F.3d 633, 641 (1st Cir. 1996) ("The NHSC's investigation of Cobbin is not an enforcement proceeding brought without any realistic expectation of finding a violation of a rule; and, therefore, the investigation does not catalyze the bad-faith exception to the *Younger* doctrine.")

II. Media Matters consented to personal jurisdiction in Missouri state court.

Media Matters has made personal jurisdiction in Missouri court critical to its complaint. Media Matters must litigate its claims one way or another. So its claim to harm rests entirely on its assertion that it would be an injury to litigate in Missouri instead of here. For example, it asserts (at 31) that it has no adequate remedy because litigating in state court would require it to waive personal jurisdiction.

The problem is that courts in Missouri plainly have personal jurisdiction. Media Matters never disputes that it solicits donations from Missourians (which creates jurisdiction). And by exercising its legal right to a change of judge, Media Matters also consented to jurisdiction. That is because Media Matters did not object to personal jurisdiction at the "first opportunity." *Everett v. Vance*, 685 S.W.3d 495, 501 (Mo. App. W.D. 2023). As every court to have squarely considered the issue has concluded, moving for a change of judge *before* opposing personal jurisdiction waives the issue. *E.g.*, *Rollins Burdick Hunter of Utah, Inc. v. Bd. of Trustees of Ball State U.*, 665 N.E.2d 914, 919 (Ind. App. 1996). For example, just last year an Illinois court concluded that if a "motion for substitution of judge" is filed "prior to filing a motion to dismiss for lack of jurisdiction, that party waives all objections to the court's

AMERICAN OVERSIGHT

jurisdiction over the party's person prospectively." *Roberson v. SSM Health St. Mary's Hosp.*, 2023 WL 4743859 (Ill. App. 5 Dist., 2023). This is consistent with the longstanding, general rule across the country that "an application for an order of the court can only be made upon the assumption that the court has jurisdiction to make the order, and a party cannot be challenging the jurisdiction and invoking it at one and the same time." *Gravelin v. Porier*, 250 P. 823, 826 (Mont. 1926).

Media Matters' *sole* attempt to distinguish cases like these is to assert (at 26) that those cases concerned "motions" for a change of judge, not an "application" for a change of judge, and that under Missouri law "applications for change of judge are not 'motions.'" But even ten seconds of research confirms that is wrong. Missouri courts use "motion" and "application" interchangeably and have referred to "motions" for a change of judge over a hundred times. *E.g.*, *State ex rel. Manion v. Elliott*, 305 S.W.3d 462, 463 (Mo. 2010) ("Manion filed a motion for change of judge."); *In re S.M.H.*, 160 S.W.3d 355, 361 (Mo. 2005) ("Father's motion for change of judge was not timely and was properly overruled."). Though these motions are granted as of right when the legal prerequisites are met, the non-moving party "is entitled to notice and an opportunity to be heard, and he may contest the form, timeliness and sufficiency of the motion." *Matter of Buford*, 577 S.W.2d 809, 827 (Mo. 1979).

No stronger is Media Matters' assertion (at 26) that parties in Missouri courts have not recently litigated whether moving for a change of judge first means the party has not, at the "first opportunity," opposed jurisdiction. That is unsurprising because litigants almost always follow the "first opportunity" rule by challenging personal jurisdiction *before* moving for a change of judge. After all, for over a century, courts have repeatedly held that litigants must object to personal jurisdiction before invoking the procedural rule Media Matters invoked here.

Further, Media Matters invoked Missouri Supreme Court Rule 51, titled "Venue Including Change of Venue and Change of Judge," which governs motions/applications of change of venue and change of judge. For 150 years, Missouri courts have held that an application for change of venue

AMERICAN OVERSIGHT

waives later challenge to personal jurisdiction. *See Feedler v. Schroeder*, 59 Mo. 364, 366 (1875) (finding defendant waived personal jurisdiction because "application for a change of venue was an appearance in the cause."); *Columbia Brewery Co. v. Forgey*, 120 S.W. 625, 628 (Mo. App. 1909) ("The taking of a change of venue by a defendant from the court in which the case is pending operates as an appearance to the merits of the action, and confers jurisdiction over the person."). If changing venue waives personal jurisdiction, there is no reason to believe taking a change of judge, which is governed by the same rule, would not. Media Matters has not cited a single case in the country adopting its rule. At the very least, Media Matters grossly overstates the case when it says Missouri courts "obviously" lack personal jurisdiction. That argument is an uphill climb for Media Matters.

III. The Court Does Not Have Personal Jurisdiction Over the Missouri Attorney General.

This Court lacks personal jurisdiction over the Missouri Attorney General and thus should dismiss. Media Matters has not satisfied the requirements of the long-arm statute and Due Process.

A. Media Matters has not satisfied the long-arm statute.

As a preliminary matter, Media Matters asserts (at 27 n.7), that the Missouri Attorney General "does not dispute that he is a 'person' under the long-arm statute." This is false. The Missouri Attorney General "assert[ed] that the State does not fall under the D.C. long-arm statute, because it is not a 'person,' as provided in the statute" and referenced Texas' briefing on the issue. Resp. Br. 30 n.7. Media Matters sued Attorney General Bailey in his official capacity, which is recognized not as a suit against him "as an individual, but rather is a suit against the official's office." *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989). Because "[a] suit brought against an official in his official capacity is generally considered to be a suit against the state," *West v. Holder*, 60 F. Supp. 3d 190, 194 (D.D.C. 2014), *aff'd sub nom. West v. Lynch*, 845 F.3d 1228 (D.C. Cir. 2017) (citing *Will*, 491 U.S. at 71), and "D.C's long-arm statute does not apply to states," *id.* (citing *United States v. Ferrara*, 54 F.3d 825, 828 (D.C. Cir. 1995)), the Missouri Attorney General is not a "person" under the long-arm statute.

AMERICAN OVERSIGHT

Media Matters offers no argument for why use of a process server is commercial or business activity under subsection (a)(1). Yet "the plaintiff *must* show that the defendant has purposefully engaged in some type of *commercial or business-related activity* directed at District residents" for subsection (a)(1) to apply. *Holder v. Haarmann & Reimer Corp.*, 779 A.2d 264, 270–71 (D.C. 2001) (emphasis added); *see also Forras v. Rauf*, 812 F.3d 1102, 1106 (D.C. Cir. 2016) ("The plain text of subsection (a)(1), however, focuses on where the defendant undertook the *challenged (business) actions*." (emphasis added)).

Media Matters instead offers a conclusory assertion that the Missouri Attorney General "contracted with an agent to cause harmful consequences within D.C." Under this theory, however, any action—by any person, organization, governmental entity, or business—that has "consequences" in D.C. would be sufficient under (a)(1). That would render the remaining subsections entirely redundant and violate the rule of surplusage. *Great Lakes Comnet, Inc. v. FCC*, 823 F.3d 998, 1003 (D.C. Cir. 2016) ("when construing a statute courts 'give effect, if possible, to every clause and word"').

Media Matters also argues (at 28), that "[t]his Court has already properly rejected" the argument that use of a process server does not fall under subsection (a)(1). In ruling against the Texas Attorney General on this score, this Court relied on a Maryland ruling, *Novack v. Nat'l Hot Rod Ass'n*, 247 Md. 350 (1967), and a D.C. Circuit concurrence, *Steinberg v. Int'l Crim. Police Org.*, 672 F.2d 927 (D.C. Cir. 1981), but overlooked *Holder* and *Forras*. These on-point decisions, which postdate *Steinberg*, represent current circuit precedent, which has been routinely applied over the last decade. *See West v. Holder*, 60 F. Supp. at 195; *Capel v. Capel*, 272 F. Supp. 3d 33, 39 (D.D.C. 2017); *IMAPizza, LLC v. At Pizza Ltd.*, 334 F. Supp. 3d 95, 110 (D.D.C. 2018); *Trump v. Comm. on Ways & Means, United States House of Representatives*, 415 F. Supp. 3d 98, 106 (D.D.C. 2019); *Aljabri v. Saud*, No. CV 20-2146, 2022 WL 4598519, at *14 (D.D.C. Sept. 30, 2022). In short, subsection (a)(1) requires a showing that the defendant engaged in commercial or business-related activities. That has not happened here.

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001297

Separately, citing this Court's ruling against Texas, Media Matters argues (at 28) that subsection (a)(3) applies because the Missouri Attorney General used a process server to serve a complaint. But unlike Texas, Missouri served the CID itself through the mail.

To get around this distinction, Media Matters asserts this this amounted to "abusive service of process," but that claim appears nowhere in the supplemental complaint, and Media Matters could not support that contention even if pleaded. "Under District of Columbia law, abuse of process occurs when process has been used to accomplish some end which is without the regular purview of the process, or which compels the party against whom it is used to do some collateral thing which he could not legally and regularly be required to do." *Houlahan v. World Wide Ass'n of Specialty Programs & Sch.*, 677 F. Supp. 2d 195, 199 (D.D.C. 2010) (citation and quotations omitted). "There are two essential elements to an abuse of process claim: (1) the existence of an ulterior motive; and (2) an *act* in the use of process other than such as would be proper in the regular prosecution of the charge." *Id.* (citation and quotations omitted). In other words, beyond an ulterior motive, there must be "some act or threat directed to an immediate objective not legitimate in the use of process" akin to "some form of extortion." *See Rockwell Cap. Partners, Inc. v. CD Int'l Enterprises, Inc.*, 311 F. Supp. 3d 52, 55 (D.D.C. 2018) (bracket adopted). There is no question that the service of a filed court petition to enforce a CID is the regular process by which the Missouri Attorney General must enforce demands under the MMPA. There is no threat or extortion directed at an illegitimate immediate objective. The Missouri Attorney General filed his petition under his statutory authority to collect documentation in service of an investigation into and enforcement against potential violations of the MMPA. There is no support for Media Matters' (unpleaded) assertion that serving a lawsuit by itself amounts to a tort.

B. Personal jurisdiction here would violate the Due Process Clause.

To support its Due Process argument, Media Matter offers a single mailing and single service of a petition from a process server. A single mailing is insufficient. *See Exponential Biotherapies, Inc. v.*

AMERICAN OVERSIGHT

Houthoff Buruma N.V., 638 F. Supp. 2d 1, 9 (D.D.C. 2009). And as discussed immediately above, Media Matters' late, drive-by assertion of "abusive process" is insufficient and unpleaded. It beggars belief that service of a CID petition is sufficient "conduct and connection with the forum State . . . such that [the Missouri Attorney General] should reasonably anticipate being haled into court there," *GTE New Media Servs. Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1347 (D.C. Cir. 2000), when the purpose of the process was to initiate litigation in a separate court and being "hailed into [federal] court" in the District of Columbia *in response* to such process is retaliatory and barred by *Younger* abstention.

Media Matters is thus forced to resort (at 29–30) to demonstrably false accusations that the Missouri Attorney General "failed to identify *any* injury, or even impact that Media Matters has caused in Missouri." (internal quotations omitted). Media Matters does not even deny its solicitation activities that the Attorney General pointed out. Indeed, Media Matters was so concerned about its extensive activities in Missouri that it reached out to determine if it needed to register under Missouri law.

Next, Media Matters relies on *Def. Distributed v. Grewal*, 971 F.3d 485 (5th Cir. 2020), but there the New Jersey Attorney General expressed "his intent to crush Defense Distributed's operations and not simply limit the dissemination of digital files in New Jersey." *Id.* at 493. It was clear he had an "intent to force Defense Distributed to close shop." *Id.* That goes far beyond a mere CID to investigate solicitations in Missouri and a request for a single $1,000 penalty for a violation of Missouri's law that indisputably occurred. Under Media Matters' rule, no State could investigate a company that engages in business in that State—but is headquartered in another—without exposing itself to a retaliatory suit like the one Media Matters brought here.

IV. Media Matters Has an Adequate Remedy at Law.

Media Matters has an adequate remedy at law, as it can raise each of its challenges to the CID in the state court enforcement action. Media Matters offers four main arguments in support of its position that Missouri courts cannot offer an adequate remedy: 1) Media Matters' First Amendment

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001299

injury is "ongoing;" 2) the MMPA "would likely require Plaintiff to waive personal jurisdiction" and only offers "meager' protections for Media Matters; 3) Media Matters cannot obtain relief *against Paxton* in Missouri court; and 4) Media Matters cannot obtain "speedy" relief. Each argument fails.

1. No allegation of "ongoing" First Amendment injury is sufficient. Media Matters is seeking only prospective relief, not retrospective. And to the extent the Court even credits any allegation of "chill," the chill comes from the investigation, not having to litigate in Missouri instead of DC. Media Matters is going to have to litigate these issues regardless. It cites nothing for the prospect that the mere location of litigation will cause chill. This Court previously rejected Texas' argument about adequate remedy because "[t]he Texas Code contains no equivalent remedies for a non-resident challenging a CID." ECF 37 at 30. Here, in contrast, as Media Matters admits (at 31), "the parallel provision in the Missouri statute identifies Cole County as a catchall venue for petitioners." Under this Court's analysis, Media Matters *can* attempt to avoid the alleged First Amendment injury by challenging the document request in Missouri state court, and thus it has an adequate remedy at law.

2. So Media Matters next argues (at 31–32) that the MMPA's statutory prescriptions for challenging a CID are inadequate because they "would likely require Plaintiff to waive personal jurisdiction." But as discussed above, Media Matters does not dispute that it solicits donations from Missourians, which suffices for personal jurisdiction. And its decision to seek a change of judge waived personal jurisdiction had it not already existed. In any event, Media Matters offers no citation for its argument that a remedy is unavailable if it would require waiving personal jurisdiction.

No better is the unsupported assertion that the MMPA offers "meager protections" for those challenging CIDs. That conclusory statement comes nowhere near rebutting the presumption this Court must adopt that "state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary." *Pennzoil*, 481 U.S. at 15.

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001300

3. Media Matters strangely argues (at 32–33) that "[i]t is doubtful that Media Matters can obtain relief against Paxton in Missouri Court." This Court of course *already* granted relief against Paxton. Media Matters can seek full relief against all remaining claims in Missouri court. And of course none of the issues concerning Paxton have anything to do with Missouri law.

To support its strange argument, Media Matters asserts (at 33) that the D.C. Circuit has held that there is no adequate remedy if a party has to "defend itself in different *state* courts" (emphasis added). But Media Matters completely mischaracterizes the case it cites, which held that "multiplicity of legal proceedings" by the *same* defendant—the Federal Government—in different *federal* courts can suggest the lack of an adequate remedy. *Reed Enterprises v. Corcoran*, 354 F.2d 519, 523 (D.C. Cir. 1965). The State of Missouri has not sought multiple proceedings. To accept Media Matters' argument would mean any company subject to proceedings in multiple States could preemptively sue all those States and force them into DC court.

4. Finally, Media Matters argues (at 33) that Missouri courts cannot "guarantee . . . a speedy remedy." But its only support for this assertion is that one CID case in Missouri courts took 13 months from complaint to final judgment. But that is quick compared to trial courts across the nation, and the trial court entered final judgment just four months after oral argument in a case where no emergency motion was filed. Media Matters is free to file for emergency relief in Missouri.[5]

V. Media Matters Cannot Establish a Justiciable, Ripe Injury.

Media Matters does not deny that the Ninth Circuit squarely held that a federal challenge to a CID was not ripe because the plaintiff had the ability to challenge the CID in state court. ECF 61 at 31; *see also Google, Inc. v. Hood*, 822 F.3d 212, 224 (5th Cir. 2016) (challenge to "administrative subpoena

[5] Media Matters' sole citation for its "speedy relief" test is a footnote from a separate opinion *disagreeing* with the majority opinion that plaintiffs had an adequate remedy through separate, individual suits. *Council of & for the Blind of Delaware Cnty. Valley, Inc. v. Regan*, 709 F.2d 1521 (D.C. Cir. 1983) (en banc). No court appears to have adopted Media Matters' test.

AMERICAN OVERSIGHT

was not ripe" because subpoena was "non-self-executing"). Nor does it deny that this Court must presume Missouri courts are adequate "in the absence of unambiguous authority to the contrary." *Pennzoil*, 481 U.S. at 15. Media Matters' sole response is again to argue that Missouri courts lack personal jurisdiction. But Media Matters makes no attempt to rebut with "unambiguous authority" the presumption that Missouri courts can adequately assess the issue of personal jurisdiction. *Pennzoil* did not carve out personal jurisdiction from its presumption that state courts are presumed adequate for resolving every question. *Cf. Robb v. Connolly*, 111 U.S. 624, 637 (1884) ("Upon the State courts . . . rests the obligation to guard, enforce, and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceeding before them . . . .").

VI. Media Matters Has Failed to State a Claim With Respect to its Four Counts.

A. The complaint fails to state a First Amendment retaliation claim.

Tellingly, Media Matters fails to even try to meet the standard required by *Nieves*. As already explained, that case squarely holds that it is not enough to allege bad motive; a plaintiff must establish lack of probable cause. *Nieves*, 139 S. Ct. at 1728 ("Because there was probable cause to arrest Bartlett, his retaliatory arrest claim fails as a matter of law."). Media Matters cannot reasonably argue that there was no probable cause to move to enforce the CID. The Attorney General has been proven correct that Media Matters would not comply.

Nor has Media Matters asserted a lack of probable cause to investigate in the first place.[6] Notably, Media Matters has made no effort to justify its flawed "reporting" last November. For example, the Attorney General pointed out that the brand-safety organization DoubleVerify recently confirmed that the allegation that X was regularly populating advertisements next to fringe content is

[6] Even if Media Matters did dispute that, it has sued not over the investigation generally, but over the CID enforcement, and so its arguments would be irrelevant.

AMERICAN OVERSIGHT

false. ECF 56 at 10. Like the district attorney in the *Netflix* case, Media Matters "does not attempt to defend" against that. *Netflix*, 88 F.4th at 1095. Indeed, if in fact Media Matters defamed X by knowingly posting false information, then its activity was not protected by the First Amendment, *Farah v. Esq. Mag.*, 736 F.3d 528, 534 (D.C. Cir. 2013), and so no "retaliation" is even possible. Media Matters' failure to dispute these facts is telling.

Add to that all the other facts that differentiate this case from the Paxton case—the four months the office spent investigating before filing a CID, the internal Media Matters documents the office acquired revealing plans by Media Matters to collaborate with X's competitors and to interfere with the infrastructure used to deliver advertisements—and it is no wonder Media Matters makes no argument about probable cause. That is fatal to its case.

Instead, Media Matters (at 35) complains that the Missouri Attorney General has not shared findings from his investigation or made formal allegations, but at the pre-complaint stage of the investigation, there is nothing yet to "allege" (other than Media Matters' violation of its duty to timely comply with or challenge the CID). And the Attorney General is not required to tip his hand, as doing so may threaten the integrity of an investigation. *See, e.g.*, *United States v. Morton Salt Co.*, 338 U.S. 632, 642 (1950) (noting that pre-complaint investigations seek "information from those who best can give it and who are most interested in not doing so").

Nor has Media Matters put forth any evidence of "chill." Just the opposite. Media Matters' declarants admit that the chill they experience (if any) is no different *after* the CID than it was before. Hananoki, for example, states that he "*continue*[s]" to be chilled. ECF 49-2 ¶¶ 11–12 (emphasis added). Dimiero says that Media Matters reporters "*continue* to self-censor." ECF 49-5 ¶ 7. No declarant alleges any reduction in output that is tied specifically to the CID, rather than the underlying investigation (which Media Matters is not challenging), the Paxton investigation, or the lawsuit brought by X. And self-serving vague accusations bring nothing to the table. *E.g.*, ECF 49-3 ¶ 11 ("The

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001303

actions of these two Attorneys General have damaged morale at Media Matters"); ¶ 13 ("ability to collaborate with other groups continues to be impaired"); ECF 49-5 ¶ 5 ("negative impact . . . on morale"). Padera does no better when she says the organization "continue[s] to devote significantly more of our time than usual to dealing with investigations and lawsuits." ECF 49-3 ¶ 15. After all, "the burden of defending an enforcement action is not sufficient to warrant interference by the federal courts" because those burdens are incidental to every proceeding. *JMM Corp. v. District of Columbia*, 378 F.3d 1117, 1122 (D.C. Cir. 2004) (quotation marks omitted). Otherwise, every lawsuit would violate the First Amendment.

These declarations also say nothing about market forces that have indisputably decreased output. Just two weeks ago, Media Matters laid off "more than a dozen" reporters; and while some former employees sought to use this litigation as a scapegoat, Media Matters' President remarked that the layoffs were due at least in part to "how rapidly the media landscape is shifting."[7] Well before Bailey's investigation, Media Matters faced significant financial distress that would cause the same reductions in collaboration, morale, and research output that Media Matters' declarants now discuss. For the tax year 2022 (the most current version public available), Media Matters' IRS Form 990 reveals a 10% reduction in contributions year-over-year and movement from net positive income of $2.9 million in 2021 to net negative income of $2.2 million in 2022—a $5 million swing in one year, all before Hananoki's statements about X.[8] Like media competitors around it, Media Matters is in a cash crunch. Moreover, Media Matters cannot reasonably link the allegations of "chill" to the Missouri Attorney General, when they are more likely linked to the ongoing defamation litigation with X.

Finally, Media Matters' "chill" argument is self-defeating. In bringing this suit, Media Matters has exposed itself to *more* legal process, not less. If Media Matters truly believed its personal

[7] https://www.yahoo.com/news/media-matters-hit-more-dozen-234119354.html
[8] https://projects.propublica.org/nonprofits/organizations/470928008

AMERICAN OVERSIGHT

jurisdiction argument were meritorious, it could have simply and quickly moved to dismiss in Missouri court and ended the whole thing. Instead, the company chose to introduce many new issues, opening the door to extensive discovery, including depositions assessing the accuracy of its (implausible) assertions of chill on its reporting process.

B. Media Matters has failed to state a First or Fourth Amendment claim.

Media Matters wrongly asserts (at 37) that the Missouri Attorney General "does not dispute that the documents he seeks are protected materials" or "that the Missouri CID is a sweeping and overbroad request for such documents." The Missouri Attorney General has not conceded these points, and certainly does not believe that the documents requests are either universally "protected materials" or "sweeping and overbroad." To the extent Media Matters believes requested documents are protected or privileged, its protections are found in challenging the CID in Missouri courts and identifying those privileged materials in a privilege log, a standard practice in litigation.

No better is the assertion (at 38) that, absent a preliminary injunction, Media Matters "will be left to rely solely upon the limited procedures available to vindicate these rights in the foreign Missouri forum." The procedures are not limited, and Media Matters again tellingly makes no attempt to rebut, with "unambiguous authority," the presumption that "state procedures will afford an adequate remedy." *Pennzoil*, 481 U.S. at 15. Media Matters, for example, asserts a need for "prompt relief" but does not dispute that it will not be required to turn over any documents until all its defenses are litigated.

C. Media Matters has failed to state a claim under the DC or Maryland Shield Laws.

Media Matters argues (at 38) that the Missouri Attorney General has a burden to show "clear and convincing evidence" to override the public interest in disclosing materials pursuant to the DC and Maryland Shield Laws. This argument highlights the fundamental error in Count VIII—Media Matters preemptively styles an affirmative defense as a cause of action to try to flip the burden. But

AMERICAN OVERSIGHT

Media Matters offers no authority providing a private right of action under either the D.C. or Maryland Shield Laws. Count VIII must be dismissed.

Separately, Media Matters argues (at 38) that "all of [the] disputed reporting occurred in D.C. or Maryland." Even if this is true, the "disputed reporting" is not the basis of the Missouri Attorney General's investigation. The basis of the investigation is the statements Media Matters makes *to Missourians* while soliciting donations from them.

D. Media Matters has failed to state a Due Process claim.

Media Matters does not dispute that a due process violation is a jurisdictional argument and not an independent tort and cause of action. Instead, Media Matters argues (at 39) that the Missouri Attorney General has "violate[d] Plaintiffs' due process rights by deploying Missouri's investigative machinery against them." The case Media Matters cites, *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, in fact supports the Missouri Attorney General. *See* 456 U.S. 694, 702 (1982) (the Due Process Clause "represents a restriction on *judicial* power" (emphasis added)).

But Count VII fails for a more fundamental reason—courts do not recognize "a constitutionally protected interest in being free from investigation." *Aponte v. Calderon*, 284 F.3d 184, 193 (1st Cir. 2002); *see also United States v. Trayer*, 898 F.2d 805, 808 (D.C. Cir. 1990) ("But, of course, there is no constitutional right to be free of investigation."); *Spreadbury v. Bitterroot Pub. Libr.*, 862 F. Supp. 2d 1054, 1057 (D. Mont. 2012) ("There is no constitutional right not to be investigated by law enforcement for suspected violations of the law."). Where Media Matters describes the heart of Count VII as "simply" an effort to enjoin alleged due process violations stemming from "Missouri's investigative machinery," this count should be dismissed.

CONCLUSION

For the foregoing reasons, Defendant Bailey respectfully requests that the Court grant his motion to dismiss for reasons of jurisdiction and failure to state a claim.

AMERICAN OVERSIGHT

Date: June 4, 2024

Respectfully submitted,

ANDREW BAILEY
Attorney General of Missouri

/s/ *Joshua M. Divine*
JOSHUA M. DIVINE, #69875MO
Solicitor General

JEREMIAH J. MORGAN, #50387MO
Deputy Attorney General – Civil

REED C. DEMPSEY, #1697941DC
Deputy Solicitor General

OFFICE OF THE ATTORNEY GENERAL
Supreme Court Building
207 West High Street
P.O. Box 899
Jefferson City, Missouri 65102
Tel. (573) 751-1800
Fax (573) 751-0774
josh.divine@ago.mo.gov
jeremiah.morgan@ago.mo.gov
reed.dempsey@ago.mo.gov

Counsel for Defendant Missouri Attorney General

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001307

CERTIFICATE OF COMPLIANCE

I certify that the foregoing document contains 25 pages, exclusive of matters designated for omission, and satisfies the typesetting requirements.

/s/ *Joshua M. Divine*
Counsel for Missouri Attorney General

CERTIFICATE OF SERVICE

I certify that on June 4, 2024, a true and accurate copy of the foregoing document was electronically filed through the Court's CM/ECF System and that a copy of the foregoing will be sent via email to all parties by operation of the Court's electronic filing system, all consistent with Federal Rule of Civil Procedure 5(b).

/s/ *Joshua M. Divine*
Counsel for Missouri Attorney General

AMERICAN OVERSIGHT

Exhibit 3

AMERICAN OVERSIGHT



ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY

December 11, 2023

Angelo Carusone
President and CEO
Media Matters for America
PO Box 44811
Washington, DC 20026
Via email to: action@medimatters.org

Re: Notice of Pending Investigation

Dear Mr. Carusone,

This letter serves as a formal document hold notice under federal and Missouri law. The Missouri Attorney General's Office has opened an investigation into Media Matters for America ("Media Matters") regarding your firm's potentially unlawful business practices.

As you are no doubt aware, a federal lawsuit has been filed against Media Matters, raising serious allegations that your firm falsely and deceptively manipulated the algorithm on X (formerly known as Twitter) through coordinated, inauthentic behavior and that you did so in an attempt to defame the organization and cause advertisers to pull their support from the platform, thus harming free speech. The lawsuit alleges that you lied to the public, falsely suggesting that fringe, extremist content regularly appears next to content from corporate advertisers when in fact the opposite is true. At the same time, you appear to have used this coordinated, inauthentic activity to solicit charitable donations from consumers across the country.

I have reason to believe that your firm's alleged actions may have violated Missouri consumer protection laws, including laws that prohibit nonprofit entities from soliciting funds under false pretenses. *E.g.*, Mo. Rev. Stat. § 407.020.1. I am especially concerned that Media Matters' actions, if proven true, have hampered free speech by targeting an expressly pro free speech social media platform in an attempt

Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-0774
www.ago.mo.gov

AMERICAN OVERSIGHT

to cause it financial harm while defrauding Missourians in the process.

You are thus hereby instructed to preserve all records that may relate to your alleged effort to engage in coordinated, inauthentic behavior on social media platforms in order to generate false statements that were used to solicit charitable contributions under false pretenses. You are instructed in particular to preserve all records that may relate to your webpage, which expressly solicits funds, at the following URL: https://www.mediamatters.org/twitter/musk-endorses-antisemitic-conspiracy-theory-x-has-been-placing-ads-apple-bravo-ibm-oracle. Records you must preserve include but are not limited to:

- Internal communications regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Communications with third parties regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Communications with IBM, Lions Gate Entertainment, Apple, Disney, Warner Brothers Discovery, Paramount Gold, NBCUniversal, Comcast, Sony, Ubisoft and Wal-Mart regarding your strategy to target advertisers on X, formerly known as Twitter, and your efforts to manipulate those advertisers into pulling their ads from the platform.
- Internal communications regarding your policies, strategies or operations related to generating stories or content intended to "cancel," "deplatform," "demonetize," or otherwise interfere with businesses or organizations located in Missouri, or utilized by Missouri residents.
- Communications and documents related to soliciting charitable funds from residents of Missouri in relation to the webpage at the URL stated above.

Your obligation to preserve evidence extends to documents kept in any form, both physical and electronic. This includes letters, emails, instant messages, text messages, drafts, informal files, desk files, handwritten notes, faxes, memoranda, forms, calendar entries, address book entries, and voicemails. Your obligation applies to both hardcopy documents and electronic ones, including those kept on computers, laptops, tablets, smartphones, and any other electronic device, including both work and personal devices, personal email accounts and personal computers and tablets. Please ensure that all employees and contractors of Media Matters are aware of their obligations to preserve evidence in this case.

AMERICAN OVERSIGHT

You and your staff are further instructed to cease any protocol for the automatic deletion of emails or backup files on your computer systems. Please forward a copy of this letter to Media Matters IT managers and instruct them to suspend any such protocols.

Be advised that any failure to preserve documents of probative value to this case, even if inadvertent, will constitute spoliation of evidence and may result in a finding of contempt from the court or in sanctions.

Your cooperation in this matter is appreciated. Please feel free to contact me with any questions or concerns.

Respectfully,

ANDREW BAILEY
Missouri Attorney General

AMERICAN OVERSIGHT

Exhibit 5

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

In the Matter of:

Media Matters for America

CID NO. 24-10
Date: March 25, 2024

INVESTIGATIVE DEMAND

THE ATTORNEY GENERAL TO:

Served: U.S. Postal Service
Certified Mail

Media Matters for America
PO Box 44811
Washington, DC 20026

The Attorney General of the State of Missouri believes it to be in the public interest that an investigation be made to ascertain whether Media Matters for America (Subject) has engaged in or is engaging in practices declared unlawful by § 407.020, RSMo.

The investigation will inquire into the activities of Subject in connection with the solicitation of funds for a charitable purpose, or the sale or advertisement of merchandise, §§ 407.020, 407.453, RSMo.

The Attorney General has reason to believe that the Subject has used deception, fraud, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of material fact in connection with the soliciting of funds for a charitable purpose or the sale or advertisement of merchandise in or from the State of Missouri, § 407.020, RSMo. Independently, the Attorney General also believes it to be in the public interest to investigate whether such acts have occurred.

The Attorney General believes you have information, documentary material or physical evidence relevant to the above-mentioned conduct.

AMERICAN OVERSIGHT

DEFINITIONS

As used in this Demand, the following terms have the meanings described below:

"Communication" means any expression, statement, conveyance, or dissemination of any words, thoughts, statements, ideas, or information regardless of form, format, or kind. "Communication" includes but is not limited to oral or written communications of any kind, such as telephone conversations, discussions, meetings, notes, letters, agreements, emails or other electronic communications, facsimiles, and other forms of written or oral exchange that are recorded in any way, including video recordings, audio recordings, written notes, or otherwise. Any "Communication" that also falls within the definition of "Document" shall constitute both a Document and a Communication for purposes of this civil investigative demand.

"Document" means all written, printed, typed, and recorded matter of every kind and description, originals and copies, and all attachments and appendices thereto. Without limiting the foregoing, "documents" include all agreements, contracts, correspondence and other communications including notes, memoranda and marginal notations, records, reports, books, manuals, instructions, statistical data and data compilations, drafts, charts, graphs and tables, bills, statements and invoices, advertising, surveys, transcripts, microfilm and microfiche, electronic records that can be reproduced in paper form, recordings, film, tapes, photographs, electronic mail and Web pages, and all other computer-generated, computer-stored, or electronically-stored matter, however and by whomever produced, prepared, reproduced, disseminated, or made.

"Identify", when used with respect to a person or entity, means information sufficient to allow employees of the Attorney General to ascertain the name, address, telephone number, and if not a natural person, the contact person of the entity or facility to be identified, as well as the relationship of that person or entity to you.

"Identifying", when used with respect to a fact or event, means information sufficient to allow employees of the Attorney General to ascertain the fact or event with reasonable particularity, and to identify each person believed to have knowledge with respect to the fact or event and each document that refers or relates to the fact or event.

AMERICAN OVERSIGHT

"Relating to", "related to", "relate to" means to be relevant in any way to the subject matter in question, including without limitation all information that directly or indirectly contains, records, reflects, summarizes, evaluates, refers to, is pertinent to, indicates, comments upon, or discusses the subject matter; or that states the background of, or was the basis for, or that records, evaluates, comments, was referred to, relied upon, utilized, generated, transmitted, or received in arriving at any conclusion, opinion, estimate, position, decision, belief, policy, practice, course of business, course of conduct, procedure, or assertion concerning the subject matter.

"You", including your, means Media Matters for America, subsidiaries, partnerships, or any other entities related to Media Matters for America.

DEMAND FOR INFORMATION

Demand is hereby made upon you, under the authority granted by Section 407.040, RSMo, to produce in person or via mail to Michelle Starke, P.O. Box 899, Jefferson City, Missouri 65102 by April 15, 2024, the following documentary material and information that may be in your possession, custody or control, and permit the inspection and copying thereof:

1. A list or information identifying any and all donations of funds from donors located in the state of Missouri from January 01, 2023 through March 25, 2024.

   The list of donations should include, but is not limited to:
   - Identity of each individual or organization who donated funds;
   - Address of each individual or organization who donated funds;
   - Total amount spent per donation;
   - Date and time of each donation;
   - Payment method for each donation;
   - Identity of financial institution where funds were sent;
   - Contracts and/or agreements governing or related to each donation;

For each Demand for Information, you shall type the Demand and type your corresponding response. If you do not know the answer to a Demand for Information, you shall identify in your response the individual or business entity that has the answer to the Demand for Information. The document on

AMERICAN OVERSIGHT

which you type each Demand and your corresponding response shall be executed by you before a Notary Public.

DEMAND FOR DOCUMENTS

Demand is hereby made upon you, under the authority granted by Section 407.040, RSMo, to produce in person or via mail to Michelle Starke, P.O. Box 899, Jefferson City, Missouri 65102 by April 15, 2024, the following documentary material that may be in your possession, custody or control, and permit the inspection and copying thereof:

2. All promotional or marketing information provided by you from January 1, 2023 to March 25, 2024 to any individual or organization for the purpose of soliciting donations.

3. All documents or communications showing how solicited donations were used.

4. All communications or materials relating to any policy, strategy or operation related to generating stories or content intended to cancel, deplatform, demonetize, or otherwise interfere with businesses located in Missouri, or utilized by Missouri residents.

5. All communications, internal and external, regarding your strategy to pressure advertisers into pulling advertisements from the social media platform, X (formerly Twitter).

6. Documents sufficient to identify your employee organizational chart.

7. Documents sufficient to identify all your operational expenses in the state of Missouri.

8. All documents discussing Elon Musk's purchase of X (formerly Twitter).

9. All documents related to the article, or to the events described in the article, by Eric Hananoki entitled "As Musk endorses antisemitic conspiracy theory, X has been placing ads for Apple, Bravo, IBM,Oracle, and Xfinity next to pro-Nazi content."

AMERICAN OVERSIGHT

10. All documents sufficient to identify X accounts owned, controlled, or authorized by you used to obtain the images in the article referenced in paragraph 9.

11. All documents sufficient to identify all X accounts followed by the X accounts identified in response to paragraph 10.

12. All communications with Apple, International Business Machine Corporation, Bravo Television Network, NBCUniversal, Oracle Corporation, Comcast Corporation, Lions Gate Entertainment Corporation, Warner Bros Discovery Inc., Paramount Pictures Corporation, or Sony Group Corporation from November 1, 2023, to March 25, 2024.

NOTICE OF DEMAND FOR RETENTION OF RECORDS

You are hereby notified that all records, including communications, documents and things, relating to the above requests and the matters that are the subject of these requests for information are to be preserved during the pendency of this investigation. This includes, but is not limited to, all related customer records, including recordings made of customers, all related correspondence and other communications with third parties, all related documents and things received from third parties, and all internal documents and things.

COMPLIANCE

You may comply with this Investigative Demand by producing copies of the requested documents and information by regular mail or overnight delivery to Michelle Starke, P.O. Box 899, Jefferson City, Missouri 65102. The requested copies of documents and information should be received by the Office of the Attorney General by 10:00 a.m. (Central) on April 15, 2024 and be accompanied by the attached Business Records Affidavit and Certification of Compliance.

You are advised that the Attorney General will not grant an extension of time or modification of the terms of the Demand except for good cause pursuant to the terms of Section 407.070, RSMo. Your prompt response and provision of the requested information is requested.

AMERICAN OVERSIGHT

Your attention is respectfully called to the provisions of Section 407.080, RSMo, which makes certain acts done with the intent to avoid, evade or prevent compliance in whole or in part with any Investigative Demand served hereunder a Class A misdemeanor, which is punishable by a fine not to exceed $1,000.00 for individuals and $5,000.00 for corporations, or by imprisonment for a term of not more than one year, or both a fine and imprisonment.

Please direct all questions regarding this Investigative Demand to Jeremiah Morgan at 573-751-1800 or by e-mail to: Jeremiah.Morgan@ago.mo.gov.

Respectfully Submitted,

ANDREW BAILEY
Attorney General

/s/ Jeremiah J. Morgan
Jeremiah J. Morgan, #50387
Deputy Attorney General – Civil Litigation
Missouri Attorney General's Office
Post Office Box 899
Jefferson City, MO 65102
Tel: (573) 751-8870; Fax: (573) 751-0774
Jeremiah.Morgan@ago.mo.gov

AMERICAN OVERSIGHT

STATE OF _____)
) SS.
COUNTY OF _____)

BUSINESS RECORDS AFFIDAVIT AND CERTIFICATE OF COMPLIANCE

Before me, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

My name is _____, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the custodian of the records of _____. Attached hereto are _____ pages of records from _____. These _____ pages of records are kept by _____ in the regular course of business, and it was the regular course of business of_____ for an employee or representative of_____ with knowledge of the act, event, condition, opinion, or diagnosis recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time of the act, event, condition, opinion or diagnosis. The records attached hereto are the original or exact duplicate of the original.

I further certify that all documents and information required by Civil Investigative Demand No. 24-10 which is in the possession, custody, control, or knowledge of, _____ has been submitted to the Missouri Attorney General as directed herein.

_____
Affiant

Sworn to before me this ____ day of_____, 2024.

_____
Notary Public
Commission Expires:

AMERICAN OVERSIGHT

Exhibit 8

AMERICAN OVERSIGHT

ELIAS LAW GROUP

250 Massachusetts Ave NW, Suite 400 | Washington, DC 20001

April 15, 2024

VIA EMAIL AND FEDEX

Jeremiah J. Morgan
Deputy Attorney General, Civil Litigation
Missouri Attorney General's Office
PO Box 899
Jefferson City, MO 65102
Jeremiah.Morgan@ago.mo.gov

Re: Missouri Attorney General's Office Civil Investigative Demand: Media Matters for America

Dear Mr. Morgan:

We write as counsel to Media Matters for America ("Media Matters") in response to the Civil Investigative Demand (the "Demand" or the "Missouri Demand") issued by Attorney General Bailey on March 25, 2024, and received by Media Matters on April 1. For the reasons detailed herein, Media Matters objects to the Demand in its entirety. Nonetheless, without waiving any defenses and to preserve all legal rights, Media Matters provides the following response to the Demand.

Attorney General Bailey's investigation of Media Matters and issuance of the Demand constitute flagrant retaliation for engaging in constitutionally protected speech and press activities. The Demand fails to explain how Media Matters, a Washington, D.C.-based media organization, is subject to Missouri law, let alone in violation of such law. The Demand also infringes on Media Matters's free speech and press rights under the First, Fourth, and Fourteenth Amendments; its due process rights under the Fourteenth Amendment; and its rights under the Maryland and District of Columbia reporters' shield laws. On top of this, Attorney General Bailey filed a petition to enforce the Demand on March 25, 2024, a *full week* before Media Matters even received the as-served Demand. *See* Petition, *Missouri ex rel. Bailey v. Media Matters for Am.*, Case No. 24AC-CC-02291 (Cole Cnty. Cir. Ct. Mar. 25, 2024). Attorney General Bailey's baseless and retaliatory conduct has unlawfully chilled, and will continue to chill, Media Matters from publishing additional reporting on X Corp. ("X") and Mr. Musk out of fear of further retaliation and harassment.

By Attorney General Bailey's own admission, the Demand is nothing more than a copycat effort modeled on Texas Attorney General Ken Paxton's similarly unlawful and retaliatory Demand

AMERICAN OVERSIGHT

issued in November 2023 (the "Texas Demand"). As you are likely aware, Media Matters challenged Attorney General Paxton's conduct in federal court in Washington, D.C. *See* Attachment A, Complaint, *Media Matters for Am. v. Paxton*, No. 24-cv-147-APM (D.D.C. Jan. 17, 2024), ECF No. 1. On April 12, 2024, the court enjoined Attorney General Paxton from enforcing the Texas Demand. *See* Attachment B, Prelim. Inj. Order, *Media Matters for Am. v. Paxton*, No. 24-cv-147-APM (D.D.C. Apr. 12, 2024), ECF No. 38. The court further enjoined Attorney General Paxton from "issuing any additional Demands, or taking steps purporting to mandate any action on behalf of" Media Matters in furtherance of his investigation. *Id*.

Notably, the court described Attorney General Bailey's actions, in issuing a demand and filing an enforcement petition, as "follow[ing Paxton's] lead." Attachment C, Mem. Op. at 5 n.3, *Media Matters for Am. v. Paxton*, No. 24-cv-147-APM (D.D.C. Apr. 12, 2024), ECF No. 37. In other words, Attorney General Bailey has embarked on the same unlawful course of action that a federal court has just enjoined with respect to Attorney General Paxton.

Given the preliminary injunction obtained against Attorney General Paxton in the federal litigation in Washington, D.C., **Media Matters requests that Attorney General Bailey immediately withdraw the Missouri Demand, dismiss the action filed in Cole County Circuit Court, and provide written notice of same to Media Matters. If Attorney General Bailey fails to provide such notice by 5:00 p.m. EDT on Thursday, April 18, Media Matters intends to pursue relief against Attorney General Bailey in federal court, consistent with that obtained against Attorney General Paxton**.

Background. In November 2023, Eric Hananoki, senior investigative reporter at Media Matters, published three investigative reports on Media Matters's website showing the placement of advertisements for major corporations next to extremist content on the social media platform formerly known as Twitter, now called "X."[1] Mr. Hananoki's reporting was consistent with a year's worth of reporting from an array of other media outlets that described the proliferation of pervasive white nationalist, antisemitic, and other extremist content on X. *See* Attachment A, ¶¶ 28–35. On November 20, 2023, following the publication of these articles, X filed a lawsuit in the Northern District of Texas against Media Matters and Mr. Hananoki, and later amended to add Media Matters President Angelo Carusone. *See X Corp. v. Media Matters for Am.*, No. 4:23-cv-1175 (N.D. Tex.). Defendants have moved to dismiss that action on jurisdictional and venue grounds and because the operative complaint fails to state a claim.

On the same day X filed its lawsuit, Texas Attorney General Ken Paxton issued a press release announcing that he was opening an investigation into Media Matters "for potential fraudulent activity."[2] Rather than providing any basis for investigating Media Matters—or explaining how

[1] Those articles were published on mediamatters.org on Monday, November 13, 2023; Thursday, November 16, 2023; and Friday, November 17, 2023 (the "November Articles").

[2] Press Release, Ken Paxton, Attorney General of Texas, Attorney General Ken Paxton Opens Investigation into Media Matters for Potential Fraudulent Activity (Nov. 20, 2023), https://www.oag.state.tx.us/news/releases/attorney-general-ken-paxton-opens-investigation-media-matters-potential-fraudulent-activity.

AMERICAN OVERSIGHT

the Texas Office of the Attorney General could plausibly assert jurisdiction over Media Matters—the press release attacked Media Matters as a "a radical anti-free speech organization" and a "radical left-wing organization[] who would like nothing more than to limit freedom by reducing participation in the public square[.]" A day earlier, Missouri Attorney General Bailey announced on X that his "team" was "looking into this matter."[3] Bailey's announcement was made in response to a post by a right-wing political operative calling for "conservative state Attorneys General" to politicize their offices by launching retaliatory investigations into Media Matters.[4]

On December 1, 2023, a process server retained by Attorney General Paxton served Media Matters with a Civil Investigative Demand. The Texas Demand sought production of documents related to twelve overbroad topics that have little connection to trade practices or consumer protection—the purported bases for Paxton's investigation. The Texas Demand provided a return date of December 12, 2023, less than two weeks after service.

On December 12, 2023, Attorney General Bailey issued a Notice of Pending Investigation to Media Matters. That Notice purported to "open[] an investigation" on the grounds that Media Matters "may have violated Missouri consumer protection laws, including laws that prohibit nonprofit entities from soliciting funds under false pretenses." But the Notice identified no specific solicitation of funds by Media Matters in Missouri. Nor did it allege any credible basis for assuming that such solicitation, if it occurred, would have been under false pretenses. In a press release announcing the issuance of the Notice, Attorney General Bailey indicated he was "fighting to ensure progressive tyrants" could not "wipe out free speech."[5]

On January 17, 2024, Media Matters filed suit against Attorney General Paxton in the U.S. District Court for the District of Columbia. *See Media Matters for Am. v. Paxton*, No. 24-cv-147-APM (D.D.C. Jan. 17, 2024). The complaint, which noted that Attorney General Bailey had announced a similar investigation on November 19, stated four claims: (1) retaliation in violation of the First Amendment; (2) violations of the First, Fourth, and Fourteenth Amendments stemming from Attorney General Paxton's attempt to rifle through Media Matters's protected documents without valid justification; (3) violations of Media Matters's Fourteenth Amendment right to due process; and (4) violations of the D.C. and Maryland Reporters' Shield Laws. Attachment A, ¶¶ 47, 81–112.

On January 18, 2024, Media Matters moved for a preliminary injunction. The court held a hearing on February 15, 2024. At that hearing, the court questioned Attorney General Paxton's basis to investigate a media entity that "hasn't directed any conduct to Texas." Tr. of Feb. 15, 2024, Prelim. Inj. Hr'g. 34:1–2, *Media Matters for Am. v. Paxton*, No. 24-cv-147-APM (D.D.C. Feb. 20, 2024).

---

[3] @AGAndrewBailey, X.com (Nov. 19, 2023, 4:46 PM ET), https://perma.cc/J463-656K.
[4] @StephenM, X.com (Nov. 19, 2023, 11:48 AM ET), https://perma.cc/9E6L-FJGY.
[5] *See* Press Release (Dec. 12, 2023), *Attorney General Bailey Notifies Media Matters of Pending Investigation*, https://ago.mo.gov/attorney-general-bailey-notifies-media-matters-of-pending-investigation/.

AMERICAN OVERSIGHT

And the court expressed concern at the prospect of other attorneys general sending CIDs to D.C.-based media companies. *Id.* 44:7–9.

On March 25, 2024, Media Matters learned that Attorney General Bailey had issued a Civil Investigative Demand and filed a lawsuit to enforce that Demand. To be clear, Media Matters was not served with anything on March 25, or for several days thereafter. Instead, Media Matters learned of the Demand and enforcement action from your office's press release and media requests seeking Media Matters's comment on the Demand. The Petition was not served on Media Matters until three days later, on March 28. And the Demand itself was not delivered to Media Matters until April 1—a full week after your office filed a lawsuit to *enforce* it. The Petition describes the Demand as "virtually identical" to that issued by Attorney General Paxton.

Of note, the press release announcing the Demand is defamatory. It claims, without qualification, that "Media Matters has used fraud to solicit donations from Missourians," a demonstrably false and damaging statement that Attorney General Bailey has never attempted to substantiate. Indeed, elsewhere Attorney General Bailey purports only to be "investigating" that claim. The Demand identifies no plausible basis for your office's jurisdiction or the unfounded allegations of unlawful conduct. To the contrary, the Demand simply restates the baseless, conclusory allegations first made in your office's December 12, 2023, Notice. Moreover, the Missouri Demand in large part simply copies the text of the Texas Demand, indicating little independent effort on Attorney General Bailey's part to investigate and substantiate his defamatory claims.

On April 12, 2024, the D.C. District Court enjoined Attorney General Paxton from enforcing the Texas Demand against Media Matters. Attachment B; *see also* Attachment C at 40. In granting Media Matters's motion for a preliminary injunction, the court determined that it has jurisdiction over Attorney General Paxton; that Media Matters had suffered a justiciable injury; and that Media Matters was likely to succeed on its First Amendment retaliation claim. *See generally* Attachment C.[6] Attorney General Paxton's Demand—which is materially indistinguishable from Attorney Bailey's Demand and was issued under similar retaliatory circumstances—violates Media Matters's and Mr. Hananoki's First Amendment rights to report on matters of public concern without fear of legal sanctions for engaging in such protected activities. *Id.* at 35–38. The loss of First Amendment rights, for even minimal periods of time, unquestionably constitutes irreparable harm. *Id.* at 38. And "there is always a strong public interest in the exercise of free speech rights otherwise abridged by an unconstitutional regulation." *Id.* at 40.

Objections to the Demand. Media Matters objects to the Demand issued by Attorney General Bailey for the reasons set forth below, which are illustrative and are not meant to be exhaustive.

First, your office lacks jurisdiction and authority to investigate Media Matters, a non-profit media watchdog organization with a principal place of business in Washington, D.C. Media Matters is

[6] Because the Court found that Plaintiffs were likely to succeed on their First Amendment retaliation claim, it did not reach Plaintiffs' other claims.

AMERICAN OVERSIGHT

not registered as a foreign corporation in Missouri because it does not "transact business" in in the state. Mo. Rev. Stat. § 351.572. Nor does Media Matters have a registered agent in Missouri. Further, Media Matters is not engaged in "the sale or advertisement of any merchandise in trade or commerce" in Missouri. *Id.* § 407.020. Nor is Media Matters targeting any "solicitation of any funds for any charitable purpose" at Missouri. *Id.*; *see also id.* § 407.453. For those reasons and others, Media Matters is exempt from registering under Missouri's Charitable Organizations and Solicitations Law, the law your office purports to be enforcing. Your office expressly confirmed Media Matters's exempt status nearly two decades ago. *See* Attachment D, Letter from Jeremiah W. Nixon, Missouri Attorney General, to Megan B. Allen (July 12, 2007); *see also* Mo. Rev. Stat. §§ 407.450 *et seq*. And the Demand itself illustrates the flimsiness of your office's claim to jurisdiction—rather than alleging jurisdictional facts that might warrant an investigation, demands 1, 4, and 7 seek to compel production of such facts. The Demand is nothing more than a politically motivated fishing expedition.

Further, Mr. Hananoki's research, drafting, preparation, and review of the November news articles referred to in your office's Demand were done at his home in Maryland, where he performs nearly all his work for Media Matters. Mr. Hananoki has never traveled to Missouri to perform his duties for Media Matters, nor did his preparation of the referenced articles involve communication with any residents, consumers, or businesses located in Missouri. Your office thus lacks jurisdiction over Mr. Hananoki and his papers.

Second, the Demand seeks information entirely protected from disclosure by federal and state law. Demands 1, 2, 3, 6, and 7, in particular, seek information related to Media Matters's sources, its uses of donated funds, and its internal decision-making, in violation of Media Matters's and its donors' First Amendment right to associate without state interference. *See Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373 (2021). And demands 4, 5, 8, 9, 10, 11, and 12 seek journalistic source information protected by the Constitution and D.C. and Maryland statutes.

Third, the Demand plainly has been issued in retaliation for Media Matters's First Amendment–protected journalistic and investigative activity. Attorney General Bailey is abusing his powers to score political points—as illustrated by his appearance on numerous media outlets to broadcast his issuance of the Demand before it had even been delivered to Media Matters, as well as the charged and defamatory language he has consistently directed at Media Matters. The entire Demand is therefore an unenforceable effort to chill Media Matters's constitutionally protected speech. Your office has no lawful authority to seek documents when the reason for doing so is retaliatory and political, rather than for a legitimate investigative purpose.

Finally, the Demand seeks unduly burdensome, privileged, and otherwise-objectionable categories of documents and communications. Demands 3, 4, 5, 6, 7, and 8, for instance, seek documents without any temporal limit. Several demands seek documents that are, at least in part, attorney-client privileged or protected by the work-product doctrine. And the overall burden of complying with the Demand would be significant and remarkably excessive not only given its extensive breadth, but also because there is no valid basis for the investigation in the first place.

AMERICAN OVERSIGHT

***

Because the Demand violates Media Matters's rights (as well as those of its journalists, donors, and other affiliates) under the U.S. Constitution and Maryland and D.C. law, and because it is unduly burdensome and otherwise improper, Media Matters objects to it in its entirety. In light of these objections and for the reasons discussed above, Media Matters will not be producing documents in response to the Demand at this time.

Media Matters's objections to the Demand are based on the information it currently has available. It reserves the right to alter, supplement, or otherwise modify these objections based on the discovery of new or additional circumstances. Nothing in this letter constitutes waiver of any additional objections Media Matters may raise in the future to the Demand or to any other investigations or claims brought by your office or any other Missouri official.

Regards,



Aria C. Branch

Abha Khanna
Aria C. Branch
Christopher D. Dodge
Samuel T. Ward-Packard
Elias Law Group LLP

J. Andrew Hirth
TGH Litigation LLC

Counsel to Media Matters for America

AMERICAN OVERSIGHT

Exhibit 11

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

JAY NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. BOX 899
(573) 751-3321

July 12, 2007

Copilevitz & Canter, LLC
Attention: Megan B. Allen
310 W. 20th Street, Suite 300
Kansas City, MO 64108

RE: Charitable Organization & Solicitation Law, 407.450 -- 407.478 RSMo, 2000
Registration and Exemption for **Media Matters for America**
Registration No .**CO-181-07**

Dear Ms. Allen:

Attorney General Jeremiah W. (Jay) Nixon has asked me to respond to your recent letter regarding the above.

Based on the facts submitted to our office, it appears that your organization is exempt from registration under the Charitable Organizations & Solicitations Law, Sections 407.450 to 407.478 RSMo 2000

The initial registration statement and letter noting your statement of exemption has been retained for our files. **In addition**, we invite your organization to be included on the Missouri Attorney General's Office charity web page. The web page will offer a profile of each organization, including a description of its charitable purpose, contact information and basic financial information about the organization with a focus on the program-spending ration. Consumers will be able to easily access information that will assist in evaluating solicitations and choosing wisely when responding to charitable appeals.

To be included on the Attorney Generals charity web page please complete the enclosed forms which certify the accuracy of the information provided. Please mail your information to:

Missouri Attorney General's Office
Attn: Judy Murray
P.O. Box 899
Jefferson City, MO 65102-0899

AMERICAN OVERSIGHT

Thank you for your continued cooperation. If you have further questions please contact the undersigned or visit us at www.ago.mo.gov.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Rhonda Johnson

Rhonda Johnson
Registration Specialist
Consumer Protection Division

Enclosure

AMERICAN OVERSIGHT

Exhibit 1

AMERICAN OVERSIGHT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MEDIA MATTERS FOR AMERICA, *et al.*, Plaintiffs, v. WARREN KENNETH PAXTON JR., in his official capacity as Attorney General of the State of Texas, ANDREW BAILEY, in his official capacity as Attorney General of the State of Missouri, Defendants.	Civil Action No. 24-cv-147

SECOND SUPPLEMENTAL DECLARATION OF ERIC HANANOKI IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST BAILEY

I, Eric Hananoki, declare as follows:

1. I am over the age of 18, am competent to testify, and have personal knowledge of the facts and information set forth in this declaration.

2. I previously submitted a declaration in this lawsuit on January 18, 2024, as well as a supplemental declaration on February 1, 2024. I incorporate those declarations by reference here and file this new declaration to address the impact that Missouri Attorney General Bailey's recent actions have had on my work and reporting.

3. Since I submitted my two earlier declarations, Attorney General Bailey has acted on his earlier public threats against Media Matters by issuing a civil investigative demand (the "Demand") seeking documents—including those involving my research and reporting—and a lawsuit to enforce that demand (the "Petition") in Missouri.

AMERICAN OVERSIGHT

4. The fears and concerns I expressed in my previous declarations due to Attorney General Paxton's actions have now been compounded by the actions of Attorney General Bailey, which I also consider to be nothing more than bad faith retaliation against my reporting.

5. Before his most recent actions, Bailey made a number of derogatory and defamatory statements about Media Matters and my reporting. For example, Bailey labeled Media Matters "radicals" and "progressive tyrants" seeking to "wipe out free speech." Bailey then made similarly outrageous claims in a number of media appearances. For example, Bailey appeared on the show "Cancel This!" and stated that "Media Matters is built on lies . . . It's a radical, progressive, tyrannical advocacy group masquerading as a news outlet."[1] He accused Media Matters of "market manipulation and bullying [] the advertisers on X[,]" and described Media Matters as a weapon of "the enemy."[2] Bailey also appeared on the channel Newsmax and claimed without any basis that Media Matters had to "dismantle and deconstruct" the "safeguards" that X had in place in order to conduct a "manipulation of the algorithms[.]"[3] Bailey then did not refute host Rob Schmitt when he responded that "these people are evil" and "these people should be deported for this."[4] Bailey publicly confirmed that his office has "coordinated with Texas," and was "in talks with other states as well" as part of the "new front in the war, in the fight for free

---

[1] Cancel This!, *It's A Color-Coded Christmas Party for This Boston Mayor + Andrew Bailey & Nelson McIlveen LIVE!*, YouTube at 1:41:27–1:43:05 (Dec. 14, 2023), https://www.youtube.com/watch?v=xDFXO1MjIME.

[2] *Id.*

[3] Rob Schmitt Tonight, Newsmax at 40:54–42:00 (Dec. 12, 2023), https://www.newsmaxtv.com/Shows/Rob-Schmitt-Tonight/vid/52639c50-996a-11ee-a4f2-5b4ee1ed8474.

[4] *Id.*

AMERICAN OVERSIGHT

speech."[5]

6. Attorney General Bailey's repeated, virulent public attacks on Media Matters and on my reporting—including his statements that he was coordinating with the retaliatory investigation of Attorney General Paxton—gave me serious concerns and contributed to the feelings of fear in my earlier declarations.

7. Attorney General Bailey has now acted upon his earlier disparagement of my reporting. On March 25, 2024, Attorney General Bailey formally issued his Demand, which I have since reviewed. The Demand identifies me by name and asks for all documents "related to" my November 16 article, or "events described in the article," which would encompass communications and documents that I used as I researched and drafted my article—materials that are fundamental to my work as a journalist. So far as I can tell, complying with the Demand would require me to turn over effectively the same set of documents demanded by Paxton's earlier civil investigative demand.

8. On the same day he issued the Demand, Attorney General Bailey also filed his Petition to enforce that Demand in a state court in Jefferson City, Missouri. That suit is highly distressing to me, and I am troubled by the prospect that access to my private research and communications will be decided by a court in a place with which I have absolutely no connection. As I previously explained, my work on the November 16 article occurred exclusively in Maryland. I have never traveled to Missouri for work, and to the best of my knowledge none of my work on the November 16 article, or any related article, involved any interaction with the state of Missouri.

---

[5] Tim Jones & Chris Arps Show, *MO A.G. Andrew Bailey: Missouri Doesn't Have Sanctuary Cities*, NewsTalkSTL at 5:32–58 (Dec. 12, 2023), https://omny.fm/shows/newstalk-stl/mo-a-g-andrew-bailey-missouri-doesnt-have-sanctuar.

AMERICAN OVERSIGHT

9. I believe that Attorney General Bailey's demand for my documents—like Attorney General Paxton's earlier demand—is in response to Musk's highly publicized call for retaliation against Media Matters. Attorney General Bailey himself said he and Musk have "been in touch over the past few months on a variety of different topics."[6] Shortly before issuing his Demand, Attorney General Bailey had what he described as a "great discussion with" Musk in a public "X Space."[7] Attorney General Bailey has relentlessly and publicly condemned Media Matters and my reporting, has claimed that he is working with Attorney General Paxton, and has shown no basis for his investigation. In my view, he is harassing and retaliating against Media Matters and myself in an effort to silence Media Matters's reporting (and my reporting specifically) about extremist content on X and to attract attention and praise from his conservative followers on platforms like X.

10. Attorney General Bailey's Demand, Petition, and his aggressive public statements about Media Matters and my reporting, have had an extremely negative effect on my work and on me personally. The fear of harassment, threats, and legal retaliation that I described in my prior declarations continues with, and is now compounded by, the recent actions taken by Attorney General Bailey. While the Court's recent ruling helped resolve some of my concerns about Attorney General Paxton's investigation, Attorney General Bailey appears to now be retaliating against me in an even more aggressive manner.

11. I continue to limit my communications and collaboration with other journalists, and I continue to be impacted in my ability to communicate with my editor, Ben Dimiero, from fear

---

[6] Pete Mundo Morning Show, *Andrew Bailey - Missouri Attorney General | 3-19-24*, YouTube at 1:36-1:41, (Mar. 19, 2024) https://www.youtube.com/watch?v=jb1ARx28tvQ&t=86s.

[7] @AGAndrewBailey, X.com (Mar. 19, 2023, 9 :49 AM ET), https://twitter.com/AndrewBaileyMO/status/1770085152699424772.

AMERICAN OVERSIGHT

that our discussions will have to be turned over to state law enforcement officials, like Bailey, who are retaliating against my reporting.

12. I also continue to curtail my investigative reporting and to self-censor in researching and drafting new articles. Since my last declaration, I have continued to generate articles and reporting ideas about Musk's ownership of X but have been unable to pursue them due to the various investigations into my work. I continue to produce reporting output far below my usual pace as a result of the retaliation I am facing from officials like Bailey.

13. For example, NBC News released a report on April 16, 2024, which found that at least "150 paid 'Premium' subscriber X accounts and thousands of unpaid accounts have posted or amplified pro-Nazi content on X in recent months, often in apparent violation of X's rules[.]" NBC News found "ads running on 74 of the 150 premium accounts, either on their profile pages or in the replies below their posts." The NBC News report cited my earlier reporting about extremism on X—the very reporting that has led to the retaliation against me by state officials like Bailey.[8]

14. The NBC News report bolstered the findings I presented in my own related articles, and in ordinary circumstances I would have followed up on the NBC News report and its findings in my own writing. However, I did not follow up with any new articles in response to the NBC News report—despite generating story ideas as a result of it—due to my fear of further legal retaliation and public threats from officials like Bailey. This chill on my reporting will continue so long as state officials' investigations and demands for my private documents and communications remain unchecked.

---

[8] David Ingram, *Verified pro-Nazi X accounts flourish under Elon Musk*, NBC News (Apr. 16, 2024), https://www.nbcnews.com/tech/social-media/x-twitter-elon-musk-nazi-extremist-white-nationalist-accounts-rcna145020.

AMERICAN OVERSIGHT

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 4/25/2024

Eric Hananoki

AMERICAN OVERSIGHT

Exhibit 2

AMERICAN OVERSIGHT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MEDIA MATTERS FOR AMERICA, *et al.*, Plaintiffs, v. WARREN KENNETH PAXTON JR., in his official capacity as Attorney General of the State of Texas, ANDREW BAILEY, in his official capacity as Attorney General of the State of Missouri, Defendants.	Civil Action No. 24-cv-147

SUPPLEMENTAL DECLARATION OF CYNTHIA PADERA IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST BAILEY

I, Cynthia Padera, declare as follows:

1. I am over the age of 18, am competent to testify, and have personal knowledge of the facts and information set forth in this declaration.

2. I am the Chief Operating Officer of Media Matters for America ("Media Matters").

3. I live in, and work from, the District of Columbia.

4. I previously submitted a declaration in this lawsuit on January 18, 2024. I incorporate that declaration by reference here and file this new declaration to address Missouri Attorney General Bailey's recent actions directed towards Media Matters, and specifically to describe Media Matters's lack of connection to the state of Missouri.

5. On March 25, 2024, Attorney General Bailey issued a civil investigative demand (the "Demand") that is very similar to the civil investigative demand issued by Texas Attorney General Paxton. Attorney General Bailey's Demand commands Media Matters to produce a wide

AMERICAN OVERSIGHT

array of documents, including documents and communications about our general operations, Eric Hananoki's November 16 article, and communications with companies which currently or previously advertised on the X platform.

6. That same day, on March 25, without allowing Media Matters time to respond to the Demand, Attorney General Bailey filed a petition (the "Petition") to enforce the Demand against Media Matters in Missouri state court—despite the fact that the organization has no relevant connection to Missouri. This was a full week before Media Matters received the Demand via U.S. mail in Washington, D.C., on April 1.

7. Media Matters first learned about the existence of the Demand, as well as Bailey's lawsuit, from a reporter who reached out to Media Matters for comment about Bailey's Demand and lawsuit early on the morning of March 25. Only hours later did Attorney General Bailey then issue a press release describing the lawsuit he had filed against Media Matters. At no time did Attorney General Bailey or his office reach out to Media Matters, or our outside counsel, to inform us about the Demand or lawsuit.

8. Several days later, on March 28, 2024, I personally accepted service of the Petition from a process server hired by Attorney General Bailey. The Petition was served on me in the lobby at Media Matters's Washington D.C. headquarters. This occurred several days before we received the actual Demand through the postal service.

9. Media Matters's leadership views the investigation and lawsuit of Attorney General Bailey—just like the actions of Attorney General Paxton—as a direct response to Mr. Musk's criticism of Media Matters. Attorney General Bailey's actions appear to be another attempt by a state attorney general to punish Media Matters for its journalism and to support Mr. Musk and his efforts to retaliate against news coverage he does not like. In fact, Attorney General Bailey interviewed Mr. Musk on March 18, during which Musk made thinly veiled references to his

AMERICAN OVERSIGHT

dispute with Media Matters by discussing advertisers "freak[ing] out if some activist organizations get some article written about how they're advertising next to content that's bad[.]" Musk claimed that this was a "major suppression of free speech" "that should be dealt with," and suggested that there had been possible legal violations—to which Bailey agreed, calling the situation a "possible antitrust issue" involving "market manipulation."[1]

10. Executive leadership has been concerned about Attorney General Bailey's highly public attacks against Media Matters and Mr. Hananoki's reporting since December 11, 2023, when Bailey sent a "Notice of Pending Investigation" demanding that Media Matters preserve documents related to a forthcoming investigation by his office. Bailey announced this "Notice" through a press release in which he condemned Media Matters, including by calling Media Matters a group of "progressive tyrants."

11. Attorney General Bailey's investigation and lawsuit have compounded the harm already caused by Attorney General Paxton's investigation. The actions of these two Attorneys General have damaged morale at Media Matters, where many of our employees continue to be fearful of being the subject of legal proceedings and exposing themselves to the threats of powerful government officials.

12. Attorney General Bailey's actions have reinforced the culture of fear within Media Matters that I described in my prior declaration, further chilling employees' willingness to speak, research, or report on topics related to the subjects of the investigations and the Petition.

13. Media Matters's ability to collaborate with other groups continues to be impaired, as groups that previously worked with Media Matters continue to carefully consider sharing sensitive documents and communications with us while we are subject to investigation. There is

[1] @AGAndrewBailey, *The Battle for Free Speech*, X.com, at 28:30–31:24 (Mar. 18, 2023, 8:02 PM), https://twitter.com/AGAndrewBailey/status/1769877183562944637.

AMERICAN OVERSIGHT

understandable concern that communications with Media Matters could expose other organizations, their members, or their employees to the kinds of legal proceedings we are now facing.

14. The organization's other collaborative efforts continue to be kept at a standstill due to the retaliatory investigations we are facing. Media Matters previously refrained from actively participating in coalitions focused on issues of hate speech on X while Attorney General Paxton's demand was pending—that participation now faces the added roadblock of Attorney General Bailey's Demand and Petition. External affairs will continue to avoid sharing research regarding X and its content moderation policies with longstanding partners for fear of further retaliation.

15. Given this latest round of legal retaliation from Attorney General Bailey, Media Matters's senior leaders and I continue to devote significantly more of our time than usual to dealing with investigations and lawsuits, rather than our ordinary job responsibilities. These acts of retaliation by Attorney General Bailey have further harmed the organization's ability to produce reporting and journalism on political extremism in the United States media and has hindered our work across the board.

16. Media Matters's leadership, officers, and staff are now once more concerned and fearful about having to protect their constitutional rights in yet another place where they do not live or work, against another partisan state attorney general. As I explain below, the organization has no relevant connection to Missouri whatsoever, never mind to Cole County, Missouri, where Attorney General Bailey has sued.

17. As I stated previously, Media Matters is incorporated under the laws of the District of Columbia and is registered to conduct business in the District of Columbia. Our sole physical office space is located within the District of Columbia and the majority of employees work from the Washington, DC metropolitan area.

AMERICAN OVERSIGHT

18. Media Matters does not have an office, workspace, or any other physical presence in Missouri.

19. Media Matters is not registered to conduct business in Missouri.

20. Media Matters is not registered as a charity organization in Missouri. The Missouri Attorney General's office exempted Media Matters from registering as a charitable organization in Missouri in 2007.

21. Media Matters does not have a registered agent in Missouri.

22. No Media Matters employee currently works from Missouri or is presently intending to do so. To the best of my knowledge, Media Matters has never had any staff based in Missouri at any point in its existence.

23. Media Matters does not buy or sell any goods in Missouri; does not offer any goods for sale in Missouri; and does not advertise any goods or merchandise for sale in Missouri. As a non-profit media organization, we do not offer goods for sale anywhere in the United States.

24. Media Matters does not conduct any fundraising campaigns specifically targeting Missouri.

25. Neither do any of Media Matters's email-based fundraising campaigns specifically target Missouri.

26. Given Attorney General Bailey's references to "war" on Media Matters and his encouragement for others to join him, his actions have felt and continue to feel like an existential threat to our organization.[2]

[2] Tim Jones & Chris Arps Show, *MO A.G. Andrew Bailey: Missouri Doesn't Have Sanctuary Cities*, NewsTalkSTL, at 5:32–58 (Dec. 12, 2023), https://omny.fm/shows/newstalk-stl/mo-a-g-andrew-bailey-missouri-doesnt-have-sanctuar.

AMERICAN OVERSIGHT

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 4/25/2024

Cynthia Padera

Cynthia Padera

AMERICAN OVERSIGHT

Exhibit 4

AMERICAN OVERSIGHT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MEDIA MATTERS FOR AMERICA, *et al.*, Plaintiffs, v. WARREN KENNETH PAXTON JR., in his official capacity as Attorney General of the State of Texas, ANDREW BAILEY, in his official capacity as Attorney General of the State of Missouri, Defendants.	Civil Action No. 24-cv-147

SUPPLEMENTAL DECLARATION OF BENJAMIN DIMIERO IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST BAILEY

I, Benjamin Dimiero, declare as follows:

1. I am over the age of 18, am competent to testify, and have personal knowledge of the facts and information set forth in this declaration.

2. I am the Editor-in-Chief of Media Matters for America ("Media Matters"). I live and work in the District of Columbia.

3. I previously submitted a declaration in this lawsuit on January 18, 2024, where I described the chilling effect that Attorney General Ken Paxton's investigation has had on my work as Editor-in-Chief, as well as my collaboration and communication with our Senior Investigative Reporter, Eric Hananoki. I also described the impact that Paxton's conduct had on the operation of our newsroom more broadly. I incorporate that declaration by reference here, and separately address the impact that the recent actions of Missouri Attorney General Bailey have had on my

AMERICAN OVERSIGHT

work and Media Matters's newsroom.

4. Since the time of my prior declaration, Missouri Attorney General Bailey issued his own civil investigative demand (the "Demand") against Media Matters, and immediately filed a lawsuit to enforce (the "Petition") the Demand in Missouri state court.

5. My prior declaration described the negative impact that Attorney General Paxton's actions had on the morale of my editorial team, and how it dramatically changed and stifled our editorial process. Attorney General Bailey's actions are now contributing to and compounding that negative impact and disruption, particularly in the wake of this Court's pause on Paxton's investigation.

6. Because of Bailey's actions, [redacted] to be impacted by concern over what we are actually able to research and report on while avoiding exposing ourselves to further retaliation. There is a persisting sense on our editorial team and in our organization that we must proceed extremely cautiously with our journalism or else face further legal retaliation that threatens our ability to operate.

7. This has proved extremely inhibiting to our editorial operations. Routine articles continue to receive greater internal scrutiny from myself, our broader editorial team, and Media Matters's leadership, which has slowed our output and hampered our ability to promptly publish coverage of emerging stories and topics. Our journalists, including Mr. [redacted] censor due to fear and concern about whether covering certain topics will lead to backlash, and perhaps even imperil the organization's future operations.

8. Attorney General Bailey's Demand and Petition—and the very real possibility that officials from other states could join his efforts—have justifiably heightened this sense of uncertainty.

AMERICAN OVERSIGHT

9. Attorney General Bailey's repeated public attacks against Media Matters have also exacerbated the concerns that Media Matters's reporters have about legal backlash to their reporting. The actions of Attorney General Bailey have worsened the culture of fear at our organization that I described in my earlier declaration. This fear continues to distract us from our work reporting on important issues like political extremism in the media, and will continue to do so if officials like Bailey are allowed to carry on their efforts to punish reporting that they dislike.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 4/25/2024

Ben Dimiero

Benjamin Dimiero

AMERICAN OVERSIGHT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MEDIA MATTERS FOR AMERICA, *et al.*, Plaintiffs, v. WARREN KENNETH PAXTON JR., in his official capacity as Attorney General of the State of Texas, ANDREW BAILEY, in his official capacity as Attorney General of the State of Missouri, Defendants. Defendants.	Civil Action No. 24-cv-147

[PROPOSED] TEMPORARY RESTRAINING ORDER

On April 25, 2024, Plaintiffs Media Matters for America ("Media Matters") and Eric Hananoki filed a motion for a temporary restraining order and preliminary injunction. After considering the arguments and papers submitted, the Court **GRANTS** the motion for a temporary restraining order and enters the following Order:

ORDERED that Andrew Bailey, Attorney General of the State of Missouri, together with his agents, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order (collectively "Defendant Bailey"), is restrained from taking any further steps to enforce the Civil Investigative Demand issued to Media Matters on March 25, 2024, including by continuing to prosecute the enforcement action Bailey filed in Cole County, Missouri, Circuit Court on March 25, 2024.

AMERICAN OVERSIGHT

ORDERED that Defendant Bailey is restrained from issuing any additional Demands or taking any other steps purporting to mandate any action on behalf of Plaintiffs (including Media Matters's officers, employees, and agents) in furtherance of any investigation of Media Matters.

This order and all supporting pleadings and opposing papers must be served on the adverse party within ___ days.

Defendant is **FURTHERED ORDERED** to show cause on _____, at ____ before this Court as to why a preliminary injunction to the same effect should not issue.

This order shall remain in effect until _____.

IT IS SO ORDERED.

Dated: _____

_____
Hon. Amit P. Mehta
United States District Judge,
U.S. District Court for the District of Columbia

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001350

CERTIFICATE OF SERVICE

I hereby certify that this document will be served on the Defendant in accordance with Fed. R. Civ. P. 5(a).

Dated: April 25, 2024

Respectfully submitted,
/s/ Aria C. Branch

ELIAS LAW GROUP LLP
Aria C. Branch (DC 1014541)
Christopher D. Dodge (DC 90011587)
Elena A. Rodriguez Armenta (DC 90018798)
Samuel T. Ward-Packard (DC 90005484)
250 Massachusetts Ave. NW, Suite 400
Washington, DC 20001
T: (202) 968-4652
abranch@elias.law
cdodge@elias.law
erodriguezarmenta@elias.law
swardpackard@elias.law

Abha Khanna*
1700 Seventh Ave. Suite 2100
Seattle, WA 98101
T: (206) 656-0177
akhanna@elias.law

GIBSON, DUNN & CRUTCHER LLP
Theodore J. Boutrous, Jr. (DC 420440)
333 South Grand Avenue
Los Angeles, CA 90071
Telephone: (213) 229-7000
Email: tboutrous@gibsondunn.com

Amer S. Ahmed (DC 500630)
200 Park Avenue
New York, New York 10166
Telephone: (212) 351-4000
Email: aahmed@gibsondunn.com

*Admitted *pro hac vice*

Counsel for Plaintiffs Media Matters for America and Eric Hananoki

AMERICAN OVERSIGHT

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

MEDIA MATTERS FOR AMERICA, ERIC HANANOKI, Plaintiffs, v. WARREN KENNETH PAXTON JR., in his official capacity as Attorney General of the State of Texas, ANDREW BAILEY, in his official capacity as Attorney General of the State of Missouri Defendants.	No. 24-cv-147

DECLARATION OF ASSISTANT ATTORNEY GENERAL STEVEN REED

I, Steven Reed, declare as follow:

1. My name is Steven Reed and I am a lawyer duly licensed and in good standing in the State of Missouri. I am over the age of 21 and fully competent to make this declaration. I make this declaration based on my personal knowledge.

2. I am the Chief Counsel for the Consumer Protection Section of the Missouri Attorney General's Office and am one of the attorneys responsible for the State of Missouri's investigation into consumer protection violations by Media Matters for America (Media Matters).

3. The Consumer Protection Section is responsible for administering and enforcing Chapter 407, the Missouri Merchandising Practices Act, of the Missouri Revised Statutes (RSMo.).

4. The Consumer Protection Section of the Missouri Attorney General's Office issues dozens of Civil Investigative Demands (CID's) under Section 407.040 RSMo. every year in an

AMERICAN OVERSIGHT

effort to investigate the "act, use or employment by any person of deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce *or the solicitation of any funds for any charitable purpose*…." Section 407.010 RSMo. (emphasis added).

5. Under Section 407.040, RSMo., the Missouri Attorney General, on behalf of the State of Missouri, may issue a CID "when it appears to the attorney general that a person has engaged in or is engaging in any method, act, use practice or solicitation declared to be unlawful by this chapter or when he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in or is engaging in any such method, act, use, practice or solicitation …."

6. In November 2023, the Missouri Attorney General's Office became aware of potential violations of the Missouri Merchandising Practices Act by Media Matters, an organization that purports to solicit funds for charitable purposes, and began to look into the matter.

7. The Missouri Attorney General's Office discovered that Media Matters not only distributes its newsletter in Missouri, but engages in internet and email solicitations, phone solicitations, and in-person solicitations for fundraising–listing Missouri in its public financial disclosures as a state in which it "is registered or licensed to solicit contributions or has been notified it is exempt from registration." Indeed, Media Matters has specifically communicated with the Missouri Attorney General's Office to seek an exemption from registration for its fundraising in Missouri. *See* Exhibit 1.

8. The Missouri Attorney General's Office further discovered that Media Matters was credibly accused of defaming the social media platform X (formerly Twitter) by falsely

AMERICAN OVERSIGHT

representing that X routinely populates advertisements for brands like Apple, IBM, and Xfinity next to extremist, fringe content.

9. The Missouri Attorney General's Office learned that, according to credible allegations, Media Matters had "knowingly and maliciously manufactured side-by-side images depicting advertisers' posts on X Corp.'s social media platform beside Neo-Nazi and white-nationalist fringe content and then portrayed these manufactured images as if they were what typical X users experience on the platform." Complaint, *X Corp. v. Media Matters for America*, No. 4:23-cv-1175, ECF 1 ¶ 1 (N.D. Tex. Nov. 20, 2023). Media Matters did this by "manipulat[ing] the algorithms … to bypass safeguards." *Id.* ¶¶ 7–8. According to credible allegations, while Media Matters insisted that paid advertisements regularly "appeared alongside the fringe content," in fact that was true "for only one viewer (out of more than 500 million) on all of X: *Media Matters*." *Id.* ¶ 13 (emphasis in original). Yet, according to reports and allegations, Media Matters' false "reporting" had the desired effect: advertisers withdrew from X in droves.

10. In confirmation of these allegations involving Media Matters, the Missouri Attorney General's Office has since learned from DoubleVerify, an organization "which provides brand-safety measurement ratings for digital platforms to major advertisers," that allegations that X was regularly populating advertisements next to fringe content is false. DoubleVerify stated that X's "Brand Safety Rates" were nearly perfect—99.99%—during the very time when Media Matters accused X of regularly posting brand advertisements next to fringe content. *See* Exhibit 2 (Todd Spangler, DoubleVerify Apologizes for Misreporting X/Twitter's Brand-Safety Rates for More Than Four Months, Variety (Apr. 15, 2024)).

11. Having identified potential violations of the Missouri Merchandising Practices Act, the Missouri Attorney General's Office determined to further investigate the matter. The Missouri

AMERICAN OVERSIGHT

Attorney General's Office did not simply file a complaint against Media Matters for violations of the Missouri Merchandising Practices Act; instead, the Missouri Attorney General's Office determined to gather more information by issuing a CID to Media Matters. This is something routinely done by the Missouri Attorney General's Office.

12. On March 25, 2024, the Office of the Missouri Attorney General, through the Consumer Protection Section that I lead as Chief Counsel, sent by certified mail, Civil Investigative Demand No. 24-10 to Media Matters, a true and accurate copy of which is attached as Exhibit 3 (CID No. 24-10). *See* Exhibit 4 (Certified mail cards and receipts).

13. Pursuant to section 407.040, the CID identifies the statute of the suspected violation and the general subject matter of the investigation. Specifically, the CID requests information relevant to whether Media Matters has engaged in or is engaging in any merchandising practices declared to be unlawful by section 407.020 with regard to Media Matters' fraudulent manipulation of data on X.com.

14. The Missouri Attorney General's Office had also learned that Media Matters would refuse, and had refused, to comply with any investigative demand, including CID No. 24-10, as it had with similar investigative demands. Accordingly, Missouri determined it would seek enforcement of its CID sent to Media Matters in Missouri state court as authorized by Missouri law. *See* Section 407.090, RSMo.

15. As anticipated, Media Matters refused, and continues to refuse, to comply with CID No. 24-10, and has provided no information or materials to the State of Missouri for its investigation under the Missouri Merchandising Practices Act.

16. After the CID to Media Matters was served, the State of Missouri filed its Petition for Order to Enforce Civil Investigative Demand. *See State of Missouri, ex rel. Andrew Bailey,*

AMERICAN OVERSIGHT

Attorney General v. Media Matters for America, Case No. 24AC-CC02291 (Circuit Court of Cole County, Missouri). I am a signatory to that Petition.

17. Media Matters appeared in the Missouri state court proceeding after service of the Petition and filed a motion for change of judge.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 8, 2024

/s/ Steven Reed

Steven Reed, Chief Counsel
Consumer Protection Section
Missouri Attorney General's Office

AMERICAN OVERSIGHT

Exhibit 1

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

JAY NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. BOX 899
(573) 751-3321

July 12, 2007

Copilevitz & Canter, LLC
Attention: Megan B. Allen
310 W. 20th Street, Suite 300
Kansas City, MO 64108

RE: Charitable Organization & Solicitation Law, 407.450 -- 407.478 RSMo, 2000
Registration and Exemption for **Media Matters for America**
Registration No .**CO-181-07**

Dear Ms. Allen:

Attorney General Jeremiah W. (Jay) Nixon has asked me to respond to your recent letter regarding the above.

Based on the facts submitted to our office, it appears that your organization is exempt from registration under the Charitable Organizations & Solicitations Law, Sections 407.450 to 407.478 RSMo 2000

The initial registration statement and letter noting your statement of exemption has been retained for our files. **In addition**, we invite your organization to be included on the Missouri Attorney General's Office charity web page. The web page will offer a profile of each organization, including a description of its charitable purpose, contact information and basic financial information about the organization with a focus on the program-spending ration. Consumers will be able to easily access information that will assist in evaluating solicitations and choosing wisely when responding to charitable appeals.

To be included on the Attorney Generals charity web page please complete the enclosed forms which certify the accuracy of the information provided. Please mail your information to:

Missouri Attorney General's Office
Attn: Judy Murray
P.O. Box 899
Jefferson City, MO 65102-0899

AMERICAN OVERSIGHT

Thank you for your continued cooperation. If you have further questions please contact the undersigned or visit us at www.ago.mo.gov.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Rhonda Johnson

Rhonda Johnson
Registration Specialist
Consumer Protection Division

Enclosure

AMERICAN OVERSIGHT

Exhibit 2

AMERICAN OVERSIGHT

Better quotes, more news, smarter tools. Welcome to the future of finance. Discover What's New

VARIETY

DoubleVerify Apologizes for Misreporting X/ Twitter's Brand-Safety Rates for More Than Four Months

Todd Spangler
Mon, Apr 15, 2024 • 4 min read



DoubleVerify, which provides brand-safety measurement ratings for digital platforms to major advertisers, incorrectly displayed X's Brand Safety Rate — a measure of how frequently ads appeared adjacent to content that met advertiser-approved criteria — on the DoubleVerify dashboard for nearly five months.

From Oct. 24, 2023, to March 14, 2024, DoubleVerify's dashboard provided the wrong data for X to advertisers. In some cases, the measurement firm showed scores as low as 70%, whereas X's Brand Safety Rates were in fact 99.99%. DoubleVerify CEO Mark Mark Zagorski, in a message to customers April 12, apologized for the error and said the company's dashboard now correctly shows X's brand-safety rates.

AMERICAN OVERSIGHT

More from Variety

- Elon Musk's X Loses Lawsuit Against Research Group That Reported Rise in Hate Speech, Racist Content on Social Network
- Don Lemon Says Elon Musk Canceled His X Talk Show Deal Shortly After Interview: The Tech Billionaire 'Is Mad at Me'
- Elon Musk Posts Crying-Laughing Emoji in Response to $128 Million Lawsuit by Fired Twitter Executives

"We apologize for any confusion this may have caused to X and to our customers in the course of reviewing your campaign performance on X," Zagorski wrote in the message to customers. "DV remains committed to maintaining the highest standards of accuracy and transparency in our data."

It's unclear how the error occurred. Reps for X and DoubleVerify said the companies are continuing to investigate the issue. DoubleVerify is "conducting a thorough review of our processes and systems to ensure this issue does not occur in the future," according to Zagorski.

"X remains dedicated to ensuring a safe and transparent platform for our valued advertisers and users," the X Business account posted on Friday. "We are deeply troubled by this gross misrepresentation of our Brand Safety performance and have taken immediate action to rectify the situation with DoubleVerify."

Elon Musk, the tech billionaire who owns X, wrote in a post April 12, "Thank you DoubleVerify for correcting your mistake regarding brand safety on this platform. When measured accurately, brand safety on 𝕏 is extremely good."

DoubleVerify's reporting error caused dozens of large brands to pull back advertising spending and stop campaigns on X, according to the social-media company. For example, the DoubleVerify dashboard said that a Molson Coors campaign delivered poorly with a brand-suitability rate in the mid-90s — when it was actually 99.99%. Account teams at Publicis Spark, which manages campaigns for such brands as Campbell's and Conagra, became aware of the erroneous DoubleVerify metric and then said they were hesitant to partner with X, according to Joe Benarroch, X's head of business operations. (A spokesman for Campbell's said that its brands have not advertised on X or Twitter since 2020; that decision was tied to consumer behavior and performance and wasn't related at all to any brand-safety issues.)

Monique Pintarelli, head of Americas for X, in remarks delivered Monday to the Mobile Marketing Association's Board of Global Advertisers, noted that the social network's tools for sensitivity settings and keyword adjacencies — and its partnerships with Integral Ad Science (IAS) and DoubleVerify to allow for third-party verification — were not available prior to Musk's acquisition of Twitter.

Pintarelli also noted that the DoubleVerify reporting error affected only X. She asked advertisers to "please connect with your agencies and measurement partners to ensure you have the most accurate information."

"We are proud of the work we are doing, to ensure our customers have the tools needed to ensure brand safety across our platform," Pintarelli said. "We are now at or above industry standards, in all metrics and capabilities."

X/ Twitter and Musk have a[illegible]ressively pushed back against claims that the social network is unsafe for brand advertising. Last November, X sued liberal watchdog group Media Matters, alleging the group "knowingly and maliciously manufactured" research that showed neo-Nazi and white-nationalist posts on X next to ads for Apple, Bravo, IBM, Oracle and Comcast's Xfinity. Following

AMERICAN OVERSIGHT

the Media Matters report and Musk's seeming endorsement of an anti-Semitic conspiracy theory, several large advertisers including Disney said they were halting their spending on X — either because of the Media Matters reports, Musk's post or a combination of both. Last month, Missouri Attorney General Andrew Bailey filed a lawsuit against Media Matters seeking to force the nonprofit to turn over documents related to the AG's investigation "into its fraudulent business practices," citing X's allegations that Media Matters "deceitfully manipulated X's algorithm to place advertisers' content next to contrived controversial posts." In a statement, Media Matters president Angelo Carusone said: "Far from the free-speech advocate he claims to be, Elon Musk has actually intensified his efforts to undermine free speech by enlisting Republican Attorneys General across the country to initiate meritless, expensive, and harassing investigations against Media Matters in an attempt to punish critics. This [Missouri] investigation is the latest in a transparent endeavor to squelch the First Amendment rights of researchers and reporters; it will have a chilling effect on news reporters."

Read Zagorski's message to DoubleVerify customers about the reporting error for X's Brand Safety Rates:

resulted in displaying an incorrect, lower rate. Specifically, DoubleVerify's dashboard incorrectly mirrored the Brand Suitability Rate for your campaign onto the Brand Safety Rate in the summary graphic in Pinnacle. The underlying data available in DV Pinnacle was accurate; only the graphical visualization was not representative of the Brand Safety Rate. This display error occurred over four and a half months from October 24, 2023 to March 14th, 2024, when it was corrected by DV. All current and retroactive Brand Safety data for X is now correctly represented in Pinnacle. The display error was not present in any other area in the UI, including the Incident Reporting and the Rollover Data Detail.

Based on DoubleVerify's metrics, X's Brand Safety Rate across all campaigns we measured exceeded 99.99% from October 2023 to the present. This means that X's Brand Safety Rate exceeds global benchmarks for brand safety, based on DV's global industry data.

DoubleVerify takes measurement accuracy and reporting seriously. We take full responsibility for the inaccurate visual representation of X's Brand Safety Rate within our dashboard that displayed an inaccurate and lower Brand Safety Rate.

We apologize for any confusion this may have caused to X and to our customers in the course of reviewing your campaign performance on X. DV remains committed to maintaining the highest standards of accuracy and transparency in our data.

DoubleVerify is working closely with X to ensure that all future reports reflect the accurate Brand Safety performance of campaigns run on X's platform. We also are conducting a thorough review of our processes and systems to ensure this issue does not occur in the future.

Should you wish to have a direct conversation with X regarding your reporting, we would be happy to relay your contact information to your X account lead and facilitate a meeting. Our team at DoubleVerify remains committed to maintaining trust and confidence in our platform, and would welcome a direct follow up with you should you wish to discuss further.

Best regards,

Mark Zagorski
CEO
DoubleVerify

Best of Variety

- New Movies Out Now in Theaters: What to See This Week
- From 'The Sympathizer' to 'Three-Body Problem': The Best Book-to-Screen Adaptations to Read This Year
- What's Coming to Disney+ in April 2024

AMERICAN OVERSIGHT

Exhibit 3

AMERICAN OVERSIGHT

ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

In the Matter of:

Media Matters for America

CID NO. 24-10
Date: March 25, 2024

INVESTIGATIVE DEMAND

THE ATTORNEY GENERAL TO:

Served: U.S. Postal Service
Certified Mail

Media Matters for America
PO Box 44811
Washington, DC 20026

The Attorney General of the State of Missouri believes it to be in the public interest that an investigation be made to ascertain whether Media Matters for America (Subject) has engaged in or is engaging in practices declared unlawful by § 407.020, RSMo.

The investigation will inquire into the activities of Subject in connection with the solicitation of funds for a charitable purpose, or the sale or advertisement of merchandise, §§ 407.020, 407.453, RSMo.

The Attorney General has reason to believe that the Subject has used deception, fraud, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of material fact in connection with the soliciting of funds for a charitable purpose or the sale or advertisement of merchandise in or from the State of Missouri, § 407.020, RSMo. Independently, the Attorney General also believes it to be in the public interest to investigate whether such acts have occurred.

The Attorney General believes you have information, documentary material or physical evidence relevant to the above-mentioned conduct.

AMERICAN OVERSIGHT

DEFINITIONS

As used in this Demand, the following terms have the meanings described below:

"Communication" means any expression, statement, conveyance, or dissemination of any words, thoughts, statements, ideas, or information regardless of form, format, or kind. "Communication" includes but is not limited to oral or written communications of any kind, such as telephone conversations, discussions, meetings, notes, letters, agreements, emails or other electronic communications, facsimiles, and other forms of written or oral exchange that are recorded in any way, including video recordings, audio recordings, written notes, or otherwise. Any "Communication" that also falls within the definition of "Document" shall constitute both a Document and a Communication for purposes of this civil investigative demand.

"Document" means all written, printed, typed, and recorded matter of every kind and description, originals and copies, and all attachments and appendices thereto. Without limiting the foregoing, "documents" include all agreements, contracts, correspondence and other communications including notes, memoranda and marginal notations, records, reports, books, manuals, instructions, statistical data and data compilations, drafts, charts, graphs and tables, bills, statements and invoices, advertising, surveys, transcripts, microfilm and microfiche, electronic records that can be reproduced in paper form, recordings, film, tapes, photographs, electronic mail and Web pages, and all other computer-generated, computer-stored, or electronically-stored matter, however and by whomever produced, prepared, reproduced, disseminated, or made.

"Identify", when used with respect to a person or entity, means information sufficient to allow employees of the Attorney General to ascertain the name, address, telephone number, and if not a natural person, the contact person of the entity or facility to be identified, as well as the relationship of that person or entity to you.

"Identifying", when used with respect to a fact or event, means information sufficient to allow employees of the Attorney General to ascertain the fact or event with reasonable particularity, and to identify each person believed to have knowledge with respect to the fact or event and each document that refers or relates to the fact or event.

AMERICAN OVERSIGHT

"Relating to", "related to", "relate to" means to be relevant in any way to the subject matter in question, including without limitation all information that directly or indirectly contains, records, reflects, summarizes, evaluates, refers to, is pertinent to, indicates, comments upon, or discusses the subject matter; or that states the background of, or was the basis for, or that records, evaluates, comments, was referred to, relied upon, utilized, generated, transmitted, or received in arriving at any conclusion, opinion, estimate, position, decision, belief, policy, practice, course of business, course of conduct, procedure, or assertion concerning the subject matter.

"You", including your, means Media Matters for America, subsidiaries, partnerships, or any other entities related to Media Matters for America.

DEMAND FOR INFORMATION

Demand is hereby made upon you, under the authority granted by Section 407.040, RSMo, to produce in person or via mail to Michelle Starke, P.O. Box 899, Jefferson City, Missouri 65102 by April 15, 2024, the following documentary material and information that may be in your possession, custody or control, and permit the inspection and copying thereof:

1. A list or information identifying any and all donations of funds from donors located in the state of Missouri from January 01, 2023 through March 25, 2024.

   The list of donations should include, but is not limited to:
   - Identity of each individual or organization who donated funds;
   - Address of each individual or organization who donated funds;
   - Total amount spent per donation;
   - Date and time of each donation;
   - Payment method for each donation;
   - Identity of financial institution where funds were sent;
   - Contracts and/or agreements governing or related to each donation;

For each Demand for Information, you shall type the Demand and type your corresponding response. If you do not know the answer to a Demand for Information, you shall identify in your response the individual or business entity that has the answer to the Demand for Information. The document on

AMERICAN OVERSIGHT

which you type each Demand and your corresponding response shall be executed by you before a Notary Public.

DEMAND FOR DOCUMENTS

Demand is hereby made upon you, under the authority granted by Section 407.040, RSMo, to produce in person or via mail to Michelle Starke, P.O. Box 899, Jefferson City, Missouri 65102 by April 15, 2024, the following documentary material that may be in your possession, custody or control, and permit the inspection and copying thereof:

2. All promotional or marketing information provided by you from January 1, 2023 to March 25, 2024 to any individual or organization for the purpose of soliciting donations.

3. All documents or communications showing how solicited donations were used.

4. All communications or materials relating to any policy, strategy or operation related to generating stories or content intended to cancel, deplatform, demonetize, or otherwise interfere with businesses located in Missouri, or utilized by Missouri residents.

5. All communications, internal and external, regarding your strategy to pressure advertisers into pulling advertisements from the social media platform, X (formerly Twitter).

6. Documents sufficient to identify your employee organizational chart.

7. Documents sufficient to identify all your operational expenses in the state of Missouri.

8. All documents discussing Elon Musk's purchase of X (formerly Twitter).

9. All documents related to the article, or to the events described in the article, by Eric Hananoki entitled "As Musk endorses antisemitic conspiracy theory, X has been placing ads for Apple, Bravo, IBM,Oracle, and Xfinity next to pro-Nazi content."

AMERICAN OVERSIGHT

10. All documents sufficient to identify X accounts owned, controlled, or authorized by you used to obtain the images in the article referenced in paragraph 9.

11. All documents sufficient to identify all X accounts followed by the X accounts identified in response to paragraph 10.

12. All communications with Apple, International Business Machine Corporation, Bravo Television Network, NBCUniversal, Oracle Corporation, Comcast Corporation, Lions Gate Entertainment Corporation, Warner Bros Discovery Inc., Paramount Pictures Corporation, or Sony Group Corporation from November 1, 2023, to March 25, 2024.

NOTICE OF DEMAND FOR RETENTION OF RECORDS

You are hereby notified that all records, including communications, documents and things, relating to the above requests and the matters that are the subject of these requests for information are to be preserved during the pendency of this investigation. This includes, but is not limited to, all related customer records, including recordings made of customers, all related correspondence and other communications with third parties, all related documents and things received from third parties, and all internal documents and things.

COMPLIANCE

You may comply with this Investigative Demand by producing copies of the requested documents and information by regular mail or overnight delivery to Michelle Starke, P.O. Box 899, Jefferson City, Missouri 65102. The requested copies of documents and information should be received by the Office of the Attorney General by 10:00 a.m. (Central) on April 15, 2024 and be accompanied by the attached Business Records Affidavit and Certification of Compliance.

You are advised that the Attorney General will not grant an extension of time or modification of the terms of the Demand except for good cause pursuant to the terms of Section 407.070, RSMo. Your prompt response and provision of the requested information is requested.

AMERICAN OVERSIGHT

Your attention is respectfully called to the provisions of Section 407.080, RSMo, which makes certain acts done with the intent to avoid, evade or prevent compliance in whole or in part with any Investigative Demand served hereunder a Class A misdemeanor, which is punishable by a fine not to exceed $1,000.00 for individuals and $5,000.00 for corporations, or by imprisonment for a term of not more than one year, or both a fine and imprisonment.

Please direct all questions regarding this Investigative Demand to Jeremiah Morgan at 573-751-1800 or by e-mail to: Jeremiah.Morgan@ago.mo.gov.

Respectfully Submitted,

ANDREW BAILEY
Attorney General

/s/ Jeremiah J. Morgan
Jeremiah J. Morgan, #50387
Deputy Attorney General – Civil Litigation
Missouri Attorney General's Office
Post Office Box 899
Jefferson City, MO 65102
Tel: (573) 751-8870; Fax: (573) 751-0774
Jeremiah.Morgan@ago.mo.gov

AMERICAN OVERSIGHT

STATE OF _____)
) SS.
COUNTY OF _____)

BUSINESS RECORDS AFFIDAVIT AND CERTIFICATE OF COMPLIANCE

Before me, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

My name is _____, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the custodian of the records of _____. Attached hereto are _____ pages of records from _____. These _____ pages of records are kept by _____ in the regular course of business, and it was the regular course of business of_____ for an employee or representative of_____ with knowledge of the act, event, condition, opinion, or diagnosis recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time of the act, event, condition, opinion or diagnosis. The records attached hereto are the original or exact duplicate of the original.

I further certify that all documents and information required by Civil Investigative Demand No. 24-10 which is in the possession, custody, control, or knowledge of, _____ has been submitted to the Missouri Attorney General as directed herein.

_____
Affiant

Sworn to before me this ____ day of_____, 2024.

_____
Notary Public
Commission Expires:

AMERICAN OVERSIGHT

Exhibit 4

AMERICAN OVERSIGHT

USPS TRACKING #

9590 9402 6353 0296 0682 26

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States Postal Service

* Sender: Please print your name, address, and ZIP+4® in this box*

Allison Whitmer
Office of the Missouri Attorney General
815 Olive Street, Suite 200
St. Louis, MO 63101

CID 24-10 Media Matters for America

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Media Matters for America
P.O Box 44811
Washington, DC 20026

9590 9402 6353 0296 0682 26

2. Article Number *(Transfer from service label)*

7017 0660 0000 6553 8055

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL®

7017 0660 0000 6553 8055

7017 0660 0000 6553 8055

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee
$

Extra Services & Fees *(check box, add fee as appropriate)*
- ☐ Return Receipt (hardcopy) $
- ☐ Return Receipt (electronic) $
- ☐ Certified Mail Restricted Delivery $
- ☐ Adult Signature Required $
- ☐ Adult Signature Restricted Delivery $

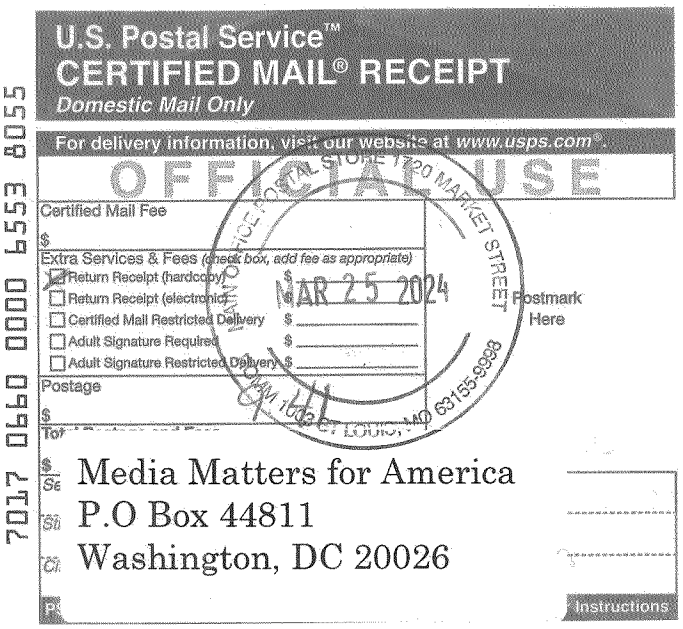
Postage
$

Postmark Here

Media Matters for America
P.O Box 44811
Washington, DC 20026

Instructions

AMERICAN OVERSIGHT



U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee
$

Extra Services & Fees (check box, add fee as appropriate)
☑ Return Receipt (hardcopy) $
☐ Return Receipt (electronic) $
☐ Certified Mail Restricted Delivery $
☐ Adult Signature Required $
☐ Adult Signature Restricted Delivery $

Postage
$

Tot

MAR 25 2024

Postmark Here

Media Matters for America
P.O Box 44811
Washington, DC 20026

Instructions

7017 0660 0000 6553 8055

AMERICAN OVERSIGHT

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

MEDIA MATTERS FOR AMERICA, ERIC HANANOKI,

Plaintiffs,

v.

WARREN KENNETH PAXTON JR., in his official capacity as Attorney General of the State of Texas,

ANDREW BAILEY, in his official capacity as Attorney General of the State of Missouri

Defendants.

No. 24-cv-147
Oral Hearing Requested

MISSOURI ATTORNEY GENERAL ANDREW BAILEY'S MOTION TO DISMISS

Defendant Andrew Bailey, in his official capacity as Attorney General of the State of Missouri, respectfully moves under Fed. R. Civ. P. 12(b) to dismiss Plaintiffs' Supplemental Complaint (ECF 46). Specifically, the Supplemental Complaint against Attorney General Bailey should be dismissed for the reasons set forth in his Opposition to Temporary Restraining Order and Preliminary Injunction filed simultaneously herewith and incorporated herein, including *Younger* abstention, the lack of subject-matter jurisdiction, and the lack of personal jurisdiction. *See* ECF 56.

AMERICAN OVERSIGHT

Date: May 8, 2024

Respectfully submitted,

ANDREW BAILEY
Attorney General of Missouri

/s/ *Joshua M. Divine*
JOSHUA M. DIVINE, #69875MO
Solicitor General

JEREMIAH J. MORGAN, #50387MO
Deputy Attorney General – Civil

OFFICE OF THE ATTORNEY GENERAL
Supreme Court Building
207 West High Street
P.O. Box 899
Jefferson City, Missouri 65102
Tel. (573) 751-1800
Fax (573) 751-0774
josh.divine@ago.mo.gov
jeremiah.morgan@ago.mo.gov

Counsel for Defendant Missouri Attorney General

CERTIFICATE OF COMPLIANCE

I certify that the foregoing document contains one page, exclusive of matters designated for omission, and satisfies the typesetting requirements.

/s/ *Joshua M. Divine*
Counsel for Missouri Attorney General

CERTIFICATE OF SERVICE

I certify that on May 8, 2024, a true and accurate copy of the foregoing document was electronically filed through the Court's CM/ECF System and that a copy of the foregoing will be sent via email to all parties by operation of the Court's electronic filing system, all consistent with Federal Rule of Civil Procedure 5(b).

/s/ *Joshua M. Divine*
Counsel for Missouri Attorney General

AMERICAN OVERSIGHT

EXHIBIT A

AMERICAN OVERSIGHT

Electronically Filed - COLE CIRCUIT - May 24, 2024 - 02:00 PM

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

STATE OF MISSOURI, ex rel. ANDREW BAILEY, ATTORNEY GENERAL,	)	
Petitioner,	)	Case No. 24AC-CC02291
v.	)	
MEDIA MATTERS FOR AMERICA,	)	
Respondent.	)	

AMENDED PETITION FOR ORDER TO ENFORCE CIVIL INVESTIGATIVE DEMAND

The State of Missouri, by and through Attorney General Andrew Bailey, petitions the Court pursuant to Missouri Revised Statutes section 407.090, to enforce its Civil Investigative Demand directed to Media Matters for America (hereinafter "Media Matters") and to impose a $1,000 civil penalty—and upon information and belief states in support as follows:[1]

INTRODUCTION

Media Matters, a self-styled not-for-profit "progressive research and information center," envisions itself monitoring, analyzing, and correcting "conservative misinformation" in the U.S. media. In fact, this description falls far short of reality for this political activist organization. Instead, rather than

[1] All statutory citations are to RSMo 2016 unless otherwise noted.

AMERICAN OVERSIGHT

Electronically Filed - COLE CIRCUIT - May 24, 2024 - 02:00 PM

passively "monitoring," Media Matters has used fraud to solicit donations from Missourians in order to trick advertisers into removing their advertisements from X, formerly Twitter, one of the last platforms dedicated to free speech in America.

Media Matters has pursued an activist agenda in its attempt to destroy X, because they cannot control it. And because they cannot control it, or the free speech platform it provides to Missourians to express their own viewpoints in the public square, the radical "progressives" at Media Matters have resorted to fraud to, as Benjamin Franklin once said, mark X "for the odium of the public, as an enemy to the liberty of the press." Missourians will not be manipulated by "progressive" activists masquerading as news outlets, and they will not be defrauded in the process.

Based on serious allegations of false and deceptive behavior, the Attorney General's Office has issued a Civil Investigative Demand ("CID"), as authorized by Missouri Law, to Media Matters to investigate possible violations of the Missouri Merchandising Practices Act. Because Media Matters has refused such efforts in other states, made clear that it will refuse any such efforts, and has in fact refused such efforts, the Attorney General seeks an order from the Court, pursuant to section 407.090, compelling Media Matters to comply with the CID within 20 days and to impose a $1,000 penalty for violating the MMPA.

AMERICAN OVERSIGHT

Electronically Filed - COLE CIRCUIT - May 24, 2024 - 02:00 PM

PARTIES

1. Andrew Bailey is the Attorney General of the State of Missouri and files this petition in his official capacity pursuant to chapter 407 and section 27.060 of the Missouri Revised Statutes, as well as the authority granted to the Attorney General at common law.

2. Respondent Media Matters is incorporated under the laws of, and has its principal place of business in the District of Columbia, and engages in media activity as well as fundraising throughout the United States, including in Missouri. Specifically, Media Matters engages in internet and email solicitations, phone solicitations, and in-person solicitations for fundraising– listing Missouri in its public financial disclosures as a state in which it "is registered or licensed to solicit contributions or has been notified it is exempt from registration."

JURISDICTION

3. This Court has subject matter and personal jurisdiction over this action under the Missouri Constitution Article. V, § 14 and section 506.500.

VENUE

4. This Court has authority over this action pursuant to section 407.090, which allows the Attorney General to file in the trial court of general jurisdiction of a county or judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order

AMERICAN OVERSIGHT

Electronically Filed - COLE CIRCUIT - May 24, 2024 - 02:00 PM

of such court for the enforcement of such CID.

5. Media Matters transacts business in this county.

MISSOURI MERCHANDISING PRACTICES ACT

6. Section 407.020 of the Missouri Merchandising Practices Act ("MMPA") provides in pertinent part:

> The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice… Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement, or solicitation.

7. The words in the statute are "unrestricted, all-encompassing and exceedingly broad." *Ports Petroleum Co., Inc. of Ohio v. Nixon*, 37 S.W.3d 237, 240 (Mo. banc 2001). "[T]he literal words cover every practice imaginable and every unfairness to whatever degree." *Id.*

8. "Person" is defined as "any natural person or his legal representative, partnership, firm, for-profit or not-for-profit corporation, whether domestic or foreign, company, foundation, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof."

AMERICAN OVERSIGHT

Electronically Filed - COLE CIRCUIT - May 24, 2024 - 02:00 PM

§ 407.010(5).

9. "Merchandise" is defined as "any objects, wares, goods, commodities, intangibles, real estate, or services." § 407.010(4)

10. "Trade" or "commerce" is defined as the "advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real,personal, or mixed, and any other article, commodity, or thing of value wherever situated. The terms 'trade' and 'commerce' include any trade or commerce directly or indirectly affecting the people of this state." § 407.010(7)

11. Respondent Media Matters has engaged in trade or commerce within the meaning ofsection 407.010.

12. Pursuant to section 407.145, the Attorney General has promulgated rules explaining and defining terms in sections 407.010-407.145 of the Merchandising Practices Act. The rules relevant tothe Merchandising Practices Act allegations herein include the provisions of 15 CSR 60.

13. Section 407.040 provides in pertinent part:

> When it appears to the attorney general that a person has engaged in or is engaging in any method, act, use, practice or solicitation declared to be unlawful by this chapter or when he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in or is engaging in any such method, act, use, practice or solicitation, he may execute in writing and cause to be served upon any person who is believed to have information, documentary material, or

AMERICAN OVERSIGHT

Electronically Filed - COLE CIRCUIT - May 24, 2024 - 02:00 PM

> physical evidence relevant to the alleged or suspected violation, a civil investigative demand requiring such person to appear and testify, or to produce relevant documentary material or physical evidence or examination, at such reasonable time and place as may be stated in the civil investigative demand, concerning the advertisement, sale or offering for sale of any goods or services or the conduct of any trade or commerce or the conduct of any solicitation that is the subject matter of the investigation. Service of any civil investigative demand, notice, or subpoena may be made by any person authorized by law to serve process or by any duly authorized employee of the attorney general.

14. Section 407.070 provides in pertinent part:

> At any time before the return date specified in a civil investigative demand issued under section 407.040, or within twenty days after the civil investigative demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside the civil investigative demand, stating good cause, may be filed in the circuit court of the county where the parties reside or in the circuit court of Cole County.

ALLEGATIONS OF FACT

15. Media Matters is credibly accused of defaming the social media platform X (formerly Twitter) by falsely representing that X routinely populates advertisements for brands like Apple, IBM, and Xfinity next to extremist, fringe content.

16. According to a lawsuit filed by X, Media Matters' statements were entirely and maliciously false. "Media Matters knowingly and maliciously manufactured side-by-side images depicting advertisers' posts on X Corp.'s

AMERICAN OVERSIGHT

Electronically Filed - COLE CIRCUIT - May 24, 2024 - 02:00 PM

social media platform beside Neo-Nazi and white-nationalist fringe content and then portrayed these manufactured images as if they were what typical X users experience on the platform." Complaint, *X Corp. v. Media Matters for America*, No. 4:23-cv-1175, ECF 1 ¶ 1 (N.D. Tex. Nov. 20, 2023). Media Matters did this by "manipulat[ing] the algorithms … to bypass safeguards." *Id.* ¶¶ 7–8. While Media Matters insisted that paid advertisements regularly "appeared alongside the fringe content," in fact that was true "for *only one* viewer (out of more than 500 million) on all of X: *Media Matters*." *Id.* ¶ 13 (emphasis in original). Yet Media Matters' false "reporting" had the desired effect: advertisers withdrew from X in droves.

17. The brand-safety organization DoubleVerify recently debunked Media Matters' assertion, confirming that when Media Matters alleged that X was regularly populating advertisements next to fringe content, that allegation was false. The organization, "which provides brand-safety measurement ratings for digital platforms to major advertisers," recently stated that X's "Brand Safety Rates" were nearly perfect—99.99%—during the very time when Media Matters accused X of regularly posting brand advertisements next to fringe content. Todd Spangler, *DoubleVerify Apologizes for Misreporting*

AMERICAN OVERSIGHT

Electronically Filed - COLE CIRCUIT - May 24, 2024 - 02:00 PM

X/Twitter's Brand-Safety Rates for More Than Four Months, Variety (Apr. 15, 2024).[2]

18. Similarly, the federal district court overseeing the X lawsuit against Media Matters recently previewed that the court believes X's lawsuit should proceed toward trial. In rejecting Media Matters' request to stay discovery, the court held that, on a preliminary view, "it appears that Plaintiff [X Corp.] sufficiently pleads facts supporting its claims." *X Corp.*, Order denying motion to stay discovery, ECF 54 at 8.[3] The court further noted that Media Matters' argument on the merits was the "weakest" argument it had presented. *Id.*

19. Because of this background, plus other information known to the Attorney General's Office, the Attorney General grew concerned about the representations that Media Matters provides to Missourians as it solicits donations and whether those representations are unlawfully deceptive.

20. So the State of Missouri, through the Attorney General, launched an investigation into whether Media Matters violated Missouri law when soliciting donations from Missourians.

21. Pursuant to that investigation, on March 25, 2024, the Office of the Missouri Attorney General served upon Media Matters, through its

[2] https://variety.com/2024/digital/news/x-twitter-brand-saftey-rate-doubleverify-apology-1235971603/
[3] https://storage.courtlistener.com/recap/gov.uscourts.txnd.383454/gov.uscourts.txnd.383454.54.0.pdf

AMERICAN OVERSIGHT

Electronically Filed - COLE CIRCUIT - May 24, 2024 - 02:00 PM

Registered Agent, Angelo Carusone, 800 Maine Avenue SW, Suite 500, Washington DC, 20024, Civil Investigative Demand Number ("Investigative Demand") CID No. 24-10. A true and accurate copy of the Investigative Demand is attached hereto as Exhibit 1 and incorporated herein. A true and accurate copy of proof of service is attached hereto as Exhibit 2 and incorporated herein.

22. Pursuant to section 407.040, Investigative Demand No. CID No. 24-10 identified the statute of the suspected violation and the general subject matter of the investigation.

23. Specifically, Investigative Demand CID No. 24-10 requests information relevant to whether Media Matters has engaged in or is engaging in any merchandising practices declared to be unlawful by section 407.020 with regard to Media Matters' fraudulent manipulation of data on X.com (formerly known as Twitter).

24. The return date to produce all requested documentation and information and submit the Certification of Compliance to the Attorney General's Office is no later than 10:00 a.m. April 15, 2024.

25. Even before April 15, Media Matters expressed its intent not to comply with CIDs like this one.

26. For example, the State of Texas served on Media Matters a virtually identical civil investigative demand in December of 2023, which

AMERICAN OVERSIGHT

Electronically Filed - COLE CIRCUIT - May 24, 2024 - 02:00 PM

Media Matters refused to comply with and instead filed a lawsuit to block compliance and disclosure of information and materials. *See* Exhibit 3 (Texas CID); Exhibit 4 (Media Matters complaint); *see generally Media Matters for America, et al. v. Paxton*, 1:24-cv-00147-APM (United States District Court for the District of Columbia).

27. As of the filing of this amended petition, more than a month has passed since the due date, and Media Matters has continued to refuse to comply.

28. Defendant did not enter an appearance or request court relief from the CID before April 15.

COUNT I-REQUEST FOR ORDER ENFORCING INVESTIGATIVE DEMAND

29. Petitioner incorporates all of the allegations contained in Paragraphs 1 through 20 above.

30. The Attorney General has reason to believe that Media Matters has engaged in methods, acts, uses, or practices that violate chapter 407, and that it is in the public's interest that an investigation should be made. *See* § 407.040.1.

31. Investigative Demand CID No. 24-10 meets all of the statutory requirements of section 407.040.2.

32. The CID does not run afoul of the statutory prohibitions of section 407.040.3, RSMo, or of the Missouri or U.S. Constitutions.

AMERICAN OVERSIGHT

Electronically Filed - COLE CIRCUIT - May 24, 2024 - 02:00 PM

33. Media Matters has failed or will fail to comply with the Investigative Demand CID No. 24-10, as it has expressed that it will not comply with similar investigative demands.

34. Media Matters has in fact failed to comply with the CID, but in any event, this action was timely when originally filed because the MMPA expressly authorizes the Attorney General to bring a lawsuit even before a completed violation of the MMPA has occurred. § 407.100, RSMo (authorizing the Attorney General to sue "[w]henever it appears to the attorney general that a person has engaged in, is engaging in, *or is about to engage in* any … act … declared to be unlawful by [the MMPA]") (emphasis added).

35. Accordingly, Petitioner is entitled to an order pursuant to section 407.090 requiring Media Matters to produce responses to Investigative Demand CID No. 24-10.

COUNT II-REQUEST FOR CIVIL PENALTY

36. Failure to comply with a CID is a violation of the MMPA: "A person upon whom a civil investigative demand is served pursuant to the provisions of section 407.040 *shall comply* with the terms thereof unless otherwise provided by an order of a court." § 407.080, RSMo (emphasis added).

37. The MMPA authorizes a court to "award to the state a civil penalty of not more than one thousand dollars per violation" whenever "a person has

AMERICAN OVERSIGHT

Electronically Filed - COLE CIRCUIT - May 24, 2024 - 02:00 PM

engaged in, is engaging in, or is about to engage in any … act… declared to be unlawful by [the MMPA]." § 407.100, RSMo.

38. Media Matters has failed to comply with the CID by failing to "comply with the terms" of the CID, such as the April 15 deadline, while simultaneously failing to seek relief from a court before that deadline. § 407.080, RSMo.

39. This Court is thus authorized to impose a $1,000 penalty for that violation.

WHEREFORE, Petitioner State of Missouri ex rel. Attorney General Andrew Bailey, prays this Court for an Order enforcing the Civil Investigative Demand, ordering Media Matters to produce complete responses to Civil Investigative Demand No. 24-10 within twenty (20) days of the entry of its Order, ordering Media Matters to pay to the State a $1,000 civil penalty, and ordering any other relief that the Court finds is warranted.

Respectfully submitted,

ANDREW BAILEY
Attorney General

/s/ Jeremiah J. Morgan
Jeremiah J. Morgan, MO 50387
Deputy Attorney General – Civil
Jeremiah.Morgan@ago.mo.gov
Steven Reed, MO 40616
Chief Counsel – Consumer Protection
Steven.Reed@ago.mo.gov
Kathryn Monroe, MO 76022

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001389

Electronically Filed - COLE CIRCUIT - May 24, 2024 - 02:00 PM

Assistant Attorney General
P.O. Box 899
Jefferson City, MO 65102
(573) 751-1800; Fax: (573) 751-0774

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that a true copy of the State's Amended Petition was served on May 24, 2024, pursuant to the Court's automatic notification system.

/s/ Jeremiah J. Morgan
Jeremiah J. Morgan

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001390

EXHIBIT B

AMERICAN OVERSIGHT

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

MEDIA MATTERS FOR AMERICA, ERIC HANANOKI, Plaintiffs, v. WARREN KENNETH PAXTON JR., in his official capacity as Attorney General of the State of Texas, ANDREW BAILEY, in his official capacity as Attorney General of the State of Missouri Defendants.	No. 24-cv-147

SECOND DECLARATION OF ASSISTANT ATTORNEY GENERAL STEVEN REED

I, Steven Reed, declare as follow:

1. My name is Steven Reed and I am a lawyer duly licensed and in good standing in the State of Missouri. I am over the age of 21 and fully competent to make this declaration. I make this declaration based on my personal knowledge.

2. I am the Chief Counsel for the Consumer Protection Section of the Missouri Attorney General's Office and am one of the attorneys responsible for the State of Missouri's investigation into consumer protection violations by Media Matters for America (Media Matters).

3. The Consumer Protection Section is responsible for administering and enforcing Chapter 407, the Missouri Merchandising Practices Act, of the Missouri Revised Statutes (RSMo.).

4. To protect the integrity of investigations as they progress, the Missouri Attorney General's Office as a general policy does not disclose or publicly discuss information about

AMERICAN OVERSIGHT

investigations under the MMPA—including documents and information that the Office collects. However, in rare instances, protecting the integrity of an investigation requires a very limited disclosure of information. This is one of those rare cases given Media Matters' decision to press incorrect allegations in an attempt to obtain an order to forcefully halt an investigation.

5. During the investigation into Media Matters, the Attorney General's Office has come into possession of internal Media Matters documents that are expressly marked not for circulation and which reveal plans by the organization to use solicited funds for activities contrary to those publicly disclosed to its Missouri donors.

6. Publicly, Media Matters solicits donations by asserting on its website that it "posts rapid-response items as well as longer research and analytic reports documenting conservative misinformation throughout the media" and "works daily to notify activists, journalists, pundits, and the general public about instances of misinformation."

7. But the confidential, internal descriptions of Media Matters' operations suggest a different picture.

8. These materials explain that high-level officials within Media Matters use the organization and its funds not just to issue reports about perceived misinformation, but to actively interfere with and neutralize the operational infrastructure of certain "target" companies.

9. For example, these documents reveal that Media Matters has entered into partnerships with Facebook and Google—competitors of X—and has developed strategic plans to interfere with the infrastructure systems used by "target" companies to display advertisements.

10. These materials are in tension with the organization's public comments and solicitations to Missourians and suggest that Media Matters is likely using solicited donations for activities in conflict with the explicit purposes disclosed to donors.

AMERICAN OVERSIGHT

11. These documents are especially noteworthy in light of credible allegations that Media Matters' assertions about advertisements on X—assertions that successfully drove advertisers from the platform—were knowingly false.

12. These materials lend credence to allegations that Media Matters may be violating the Missouri Merchandising Practices Act, and underscore the need for obtaining further documents identified in Civil Investigative Demand No. 24-10.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 4, 2024

/s/ Steven Reed
Steven Reed, Chief Counsel
Consumer Protection Section
Missouri Attorney General's Office

AMERICAN OVERSIGHT

Exhibit 2

AMERICAN OVERSIGHT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MEDIA MATTERS FOR AMERICA,
P.O. Box 44811,
Washington, D.C. 20026;

and

ERIC HANANOKI,
Notice of address filed under seal pursuant to LCvR 5.1(c)(1),

Plaintiffs,

v.

WARREN KENNETH PAXTON JR., in his official capacity as Attorney General of the State of Texas,
P.O. Box 12548,
Austin, TX 78711,

and

ANDREW BAILEY, in his official capacity as Attorney General of the State of Missouri,
P.O. Box 899,
Jefferson City, MO 65102,

Defendants.

Civil Action No. 24-cv-147-APM

[CIVIL RIGHTS ACTION]

[PROPOSED]
SUPPLEMENTAL COMPLAINT

INTRODUCTION

1. Plaintiffs Media Matters for America and Mr. Eric Hananoki filed the operative Complaint in this action on January 17, 2024. ECF No. 1.

2. The Complaint named Texas Attorney General Ken Paxton, in his official capacity, as the sole defendant, and pleaded four counts against him. Count I alleges that Paxton's issuance

AMERICAN OVERSIGHT

of a civil investigative demand (the "Texas Demand") to Media Matters is unlawful retaliation in violation of Plaintiffs' First and Fourteenth Amendments rights. Count II alleges that the Texas Demand seeks sensitive and privileged documents and communications without adequate justification, in violation of Plaintiffs' First, Fourth, and Fourteenth Amendment rights. Count III alleges that the Texas Demand violates Plaintiffs' Fourteenth Amendment rights to due process by improperly subjecting them to Texas's jurisdiction and laws. Count IV alleges that Paxton's Demand violates Plaintiffs' rights to protect their confidential source information from disclosure under the District of Columbia and Maryland shield laws.

3. Pursuant to Federal Rule of Civil Procedure 15(d), Plaintiffs file this Supplemental Complaint for the purpose of setting forth occurrences and events "that happened after the date of the pleading to be supplemented." Specifically, the Missouri Attorney General's Office issued a civil investigative demand (the "Missouri Demand") to Media Matters on March 25, 2024. That same day, before Media Matters had even received the Missouri Demand at its office in D.C., the Missouri Attorney General also filed a petition to enforce the Demand in Cole County, Missouri, Circuit Court. The Missouri Attorney General hired a process server to serve Media Matters with that enforcement petition at its office in D.C. on March 28, 2024.

4. In this Supplemental Complaint, Plaintiffs add Missouri Attorney General Andrew Bailey as a Defendant and plead the same four causes of action against Bailey that Plaintiffs' original Complaint pleaded against Paxton.

SUPPLEMENTAL PARTY

5. Defendant Andrew Bailey is the Attorney General of the State of Missouri and is sued in his official capacity. Missouri law grants Bailey certain limited powers related to the issuance of civil investigative demands. *See, e.g.*, Mo. Rev. Stat. § 407.040 (Merchandising Practices Act); *id.* § 407.472 (Charitable Organizations and Solicitations Act). In particular, the

AMERICAN OVERSIGHT

Attorney General may issue a civil investigative demand "[w]hen it appears to the attorney general that a person has engaged in or is engaging in any method, act, use, practice or solicitation declared to be unlawful" under the Merchandising Practices Act. *Id.* § 407.040. As in Texas, the Missouri Attorney General is not required by statute to show probable cause or establish jurisdiction before issuing a civil investigative demand. Rather, state law authorizes him to do so, among other reasons, whenever he "believes it to be in the public interest that an investigation should be made." *Id.*

JURISDICTION OVER SUPPLEMENTAL CLAIMS AND PARTY

6. The grounds for the Court's subject matter jurisdiction over the claims pleaded below are the same as the grounds set forth in the original Complaint. *See* Compl. ¶¶ 11–12, ECF No. 1.

7. This Court may exercise personal jurisdiction over Bailey in his official capacity as Attorney General of Missouri. Bailey, like Paxton, dispatched a process server into the District of Columbia to serve his enforcement petition at Media Matters's Washington, D.C. headquarters. He also effectuated service of the Missouri Demand in this District by mailing the Demand to Media Matters in the District. By engaging in these activities, Bailey has committed a tort in the District. Bailey has otherwise directed activity in the District by seeking to conduct an ongoing investigation into documents located here. Bailey has thereby availed himself of the District and subjected himself to the jurisdiction of its laws and courts.

8. Bailey is a "person" for purposes of D.C. Code § 13-421 because he is a state officer sued for prospective injunctive relief under *Ex parte Young*.

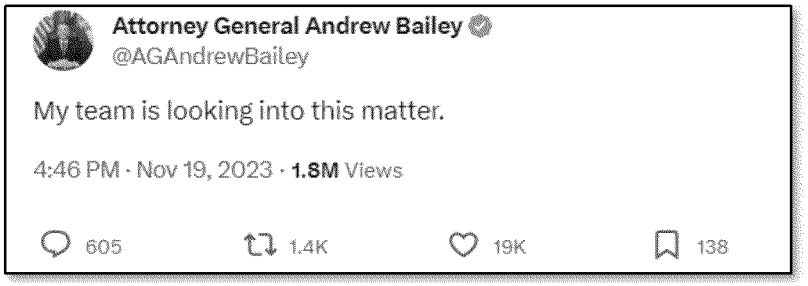
9. This Court has statutory long-arm jurisdiction over Bailey under D.C. Code § 13-423(a)(1), (3) and (4). Bailey has transacted business in the District by mailing his Demand into the District, seeking documents here, and employing and directing a process server to serve Media

AMERICAN OVERSIGHT

Matters in the District with a Petition to enforce the Demand in Missouri state court. Bailey has caused tortious injury to Plaintiffs in the District through those actions taken in the District. Even if Bailey had not taken actions in the District to cause tortious injury to Plaintiffs, he is otherwise engaged in a persistent course of conduct in the District—and its courts—in his capacity as Missouri Attorney General.

SUPPLEMENTAL ALLEGATIONS

10. As alleged in the Complaint, ¶ 47, Bailey announced on November 19, 2023, that his "team [was] looking into" Plaintiffs' coverage of Musk and extremism on X. @AGAndrewBailey, X.com (Nov. 19, 2023, 4:46 PM ET), https://perma.cc/J463-656K.



11. Bailey subsequently issued a "Notice of Pending Investigation" on December 11, 2023, demanding that Media Matters preserve certain documents. Ex. 3, Notice of Pending Investigation, Mo. Att'y Gen. (Dec. 11, 2023). But Bailey never formally served that Notice, instead electing only to email it to the generic email inbox "action@mediamatters.org." His press release announcing the Notice provided no explanation as to what possible basis he had for investigating or exercising jurisdiction over Media Matters, yet nonetheless slandered the organization as a group of "progressive tyrants." Ex. 4, *Attorney General Bailey Notifies Media Matters of Pending Investigation*, Mo. Att'y Gen. (Dec. 11, 2023).

AMERICAN OVERSIGHT

12. Plaintiffs filed the Complaint on January 17, 2024. ECF No. 1. Because Bailey had not issued any formal demand or initiated any formal process against Media Matters at that juncture, Plaintiffs did not name Bailey as a Defendant at that time.

13. On January 18, 2024, one day after filing the Complaint, Plaintiffs moved for a temporary restraining order and preliminary injunction against Paxton. ECF No. 4. After Paxton confirmed that his office would take no steps to enforce the Texas Demand while the preliminary injunction motion was pending, ECF No. 11, the Court entered a Minute Order on January 23 denying the request for a TRO as moot.

14. The Court held a hearing on the preliminary injunction motion on February 15, and thereafter ordered supplemental briefing on whether Paxton, when sued in his official capacity, is a "person" within the meaning of the District of Columbia's personal jurisdiction statute, D.C. Code § 13-421.

15. On April 12, 2024, this Court granted a preliminary injunction against Paxton preventing him from taking any steps to enforce the Texas Demand or issue further demands. ECF Nos. 37, 38. In doing so, the Court made various factual determinations, including that Paxton's issuance of the Texas Demand "had the effect of chilling Plaintiffs' expressive activities nationwide" and "deprived D.C. residents [of] access to Plaintiffs' reporting." Mem. Op. at 22, ECF No. 37.

16. On March 25, 2024, months after this lawsuit was filed but before the preliminary injunction motion against Paxton was resolved, Attorney General Bailey copied Paxton's playbook by issuing a Civil Investigative Demand of his own.

17. Bailey's Demand, like Paxton's, seeks to rifle through Media Matters's most sensitive internal documents—donor records, internal correspondence, and journalistic source

AMERICAN OVERSIGHT

material—in retaliation for Media Matters's reporting about X. Ex. 5, Civil Investigative Demand, Mo. Att'y Gen. (Mar. 25, 2024). Among other things, it seeks names, home addresses, and donation amounts for Missouri-based donors to Media Matters; internal communications about sources and uses of donated funds; internal communications about strategy; and confidential source information related to Mr. Hananoki's reporting. The Missouri Demand is, like the Texas Demand, incredibly broad in scope; for instance, it seeks several categories of documents without imposing any temporal limits on the requested production.

18. The Missouri Demand is materially very similar to the Texas Demand, and in many respects is a word-for-word copy. Indeed, Bailey has described the Missouri Demand as "virtually identical" to the Texas Demand. Ex. 6 ¶ 20, Petition for Order to Enforce Civil Investigative Demand, *Missouri ex rel. Bailey v. Media Matters for Am.*, No. 24AC-CC02291 (Cole Cnty. Cir Ct. Mar. 25, 2024). For instance, the Texas Demand sought "all of Media Matters for America's external communications with Apple Inc., International Business Machine Corporation (IBM), Bravo television network, NBCUniversal, Oracle Corporation, and Comcast Corporation, Lions Gate Entertainment Corporation, Warner Bros Discovery Inc., Paramount Pictures Corporation, and Sony Group Corporation from November 1, 2023 to November 21, 2023." Compl. Ex. B at 7, ECF No. 1-4. The Missouri Demand similarly seeks "[a]ll communications with Apple, International Business Machine Corporation, Bravo Television Network, NBCUniversal, Oracle Corporation, Comcast Corporation, Lions Gate Entertainment Corporation, Warner Bros Discovery Inc., Paramount Pictures Corporation, or Sony Group Corporation from November 1, 2023, to March 25, 2024." Ex. 5 at 5.

19. Substantial evidence indicates that Bailey issued the Missouri Demand to harass and retaliate against Plaintiffs, rather than for any good-faith investigative reason. For example,

AMERICAN OVERSIGHT

although more than three months passed between Bailey's Notice of Pending Investigation and his issuance of the Missouri Demand, Bailey apparently expended little investigative effort in that time. Neither the Missouri Demand nor the Petition seeking to enforce it identifies *any* new facts regarding Media Matters. Both documents simply regurgitate the vague and groundless accusations leveled at Media Matters in the Notice.

20. Similarly, Bailey's press release announcing the escalation in harassment was short on facts and long on invective. Among other things, it characterized Media Matters as a "political activist organization," described its reporting on X as "an "attempt to destroy X, because they [sic] cannot control it," and described its reporters as "radical 'progressives'" and "'progressive' activists masquerading as news outlets [sic]." Ex. 7, *Attorney General Bailey Files Suit Against Media Matters for Refusal to Cooperate with Investigation*, Mo. Att'y Gen. (Mar. 25, 2024).

21. Although Hananoki himself has not previously reported on Bailey, Bailey has, like Paxton, been subject to critical reporting from Media Matters.[1] Bailey's Demand, much like Paxton's, reeks of opportunistic retaliation.

22. The Missouri Demand has a return date of April 15, 2024. Ex. 5 at 5.

23. Media Matters received the demand by certified mail on April 1, 2024.

24. Remarkably, Bailey filed an enforcement petition against Media Matters in Missouri state court on March 25—the same day he issued the Missouri Demand and a full *week* before Media Matters had even received the Demand in D.C. *See* Ex. 6. That Petition, citing this case, claims an immediate enforcement action is appropriate because Media Matters has resisted

[1] *E.g.*, Payton Armstrong, *On Salem Media, Jenna Ellis and Missouri Attorney General Andrew Bailey push states to ban health care for trans people*, Media Matters for Am. (Aug. 31, 2023). https://www.mediamatters.org/salem-media-group/salem-media-jenna-ellis-and-missouri-attorney-general-andrew-bailey-push-states.

AMERICAN OVERSIGHT

Paxton's Demand. *Id.* ¶ 20. On Bailey's view, because Media Matters chose to vigorously defend its constitutional rights against Paxton rather than capitulate to his bullying, Bailey is free to disregard the basic dictates of due process—and Missouri state law—by enforcing a Demand without even serving it. This rush to court further illustrates that Bailey issued the Missouri Demand chiefly to harass and punish Media Matters, rather than for any bona fide investigatory purpose.

25. Bailey served the Petition by dispatching a process server to Media Matters's D.C. office on March 28, 2024.

26. Although Bailey's Demand purports merely to be investigating Media Matters, the Petition goes much further, affirmatively alleging that Media Matters "has used fraud to solicit donations from Missourians." Ex. 6 at 2. But the Petition provides zero factual support for that inflammatory suggestion, asserting only that Bailey "has reason to believe" that Media Matters has somehow violated Missouri law. *Id.* ¶ 22. The Petition also describes Media Matters and its employees as "radical 'progressives" who are "attempt[ing] to destroy X, because they cannot control it," and as "activists masquerading as [a] news outlet[]."*Id.* at 2.

27. Moreover, the Petition makes clear that Bailey intends to rely solely upon his authority under the Merchandising Practices Act as a basis for issuing and enforcing the Demand. Ex. 6 ¶¶ 13–14, 16, 22–24; *see also* Ex. 7 (accusing Media Matters of acting in direct violation of the Missouri Merchandising Practices Act). But the Missouri Supreme Court has made clear that the Act applies only to "the protection of consumers who are the actual buyers in a sale." *Ports Petroleum Co. of Ohio v. Nixon*, 37 S.W.3d 237, 241 (Mo. 2001). Media Matters makes no "sales" and has no "actual buyers" in Missouri or elsewhere. Bailey's choice to employ authority under a law that, on its face, has no possible application to Media Matters further demonstrates that his

AMERICAN OVERSIGHT

conduct is not for any real investigative purpose, but instead simply to harass and retaliate against Media Matters.

28. On April 15, 2024, the return date for the Missouri Demand, Media Matters replied to the Demand in a letter objecting to it in full. Ex. 8, Letter from Aria C. Branch to Jeremiah J. Morgan (April 15, 2024). In that letter, Media Matters informed Bailey of this Court's grant of a preliminary injunction against Paxton and requested that Bailey withdraw the Missouri Demand. *Id.* at 2.

29. Bailey refused to withdraw the Missouri Demand in an email sent by one of his deputies on April 17, 2024. Ex. 9, Email from Jeremiah Morgan to Samuel Ward-Packard (Apr. 17, 2024, 5:04 PM). That email failed to explain the basis for Bailey's purported jurisdiction over Media Matters, nor did it acknowledge—let alone distinguish—this Court's preliminary injunction against Paxton's "virtually identical" Demand. *Id.* The only thing made clear by the email is that Bailey intends to proceed with his investigation and enforcement of the Missouri Demand regardless of this Court's preliminary injunction order against Paxton.

30. Also on April 17, Bailey filed a Notice informing the Cole County, Missouri, Circuit Court of Media Matters's response to the Missouri Demand. Ex. 10, Notice of Filing Response to Civil Investigative Demand, *Missouri ex rel. Bailey v. Media Matters for Am.*, No. 24AC-CC02291 (Cole Cnty. Cir Ct. Apr. 17, 2024). That Notice asserted, improbably, that the Cole County Circuit Court had jurisdiction over Media Matters and was a proper venue because of the Missouri Attorney General's issuance of a letter in 2007 *exempting* Media Matters from any obligation to register as a charity in Missouri. *Id.* ¶ 5.

31. The Missouri Demand and Petition have magnified and compounded the acute chill Plaintiffs suffered as a consequence of the Texas Demand. The Missouri Demand, unlike the Texas

AMERICAN OVERSIGHT

Demand, is the subject of a pending enforcement action. It therefore represents a significant escalation: Moving to enforce creates an imminent possibility that Plaintiffs may be coerced into granting Bailey access to Plaintiffs' most sensitive papers.

32. Bailey's enforcement action is also in a foreign venue with which neither Media Matters nor Hananoki has any ties.

33. Media Matters is not registered as a foreign corporation in Missouri because it does not "transact business" in Missouri. Mo. Rev. Stat. § 351.572. Nor does it have a registered agent in Missouri. Further, Media Matters is not engaged in "the sale or advertisement of any merchandise in trade or commerce" in Missouri. *Id.* § 407.020. Nor is it targeting any "solicitation of any funds for any charitable purpose" at Missouri. *Id.*; *see also id.* § 407.453. Indeed, it is not even registered as a charity in Missouri because nearly two decades ago the Missouri Attorney General's Office itself concluded Media Matters was exempt from registration. Ex. 11, Letter from Rhonda Johnson to Megan B. Allen (July 12, 2007). Media Matters has never employed anyone in Missouri and has no physical presence in the state.

34. Hananoki's reporting occurred entirely within Maryland and involved no contact with Missouri.

35. Despite these readily ascertainable facts, Bailey's Petition seeking to enforce the Missouri Demand flatly asserts without support that "Media Matters transacts business in this county [*i.e.*, Cole County, Bailey's home jurisdiction]." Ex. 6 ¶ 5.

36. Bailey's actions are particularly troubling in light of this Court's recent preliminary injunction ruling, which enjoined Paxton from further enforcing the Texas Demand. *See* ECF Nos. 37, 38. Bailey and Paxton are coordinating with one another. Bailey himself admitted as much in an interview on a St. Louis radio program: "Yeah, certainly we've coordinated with Texas. Texas

AMERICAN OVERSIGHT

has launched a similar investigation and we're in talks with other states as well. This is a new front in the war, in the fight for free speech."[2] And Paxton expressly encouraged other Attorneys General to follow his lead, *see* Compl. ¶ 51, ECF No. 1, which Bailey has now done. It is thus no surprise that Bailey's Demand is virtually identical to Paxton's, effectively picking up Paxton's baton now that the Texas Demand is enjoined.

37. Whether Bailey obtains access to Plaintiffs' papers or Paxton does makes no practical difference to Plaintiffs—the retaliation will have been accomplished either way.

SUPPLMENTAL CLAIMS FOR RELIEF

COUNT V
(Against Bailey)

First Amendment Retaliation in Violation of Plaintiffs' Rights Under the First and Fourteenth Amendments of the United States Constitution (42 U.S.C. § 1983)

38. Plaintiffs incorporate all paragraphs above and in the original Complaint as if fully set forth in this paragraph.

39. Bailey has violated, and continues to violate, Plaintiffs' First Amendment rights by launching an investigation and serving a burdensome Demand in retaliation for Plaintiffs' speech, press, and associational activities. Bailey's use of the power of his office is discouraging and will continue to discourage Plaintiffs from engaging in news coverage. The chill imposed by his retaliatory actions injures Plaintiffs' ability to investigate and publish news stories and further chills their ability to participate in a robust public discussion around political extremism on the X platform. And because Bailey has moved to enforce his lawless Demand, the chill is even more

[2] Tim Jones & Chris Arps Show, *MO A.G. Andrew Bailey: Missouri Doesn't Have Sanctuary Cities*, NewsTalkSTL at 5:32–58 (Dec. 12, 2023), https://omny.fm/shows/newstalk-stl/mo-a-g-andrew-bailey-missouri-doesnt-have-sanctuar.

AMERICAN OVERSIGHT

acute, and the retaliatory effect even graver, than that caused by Paxton's Demand. Absent relief from this Court, that chill will continue.

40. "[T]he law is settled that . . . the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out." *Hartman v. Moore*, 547 U.S. 250, 256 (2006). "The First Amendment right to free speech includes not only the affirmative right to speak, but also the right to be free from retaliation by a public official for the exercise of that right." *Suarez Corp. Indus. v. McGraw*, 202 F.3d 676, 685 (4th Cir. 2000).

41. The D.C. Circuit has long recognized First Amendment retaliation claims as "actionable precisely 'because retaliatory actions may tend to chill individuals' exercise of constitutional rights.'" *Crawford-El v. Britton*, 93 F.3d 813, 846 (D.C. Cir. 1996) (Henderson, J., concurring) (quoting *ACLU of Md., Inc. v. Wicomico County*, 999 F.2d 780, 785 (4th Cir. 1993)); *see also Perry v. Sindermann,* 408 U.S. 593, 597 (1972). That cause of action for First Amendment retaliation arises under 42 U.S.C. § 1983, which "has long [been] interpreted . . . to permit suits against officials in their individual capacities" for constitutional violations. *Tanzin v. Tanvir*, 592 U.S. 43, 48 (2020). To prevail on their retaliation claim, Plaintiffs must show: "(1) [they] engaged in conduct protected under the First Amendment; (2) [Bailey] took some retaliatory action sufficient to deter a person of ordinary firmness in [Plaintiffs'] position from speaking again; and (3) a causal link between the exercise of a constitutional right and the adverse action." *Aref v. Lynch*, 833 F.3d 242, 258 (D.C. Cir. 2016) (quotation marks omitted). Plaintiffs satisfy each element.

42. *First*, Plaintiffs' investigative, newsgathering, and reporting activities are "legally protected interest[s]" under the First Amendment. *Overbey v. Mayor of Baltimore*, 930 F.3d 215, 227 (4th Cir. 2019) (recognizing right of local news website operator to "gather news"); *see also*

AMERICAN OVERSIGHT

Flynt v. Rumsfeld, 180 F. Supp. 2d 174, 175 (D.D.C. 2002) (explaining that "under the First Amendment the press is guaranteed a right to gather and report news"). Media Matters provides journalistic research and investigative reporting on a variety of matters and figures of public importance. Hananoki is a senior investigative reporter who for over a decade has published journalism about political extremism online, including on platforms like X. The "First Amendment applies in full force" to this newsgathering and commentary, and further "protect[s] a news outlet's editorial perspective [and] the way its beat reporters cover a given" public issue. *Washington Post v. McManus*, 944 F.3d 506, 518 (4th Cir. 2019) (quoting *Mia. Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 258 (1974)); *cf. Nat'l Org. For Women v. Fed. Commc'n Comm'n*, 555 F.2d 1002, 1010 (D.C. Cir. 1977) (explaining that "[t]he exercise of such editorial discretion, especially in connection with news reporting, sharply implicates First Amendment values"). Indeed, "the constitutional protection of the press reaches its apogee" where, as here, Plaintiffs are members of the press who investigate and write about "a public figure" or "on a matter of public concern." *Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087, 1092 (4th Cir. 1993) (citing *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)); *see also Snyder v. Phelps*, 562 U.S. 443, 451–52 (2011) ("Speech on matters of public concern is at the heart of the First Amendment's protection.") (cleaned up); *Farah v. Esquire Mag.*, 736 F.3d 528, 539 (D.C. Cir. 2013) (similar).

43. *Second*, Bailey has taken action adverse to Plaintiffs' protected activity in response to news coverage. His investigation, intrusive Demand, and Petition to enforce that Demand have already chilled Plaintiffs' speech and reporting activities and will continue to do so absent relief. Bailey's retaliatory conduct would "deter a person of ordinary firmness in [Plaintiffs'] position from speaking again." *Aref*, 833 F.3d at 258. This chill is exacerbated by the fear Plaintiffs will be

AMERICAN OVERSIGHT

forced to defend their constitutional rights in a jurisdiction with which they have no meaningful connection.

44. *Third*, there is no serious dispute that Bailey's investigation and Demand are causally linked to Plaintiffs' coverage of X and Musk. Bailey has publicly admitted as much. He announced his intention to investigate Plaintiffs on November 19, 2023, in direct response to a suggestion that conservative Attorneys General launch investigations into Media Matters based on its reporting on X in the preceding days. The material sought by Bailey's Demand further confirms the causal connection, as it singles out documents and communications related to Hananoki's November 16 article, as well as X and its officers. Indeed, the Missouri Demand is a near–carbon copy of the Texas Demand.

45. Bailey's retaliatory campaign against Media Matters has injured Plaintiffs and will continue to do so absent relief from this Court. This harm will be redressed by an order declaring Bailey's conduct to be unlawful and enjoining him from further investigating Plaintiffs or enforcing his Demand. Such relief is appropriate under Section 1983. *Hedgepeth ex rel. Hedgepeth v. Washington Metro. Area Transit Auth.*, 386 F.3d 1148, 1152 n.3 (D.C. Cir. 2004); *Anderson v. Reilly*, 691 F. Supp. 2d 89, 92 (D.D.C. 2010).

COUNT VI
(Against Bailey)

Violation of Plaintiffs' Rights Under the First, Fourth, and Fourteenth Amendments of the United States Constitution (42 U.S.C. § 1983)

46. Plaintiffs incorporate all paragraphs above and in the original Complaint as if fully set forth in this paragraph.

47. Bailey's issuance of the overbroad and retaliatory Demand further violates Plaintiffs' First and Fourth Amendment rights by unreasonably requiring them to turn over

AMERICAN OVERSIGHT

sensitive and privileged materials, including those that impinge upon their association with other organizations.

48. The Fourth Amendment limits the scope of administrative subpoenas. *See Okla. Press Publ'g Co. v. Walling*, 327 U.S. 186, 208–11 (1946). The First Amendment provides Plaintiffs a privilege against disclosure of materials that would chill their constitutional rights. *See Perry v. Schwarzenegger*, 591 F.3d 1147, 1160 (9th Cir. 2010). Where "the materials sought to be seized" by an administrative subpoena even "*may* be protected by the First Amendment," the requirements of the Fourth Amendment are applied with "scrupulous exactitude." *Zurcher v. Stanford Daily*, 436 U.S. 547, 564 (1978) (citing *Stanford v. Texas,* 379 U.S. 476, 485 (1965)) (emphasis added).

49. Bailey has shown no such "scrupulous exactitude" in his Demand. Without any showing of cause or jurisdiction, Bailey has demanded that Plaintiffs produce a broad set of documents that implicate their core First Amendment rights. Indeed, Bailey seeks even broader information about Media Matters's donors than does Paxton.

50. The Missouri Demand seeks, for example, swathes of documents related to Plaintiffs' donors, funding sources, expenditures, and employees, all of which are protected from compelled disclosure under the First Amendment. *E.g.*, *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2382 (2021); *NAACP v. Alabama*, 357 U.S. 449, 462 (1958).

51. Relatedly, the Missouri Demand seeks various kinds of "external communications" that would expose Plaintiffs' associations and collaborations with other groups, including on efforts like ongoing coalitions that include prominent civil rights organizations as well as technology experts and research organizations focused on the challenges of content moderation on X. "It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in

AMERICAN OVERSIGHT

advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action." *NAACP*, 357 U.S. at 462. Compelled disclosure of such associational materials must meet "exacting scrutiny." *Bonta*, 141 S. Ct. at 2383.

52. The Missouri Demand further requires that Plaintiffs surrender internal communications and files regarding news articles, as well as communications with employees at X and its advertisers, again with no showing of cause. Bailey may not "rummage at large in newspaper files or [] intrude into or to deter normal editorial and publication decisions" under the First Amendment. *Zurcher*, 436 U.S. at 566; *see also Lacey v. Maricopa County*, 693 F.3d 896, 917 (9th Cir. 2012). Such "[b]road and sweeping state inquiries into these protected areas . . . discourage citizens from exercising rights protected by the Constitution." *Baird v. State Bar of Ariz.*, 401 U.S. 1, 6 (1971) (plurality opinion).

53. It provides no meaningful relief to Plaintiffs that Bailey is authorized to enforce his Demand only through a petition in Missouri state court. *See* Mo. Rev. Stat. § 407.090. Missouri courts plainly lack personal jurisdiction over Plaintiffs, who should not be forced to subject themselves to foreign tribunals to defend their constitutionally protected rights. And Bailey has already exercised his authority to enforce the Missouri Demand in state court.

54. Plaintiff Media Matters is incorporated under the laws of, and has its principal place of business in, the District of Columbia. Plaintiff Eric Hananoki is domiciled in Maryland. Missouri courts lack general jurisdiction over Plaintiffs. *See Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 359–60 (2021).

55. Plaintiffs have not purposefully availed themselves of the privilege of conducting activities in Missouri, nor would any cause of action stemming from the Demand arise out of or relate to such purposeful contacts, if they existed. Missouri courts lack specific jurisdiction to

AMERICAN OVERSIGHT

enforce the Demands against Plaintiffs. *See Johnson v. Arden*, 614 F.3d 785, 796 (8th Cir. 2010); *Johnson v. TheHuffingtonPost.com, Inc.*, 21 F.4th 314, 317–18 (5th Cir. 2021), *reh'g en banc denied*, 32 F.4th 488 (5th Cir. 2022), *cert. denied*, 143 S. Ct. 485 (2022); *Fidrych v. Marriott Int'l, Inc.*, 952 F.3d 124, 140 (4th Cir. 2020); *GTE New Media Servs. Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1349–50 (D.C. Cir. 2000).

56. With an action to enforce the Missouri Demand ongoing, Plaintiffs are faced with the ongoing prospect of either surrendering constitutionally protected materials in violation of their First and Fourth Amendment rights or subjecting themselves to proceedings in a foreign court that plainly lacks jurisdiction over them. That is no true choice at all.

57. This ongoing violation of Plaintiffs' First and Fourth Amendment rights will be remedied by prompt injunctive relief from this Court setting aside the Demand.

COUNT VII
(Against Bailey)

Violation of Plaintiffs' Due Process Rights Under the Fourteenth Amendment to the United States Constitution (42 U.S.C. § 1983)

58. Plaintiffs incorporate all paragraphs above and in the original Complaint as if fully set forth in this paragraph.

59. The guarantee of due process in the Fourteenth Amendment "recognizes and protects an individual liberty interest" from being subjected to legal process in a jurisdiction with which a person has no contact, unless they willingly consent to such process. *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982).

60. For a state to exercise personal jurisdiction over a party in a manner consistent with due process, the party must have "'minimum contacts' in the forum State." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Mere "foreseeability of causing *injury* in another State" is not a "'sufficient benchmark'

AMERICAN OVERSIGHT

for exercising personal jurisdiction." *Id.* (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980)). "Instead, 'the foreseeability that is critical to due process analysis . . . is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.'" *Id.* (quoting *World-Wide Volkswagen*, 444 U.S. at 297).

61. Here, Bailey has sought to subject Plaintiffs to legal process under Missouri law—and has already hailed Plaintiff Media Matters into Missouri state court in an attempt to enforce his Demand—despite Plaintiffs' having no minimum contacts with Missouri and not being subject to either general or specific personal jurisdiction in that state. Plaintiffs do not avail themselves of Missouri law and had no reason to ever foresee being subject to Missouri's Charitable Organizations and Solicitations Law. Media Matters's mere "operation of a website accessible in [Missouri] is insufficient to satisfy the minimum-contacts requirement of the personal-jurisdiction inquiry" under the Due Process clause. *Fidrych*, 952 F.3d at 140.

62. Plaintiffs are injured by the ongoing imposition of Missouri law on them by Bailey despite his clear lack of jurisdiction to do so. Bailey's hailing of them into Cole County court, his home jurisdiction, is a plain violation of fundamental due process principles. And—compounding the due-process injury—Bailey filed his enforcement action *before Media Matters had even received the Demand*.

COUNT VIII
(Against Bailey)

Violation of Plaintiffs' Rights Under the District of Columbia's and Maryland's Reporters' Shield Laws

63. Plaintiffs incorporate all paragraphs above and in the original Complaint as if fully set forth in this paragraph.

AMERICAN OVERSIGHT

64. Bailey's Demand violates Plaintiffs' rights under the District of Columbia's and Maryland's shield laws by seeking to compel disclosure of statutorily protected, confidential sources. D.C. Code §§ 16-4702, 4703; Md. Cts. & Jud. Proc. Code Ann. § 9-112(b), (c).

65. The D.C. shield law provides absolute protection against compelled disclosure of sources, D.C. Code § 16-4703(b), and qualified protection against compelled disclosure of other information, including "any news or information procured . . . in the course of pursuing [] professional activit[ies]," including notes, to the extent such information is not publicly disclosed, *id.* § 16-4702. *See also Grunseth v. Marriott Corp.*, 868 F. Supp. 333, 336 (D.D.C. 1994). The shield law protects media organizations and their employees acting within the scope of a contract in any "news gathering or news disseminating capacity." D.C. Code § 16-4702.

66. Maryland's shield law provides materially equivalent protections. *See* Md. Cts. & Jud. Proc. Code Ann. § 9-112(b)(1), (c)(2).

67. To overcome even the qualified privilege for non-source information, both statutes provide that parties seeking news or information must establish by clear and convincing evidence that (1) the news or information is relevant to a significant legal issue before a party that has a power to issue a subpoena; (2) the news or information could not, with due diligence, be obtained by any alternative means; and (3) there is an overriding public interest in the disclosure. Still, courts have quashed subpoenas that seek information from news media, even when all three prongs of the qualified privilege apply. *See, e.g.*, *Bice v. Bernstein*, No. 93-CA-22258, 1994 WL 555379, at *1–*2 (Md. Cir. Ct. Apr. 20, 1994); *Grunseth*, 868 F. Supp. at 336.

68. Bailey's Demand is consequently infirm because its overbreadth will require that Plaintiffs turn over constitutionally protected sources. The Demand asks for any and all documents related to Plaintiffs' November 16 article—including internal documents—as well as external

AMERICAN OVERSIGHT

communications between Plaintiffs and others. What is more, the Demand seeks documents regarding Plaintiffs' organizational structure, as well as the specific X accounts used to obtain the screenshots contained in the November 16 article. In essence, the Demand functions as a boundless inquiry into Plaintiffs' organization and news gathering capacity—precisely the kind of pernicious subpoena that these shield laws were designed to combat.

69. Bailey's Demand not only seeks privileged material in violation of Plaintiff's First Amendment rights, but also chills Plaintiffs' news gathering capacity. An order setting aside the Demand is the only legal mechanism to ensure that Plaintiffs' rights—protected by the Constitution and by state statute—are secure.

SUPPLEMENTAL PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully ask for the following supplemental relief:

70. Declare that Bailey's Demand and Petition constitute a First Amendment retaliatory action in violation of Plaintiffs' rights under the First and Fourteenth Amendments of the U.S. Constitution.

71. Declare that Bailey's Demand and Petition violate Plaintiffs' rights under the First, Fourth, and Fourteenth Amendments of the U.S. Constitution.

72. Declare as a matter of law that courts in the State of Missouri cannot exercise personal jurisdiction over Plaintiffs in any imminent action to enforce the Demand, including that prematurely filed by Bailey.

73. Declare that Bailey's Demand seeks disclosure of information protected by the Maryland and D.C. shield laws.

74. Preliminarily enjoin Bailey, his officers, agents, servants, and employees from taking any further action to enforce the Missouri Demand or further investigating Plaintiffs in violation of their constitutional rights.

AMERICAN OVERSIGHT

75. Permanently enjoin Bailey, his officers, agents, servants, and employees from taking any further to enforce the Missouri Demand or further investigating Plaintiffs in violation of their constitutional rights.

76. Award Plaintiffs their costs, expenses, and reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988, and any other applicable law.

77. Grant Plaintiffs any and all other relief that the Court deems just and proper.

Dated: April 18, 2024

Respectfully submitted,

/s/ Aria C. Branch

ELIAS LAW GROUP LLP
Aria C. Branch (DC 1014541)
Elizabeth C. Frost (DC 1007632)
Christopher D. Dodge (DC 90011587)
Jacob D. Shelly (DC 90010127)
Elena A. Rodriguez Armenta (DC 90018798)
Daniela Lorenzo (DC 90022335)
Omeed Alerasool (DC 90006578)
Samuel T. Ward-Packard (DC 90005484)
250 Massachusetts Ave. NW, Suite 400
Washington, DC 20001
T: (202) 968-4652
abranch@elias.law
efrost@elias.law
cdodge@elias.law
jshelly@elias.law
erodriguezarmenta@elias.law
dlorenzo@elias.law
oalerasool@elias.law
swardpackard@elias.law

Abha Khanna*
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
T : (206) 656-0177
akhanna@elias.law

AMERICAN OVERSIGHT

GIBSON, DUNN & CRUTCHER LLP
Theodore J. Boutrous, Jr. (DC 420440)
333 South Grand Avenue
Los Angeles, CA 90071
Telephone: (213) 229-7000
Email: tboutrous@gibsondunn.com

Amer S. Ahmed (DC 500630)
200 Park Avenue
New York, New York 10166
Telephone: (212) 351-4000
Email: aahmed@gibsondunn.com

*Admitted *pro hac vice*

Counsel for Plaintiffs Media Matters for America and Eric Hananoki

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001417

Exhibit B

AMERICAN OVERSIGHT

OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

CIVIL INVESTIGATIVE DEMAND

To: **Media Matters for America**

c/o **Angelo Carusone**
800 Maine Ave SW, Suite 500
Washington, DC 20024

via FedEx 7741 8756 3037
Return Date: December 12, 2023

Pursuant to this office's specific authority under § 17.61 of the Texas Deceptive Trade Practices – Consumer Protection Act, §§ 17.41-.63, Texas Business and Commerce Code ("DTPA"), Media Matters for America ("Media Matters") is hereby directed to produce the items listed in **"Exhibit A"** attached hereto.

You are to make available the documentary material described in **"Exhibit A"** to the undersigned Assistant Attorney General, or other authorized agent(s) identified by the Consumer Protection Division ("Division"), by the "Return Date" indicated above for inspection and copying. In lieu of producing the originals for inspection and copying at your principal place of business, you may deliver true copies of the requested documents to the Assistant Attorney General or Authorized Agent below at the Office of the Attorney General, 300 W 15th St, Austin, TX, 78701. **Contact one of the persons listed below upon receipt to discuss the logistics of producing the requested documents to the Division.**

The Division believes that Media Matters for America is in possession, custody, or control of documentary material relevant to the subject matter of an investigation of possible violations of §§ 17.46(a) and (b) of the DTPA, related to false, misleading, and/or deceptive practices in the State of Texas.

TAKE NOTICE THAT pursuant to section 17.62, Texas Business and Commerce Code, any person who attempts to avoid, evade, or prevent compliance, in whole or in part, with this directive by removing, concealing, withholding, destroying, mutilating, altering, or by any other means falsifying any documentary material may be guilty of a misdemeanor and on conviction is punishable by a fine of not more than $5,000.00 or by confinement in the county jail for not more than one year, or both.

ISSUED THIS 21st day of November, 2023.

/s Levi Fuller
Levi Fuller
Assistant Attorney General
(512) 936-1308

Authorized Agent
Ryan Hanlan
Investigator
(512) 936-3354

AMERICAN OVERSIGHT

Instructions

1. **Read These Instructions/Definitions.** Read these instructions and definitions carefully.

2. **Duty to Preserve Documents**. All documents and/or other data which relate to the subject matter or requests of this Civil Investigative Demand must be preserved. ***Any ongoing, scheduled or other process of document or data destruction involving such documents or data must cease even if it is your normal or routine course of business for you to delete or destroy such documents or data and even if you believe such documents or data are protected from discovery by privilege or otherwise.*** Failure to preserve such documents or data may result in legal action and may be regarded as spoliation of evidence under applicable law.

3. **Relevant Dates**. Unless otherwise noted, the requests in this Civil Investigative Demand require production of documents for each year from January 1, 2022 to the final date of your production of responsive documents, herein called "the relevant time period."

4. **Custody and Control.** In responding to this Civil Investigative Demand, you are required to produce not only all requested documents in your physical possession, but also all requested documents within your custody and control, including those within the possession of persons reasonably available to you or under your direction or control.

5. **Identification of Documents not in Custody or Control.** If any responsive document was, but no longer is, in your possession, custody or control, produce a description of each such document. The description shall include the following:

   a. The name of each author, sender, creator, and initiator of such document;

   b. the name of each recipient, addressee, or party for whom such document was intended;

   c. the date the document was created;

   d. the date(s) the document was in use;

   e. a detailed description of the content of the document;

   f. the reason it is no longer in your possession, custody or control; and

   g. the document's present whereabouts.

   If the document is no longer in existence, in addition to providing the information indicated above, state on whose instructions the document was destroyed or otherwise disposed of, and the date and manner of the destruction or disposal.

6. **Privileged Documents**. If any responsive document is withheld, in whole or in part, under any claim of privilege, provide a detailed privilege log that contains at least the following information for each document or partial document that you have withheld:

   a. the document's control numbers;

   b. all authors of the document;

   c. all addressees of the document;

   d. all recipients of the document or of any copies of the document, to the extent not included among the document's addressees;

AMERICAN OVERSIGHT

e. the date of the document;

f. a description of the subject matter of the document sufficient to determine the applicability of the privilege;

g. the nature or type of the privilege that is being asserted for the document (e.g., "attorney-client privilege");

h. the specification(s) of the Demand to which the document is responsive;

i. the document control number(s) of any attachments to the document, regardless of whether any privilege is being asserted for such attachment(s); and

j. whether the document has been produced in redacted form, and if so, the range of the control numbers for the document.

7. **Trade Secrets.** It is your responsibility to clearly designate which, if any, of the requested documents contain trade secrets, in accordance with Section 17.61(f) of the Texas Business and Commerce Code.

8. **Consult Before Producing Documents.** Before processing or making copies of hard copy documents or electronically stored information in response to this Civil Investigative Demand, consult with the designated representative(s) of the Office of the Attorney General, ("OAG") identified above and reach agreement on the format and method of production.

   Likewise, before producing any *original* documents, consult with one of the designated representatives of the OAG identified above to obtain approval. If you produce original documents, the OAG cannot guarantee their return.

9. **You May Produce Copies.** Subject to the consultation requirement noted above, you may submit photocopies (with color photocopies where necessary to interpret the document) in lieu of original hard-copy documents, provided that such copies are accompanied by an affidavit of an officer of Media Matters for America stating that the copies are true, correct, and complete copies of the original documents, and (if appropriate) were generated and maintained in the ordinary course of your business, and provided that where the original contains colored text or images, a color copy must be provided.

10. **Non-identical Copies to be Produced.** Identical copies of responsive documents need not be produced. However, any copy of a document that differs in any manner, including but not limited to the presence of handwritten notations, different senders or recipients, etc. must be produced.

11. **No Redaction**. All materials or documents produced in response to this Civil Investigative Demand shall be produced, except as deemed privileged, in complete unabridged, unedited and unredacted form, even if portions may contain information not explicitly requested, or might include interim or final editions of a document.

12. **Documents to be Bates Numbered.** Mark each page or electronic medium (e.g., disk, tape, or CD) with individual or corporate identification and eight-digit consecutive document control numbers (e.g., DOE-12345678; CORP-12345678). Hardcopy bound pamphlets or books may be marked with a single identification and control number. Documents as to which privilege is asserted are to also receive identification and control numbers.

    If your production will be more than one box or piece of electronic media, number each box or electronic media, as well as the total number of boxes/media (e.g., box 1 of 13) and mark each with the name(s) of the person(s) whose files are contained therein, the requests(s) to which they are responsive, and the document control numbers contained therein.

AMERICAN OVERSIGHT

13. **Document Organization**. ***Each document and other tangible thing produced shall be clearly designated as to which request, and each sub-part of a request, that it satisfies. The documents produced shall be identified and segregated to correspond with the number and subsection of the request.***

14. **Production of Electronic Documents.** Unless otherwise agreed to in writing by the designated OAG representative, electronically stored information shall be produced in electronic form. Before you prepare documents or information for production in electronic form in order to comply with this Civil Investigative Demand (for example, before you attempt to process electronically stored information or image hard copy documents), you must consult with the designated representative(s) of the OAG identified above and reach agreement regarding the format and method of production.

15. **Questions.** Questions concerning this Civil Investigative Demand should be directed to Assistant Attorney General Levi Fuller at (512) 936-1308.

AMERICAN OVERSIGHT

Definitions

1. **"You," "your," "the business," "Media Matters for America,"** or **"Media Matters"** means Media Matters for America, their past and present officers, employees, agents and representatives, parents and predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and includes all persons and entities acting or purporting to act under the guidance or on behalf of any of the above. The terms "subsidiary," "affiliate," and "joint venture" refer to any firm in which there is total or partial ownership (25 percent or more) or control between the company and any other person or entity.

2. **"X," "X Corp.," "Twitter,"** or **"Twitter, Inc."** means X, their past and present officers, employees, agents and representatives, parents and predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and includes all persons and entities acting or purporting to act under the guidance or on behalf of any of the above.

3. **"Document"** means the original and all non-identical copies (whether different from the original because of notes, underlining, attachments, or otherwise) of all computer files, and all written, printed, graphic or recorded material of every kind, regardless of authorship. It includes communications in words, symbols, pictures, photographs, sounds, films, and tapes, as well as electronically stored information, computer files, together with all codes and/or programming instructions and other materials necessary to understand and use such systems. The term "computer files" includes information stored in or accessible through computers or other information retrieval systems and includes but is not limited to drafts of documents, metadata, embedded, hidden and other bibliographic or historical data describing or relating to documents created, revised, or distributed on computer systems, as well as spreadsheets and their underlying cell formulae and other codes. Thus, you should produce documents that exist in machine-readable form, including documents stored in personal computers, portable computers, workstations, minicomputers, phones, pagers, personal data/digital assistants, archival voice storage systems, group and collaborative tools, electronic messaging devices, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off your premises. This definition covers electronic mail messages ("e-mail"), text messages, voice mail, and all other documents in the possession of you and/or your directors, officers, managers, or employees, whether located at their home or office, whether on work or personal devices. Notice: Unless otherwise specified, the term "document" excludes bills of lading, invoices in non-electronic form, customs declarations, purchase orders, and other similar documents of a purely transactional nature.

4. **"Communication"** means any exchange or transmission of words or ideas to another person or an entity, including without limitation conversations, discussions, letters, memoranda, meetings, notes, speeches, or other transfer of information, whether written, oral, or by any other means, whether direct or indirect, formal or informal, and includes any document which abstracts, digests, transcribes or records any such communication. This definition extends to and encompasses electronic communications on internal chat platforms such as Slack, Microsoft Teams, Google Chat, and other similar messaging platforms.

5. **"Entity"** means legal or business entity of any kind and includes, without limitation, corporations, partnerships, joint ventures, associations, governmental bodies, and trusts.

6. **"Evidencing"** means having any tendency to make the existence of any fact related to the request more probable than it would be without the evidence.

7. **"Identify"** means

AMERICAN OVERSIGHT

a. Regarding an individual, to identify that individual's:

i. name;

ii. current or last known telephone numbers at business and home; and

iii. current or last known business and home addresses.

b. Regarding a person other than an individual, to identify:

i. its full name;

ii. the nature of its organization;

iii. the address and telephone number of its principal offices and, if applicable, the state in which it is incorporated; and

iv. its principal line of business or activity.

c. Regarding any other tangible thing, to identify:

i. what it is, giving a reasonably detailed description thereof;

ii. when, where, and how it was made, if applicable;

iii. who made it, if applicable; and

iv. its current custodian or the person that had last known possession, custody, or control thereof.

8. **"Including"** means including, but not limited to.

9. **"Person"** includes you and means any entity or natural person.

10. **"Relate," "related,"** and **"relating"** mean being in any way legally, logically, or factually connected with the subject matter of the request at issue.

11. The words **"and"** and **"or"** shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of the request, any document(s) that might be deemed outside its scope by another construction.

12. Unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular, and the neuter gender includes the masculine and the feminine.

AMERICAN OVERSIGHT

EXHIBIT A: DOCUMENTS TO BE PRODUCED

1. Produce documents sufficient to identify Media Matters for America's employee organizational chart.

2. Produce documents sufficient to identify all of Media Matters for America's sources of income originating in the State of Texas.

3. Produce documents sufficient to identify all of Media Matters for America's operational expenditures in the State of Texas.

4. Produce all documents related to internal and external communications by Media Matters for America regarding Elon Musk's purchase of X during the relevant time period.

5. Produce all documents related to internal and external communications by Media Matters for America regarding Linda Yaccarino during the relevant time period.

6. Produce documents sufficient to identify all current and past X accounts under the ownership, control, or operating at the behest of Media Matters for America.

7. Produce all documents related to internal and external communications relating to the article titled "As Musk endorses antisemitic conspiracy theory, X has been placing ads for Apple, Bravo, IBM, Oracle, and Xfinity next to pro-Nazi content" by Eric Hananoki.

8. Produce documents sufficient to identify all of Media Matters for America's owned, controlled, or authorized X accounts that were used to obtain, produce, or otherwise acquire the screenshot images contained in the article titled "As Musk endorses antisemitic conspiracy theory, X has been placing ads for Apple, Bravo, IBM, Oracle, and Xfinity next to pro-Nazi content" by Eric Hananoki.

9. Produce documents sufficient to identify all X accounts, profiles, and members followed by the X accounts identified in response to Demand Number 8, above.

10. Produce all of Media Matters for America's external communications with employees and representatives of X from November 1, 2023 to November 21, 2023.

11. Produce all of Media Matters for America's external communications with Apple Inc., International Business Machine Corporation (IBM), Bravo television network, NBCUniversal, Oracle Corporation, and Comcast Corporation, Lions Gate Entertainment Corporation, Warner Bros Discovery Inc., Paramount Pictures Corporation, and Sony Group Corporation from November 1, 2023 to November 21, 2023.

12. Produce documents sufficient to identify all direct and indirect sources of funding for all Media Matters for America operations involving X research or publications.

AMERICAN OVERSIGHT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MEDIA MATTERS FOR AMERICA, et al.,	)	
Plaintiffs,	)	
v.	)	**Civil No. 24-cv-147 (APM)**
WARREN KENNETH PAXTON, *Attorney General of the State of Texas*,	)	
Defendant.	)	

MEMORANDUM OPINION

I. INTRODUCTION

On November 16, 2023, Plaintiff Media Matters for America, Inc. ("Media Matters"), a District of Columbia-based media company, published an online article written by one of its long-time journalists, Plaintiff Eric Hananoki, which reported that advertisements for major corporations were appearing next to extremist content on X.com, the social media platform formerly known as Twitter ("November 16 Article"). The story depicted multiple images of the advertisements and posts at issue. The article showed images of Adolph Hitler alongside advertisements from Apple, Oracle, and IBM, and white nationalist tweets next to advertisements from Xfinity and Bravo. X's new owner, Elon Musk, responded that the November 16 Article was a "fraudulent attack on [the] company," and he promised to file "a thermonuclear lawsuit against Media Matters[.]"

Days later, the Attorney General for the State of Texas, Defendant Warren Kenneth Paxton, announced that he was opening an investigation into whether Media Matters' reporting about X had violated Texas' Deceptive Trade Practices Act ("DTPA"). According to a press release,

AMERICAN OVERSIGHT

Defendant "was extremely troubled" by allegations that Media Matters had "fraudulently manipulated data on X.com" in its reporting. Defendant then issued a Civil Investigative Demand ("CID"), which sought from Media Matters a host of records, including its internal and external communications about Musk's purchase of X; the company's CEO, Linda Yaccarino; and the November 16th Article. It also sought records about the company's sources of income and expenditures in Texas. Defendant hired a process server who successfully served the CID on Media Matters in the District of Columbia.

Plaintiffs are before this court seeking an order that preliminarily enjoins Defendant from enforcing the CID. Their primary claim is that Defendant has retaliated against them for exercising their First Amendment rights, which caused substantial chilling effects such as self-censorship and other disruptions of their journalistic endeavors. For his part, Defendant urges the court to reject the requested relief on various grounds: (1) lack of personal jurisdiction, (2) failure to pursue an adequate legal remedy in Texas state court, (3) improper venue, (4) failure to demonstrate a likelihood of success on the merits, and (5) absence of irreparable harm.

As explained below, the court finds that Defendant is subject to personal jurisdiction in this court, and Plaintiffs have satisfied each of the preliminary injunction factors. The court therefore grants Plaintiffs' motion for preliminary relief.

II. BACKGROUND

A. Factual Background

1. Media Matters and Eric Hananoki

Plaintiff Media Matters is a non-profit research and information center that monitors and reports on misinformation and political extremism in the U.S. media landscape. Compl., ECF No. 1, ¶ 2 [hereinafter Compl.]. Media Matters is incorporated in Washington, D.C. Pls.'

AMERICAN OVERSIGHT

Mot. for TRO & Prelim. Inj., ECF No. 4 [hereinafter Pls.' Mot.], Decl. of Cynthia Padera in Supp. of Pls.' Mot., Ex. 2, ECF No. 4-2, ¶ 7 [hereinafter Padera Decl.]. Its principal place of business and office space are in the District, as are its hard-copy records. Padera Decl. ¶ 9. Media Matters has no meaningful ties to the State of Texas. Padera Decl. ¶¶ 10–14.

Plaintiff Eric Hananoki is a senior investigative reporter who has worked at Media Matters since 2007. Pls.' Mot., Decl. of Eric Hananoki in Supp. of Pls.' Mot., Ex. 3, ECF No. 4-3, ¶ 2 [hereinafter Hananoki Decl.]. Hananoki resides in Maryland and works remotely from there, although he occasionally visits Media Matters' D.C. office. *Id.* ¶ 3. For more than a decade, Hananoki's work "has focused on documenting extremism—including white nationalism, antisemitism, and Islamophobia." *Id.* ¶ 4. As part of his reporting, Hananoki has covered the social media platform X. *Id.* ¶ 9. None of that work has involved speaking with Texas residents or businesses, and he has never traveled to Texas for business purposes. *Id.* ¶ 21.

2. Media Matters Publishes the November 16 Article about X

In 2022, Elon Musk acquired X. In the wake of the ownership change, Hananoki observed a "sustained and significant surge" in extremist content on the platform. *Id.* ¶ 10. He reported, in nearly a dozen articles, that corporate advertisements on X were appearing alongside extremist content. *Id.* ¶ 12 (listing articles). Other media outlets published similar stories. *Id.* ¶¶ 10, 13; Pls.' Mem. in Supp. of Pls.' Mot., ECF No. 4-1 [hereinafter Pls.' Mem.], at 6 (listing news stories).

One of Hananoki's articles gave rise to the present controversy. On November 16, 2023, Media Matters published on its website an article written by Hananoki titled, "As Musk endorses antisemitic conspiracy theory, X has been placing ads for Apple, Bravo, IBM, Oracle, and Xfinity next to pro-Nazi content" ("November 16 Article"). Hananoki Decl. ¶ 12.[1] The story included

[1] Article available at https://perma.cc/HHX2-AT2N (last visited on April 12, 2024).

AMERICAN OVERSIGHT

multiple images of antisemitic tweets, in some cases depicting Hitler, next to advertisements by the companies identified in the article's title. *Id.* ¶ 15. The story also noted that the night before Musk had "endorsed the pernicious antisemitic conspiracy that Jewish people are supporting 'hordes of minorities' who are 'flooding' into the country to replace white people." *Id.* ¶ 14.

Musk responded to the article swiftly and aggressively. On November 18, 2023, he posted on his X account that "X will be filing a thermonuclear lawsuit" against Media Matters and others "who colluded in this fraudulent attack on our company." *Id.* ¶ 16. Then, on November 20, 2023, X filed suit against Media Matters and Hananoki, citing the November 16 Article and one other. *Id.* ¶ 18.

3. Defendant Launches an Investigation of Media Matters' Reporting on X

Defendant Kenneth Paxton is the Attorney General for the State of Texas. Texas has adopted a modified version of the Uniform Unfair and Deceptive Trade Practices Act, which prohibits "[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce[.]" Tex. Bus. & Com. Code § 17.46(a). Deceptive trade practices include "disparaging the goods, services, or business of another by false or misleading representation of facts[.]" *Id.* § 17.46(b)(8). The DTPA authorizes the Consumer Protection Division of the Office of Attorney General to enforce the statute. *See id.* § 17.61(a).

On November 20, 2023, the same day that X filed suit, Defendant issued a press release announcing that he was opening an investigation of Media Matters "for potential fraudulent activity" in violation of the DTPA. Pls.' Mot., Ex. 5, Decl. of Aria C. Branch in Supp. of Pls.' Mot. [hereinafter Branch Decl.], Ex. B, ECF No. 4-5, at 13.[2] The press release explained that Defendant "was extremely troubled by the allegations that Media Matters, a radical anti-free

[2] Page number references to the exhibits attached to the Branch Declaration are those generated by CM/ECF.

AMERICAN OVERSIGHT

speech organization, fraudulently manipulated data on X.com (formerly known as Twitter)." *Id.* The press release quotes Defendant describing Media Matters as a "radical left-wing organization who would like nothing more than to limit freedom by reducing participation in the public square." *Id.*

Defendant talked to the press about the investigation. He told Newsmax that his office had learned about the controversy from Musk's lawsuit and press accounts. Pls.' Mem. at 10 n.6. Defendant said on CNBC that he had initiated the investigation because of the "information" that Media Matters had reported about X. Branch Decl., Ex. D, at 25. On a podcast called "The Benny Show," Defendant "encouraged" Attorneys General of both political parties to look into Media Matters' reporting, though he observed that Democratic Attorneys General "probably won't but they should because they should care about free speech as much as we do." *Id.*, Ex. C, at 17.[3] And, on another podcast a week later, Defendant described Media Matters as a "left-wing organization" and stated he was "pretty sure that they had put hit pieces out on [him]." Hananoki Decl. ¶ 25 (citing Tudor Dixon Podcast, Dec. 1, 2023).

4. Defendant Serves a Civil Investigative Demand on Media Matters

The DTPA grants the Attorney General various tools to investigate violations of the Act. Among them are issuing a CID "requiring [a] person to produce [] documentary material and permit [its] inspection and copying." Tex. Bus. & Com. Code § 17.61(a). The statue permits service of the CID on out-of-state persons either by "delivering a duly executed copy of the demand to the principal place of business in the state of the person to be served" or, "if the person has no place of business in th[e] state," by "mailing by registered mail or certified mail a duly executed

[3] At least one Attorney General has followed Defendant's lead. On March 25, 2024, Missouri Attorney General Andrew Bailey announced that he was serving a "virtually identical" CID on Media Matters and filing a petition to enforce it in Missouri state court. Pls.' Notice of Mo. Att'y Gen. CID & Pet., ECF No. 36.

AMERICAN OVERSIGHT

copy of the demand addressed to the person to be served . . . to his principal office or place of business." *Id.* § 17.61(d)(2), (3). The CID's recipient may petition to "modify or set aside the demand, stating good cause," in "the district court in the county where the parties reside, or a district court of Travis County." *Id.* § 17.61(g).

The day after announcing his investigation, Defendant issued a CID, seeking a broad array of records from Media Matters. Branch Decl., Ex. A, at 5. The CID directed the company to produce records relating to the following:

- an employee organizational chart;
- sources of income originating in Texas;
- operational expenditures in Texas;
- internal and external communications regarding Musk's purchase of X;
- internal and external communications regarding the CEO of X, Linda Yaccarino;
- current and past X accounts under ownership or control of Media Matters;
- internal and external communications regarding the November 16 Article;
- the X accounts that Media Matters used to obtain the screenshot images used in the November 16 Article;
- the accounts, profiles, and members followed by Media Matters' X accounts referenced in November 16 Article;
- external communications with employees and representatives of X from November 1, 2023, to November 21, 2023;
- external communications with Apple, IBM, Bravo, and the various other companies identified in the November 16 Article; and,

AMERICAN OVERSIGHT

- direct and indirect sources of funding for all Media Matters operations involving X research or publications.

Id. at 11. The CID set a return date of December 12, 2023. *Id.* at 5. It further instructed that Media Matters could produce responsive records directly to the designated Assistant Attorney General, "[i]n lieu of producing the originals for inspection and copying at your principal place of business[.]" *Id.* And it directed Media Matters to contact the designated Assistant Attorney General "to discuss the logistics of producing the requested documents to the [Consumer Protection] Division." *Id.*

Media Matters received the CID on November 22, 2023, via FedEx delivery at its office in the District. Compl. ¶ 52. Defendant also dispatched a process server who, on November 30, 2023, attempted to serve the CID upon Media Matters at its office. *Id.* The agent ultimately delivered the CID to Media Matters' outside counsel, the Elias Law Group, at their D.C. office on December 1, 2023. Branch Decl. ¶ 4.

Media Matters responded on December 12, 2023, with objections to the CID and put Defendant on notice that it would seek preliminary injunctive relief in federal court in Maryland. Branch Decl., Ex. E, at 33–35. Media Matters asserted that Defendant lacked jurisdiction to issue and enforce the CID, the CID violated the First Amendment, and the CID's scope was overly burdensome and broad. *Id.* Defendant responded on December 29, 2023. He wrote that he had "broad discretion" in determining the breadth and relevance of materials sought in a pre-litigation investigatory demand. Branch Decl., Ex. F, at 38–39. He said that Media Matters would need "to establish that there were zero permissible justifications for the investigation" in order to "resist the Attorney General's investigation," and that Media Matters could seek relief in Texas state court under the DTPA. *Id.*

AMERICAN OVERSIGHT

B. Procedural Background

Plaintiffs initially brought suit for injunctive relief against Defendant, in his official capacity, in the U.S. District Court for the District of Maryland on December 12, 2023. *Media Matters for Am. v. Paxton*, No. 8:23-cv-3363 (PJX) (D. Md.), ECF Nos. 1–2. That court held a hearing on January 8, 2024, which focused primarily on whether it could exercise personal jurisdiction over Defendant. The court's comments suggested that it believed that personal jurisdiction in the District of Columbia might be less controverted, prompting Plaintiffs to voluntarily dismiss that action and refile suit here on January 17, 2024. Pls.' Mem. at 19–20; Compl.

Plaintiffs assert four claims. The first three are under 42 U.S.C. § 1983 for (1) retaliation in violation of the First Amendment (Count I); (2) an overbroad CID in violation of the First and Fourth Amendments (Count II); and (3) unlawful service of the CID in violation of the Due Process Clause (Count III). Compl. at 35–42. Plaintiffs' fourth cause of action is for violations of the D.C. and Maryland reporters' shield laws. *Id.* at 42–44. Plaintiffs also sought both a temporary restraining order and a preliminary injunction. Pls.' Mot. Defendant agreed that he would not seek to enforce the CID until the court ruled on the preliminary injunction motion, thereby mooting Plaintiffs' request for temporary relief. Resp. to Order of the Ct., ECF No. 11; Minute Order, Jan. 23, 2024.

The parties' dispute centers primarily on whether the court can exercise personal jurisdiction over Defendant and whether Plaintiffs' suit is premature. Pls.' Mem. at 21–23; Def.'s Opp'n to Pls.' Mot., ECF No. 26 [hereinafter Def.'s Opp'n], at 11–19; Pls.' Reply in Supp. of Pls.' Mot., ECF No. 28 [hereinafter Pls.' Reply], at 2–15. As to the first issue, Defendant filed a sur-reply brief at the court's direction. Minute Order, Feb. 7, 2024; Def.'s Sur-Reply to Pls.' Reply,

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001433

ECF No. 30 [hereinafter Def.'s Sur-Reply]. The court held a hearing on February 15, 2024. Hr'g Tr., ECF No. 33. At the court's request, the parties then submitted supplemental briefing on the discrete question of whether Defendant is a "person" for purposes of the D.C. long-arm statute. Def.'s Suppl. Briefing on *Ex Parte Young*, ECF No. 34 [hereinafter Def.'s Suppl. Br.]; Pls.' Suppl. Br. in Supp. of Pls.' Mot., ECF No. 35 [hereinafter Pls.' Suppl. Br.].

III. LEGAL STANDARD

Preliminary injunctive relief is an "extraordinary and drastic remedy" that is "never awarded as [a matter] of right." *Munaf v. Geren*, 553 U.S. 674, 689–90 (2008) (internal quotation marks and citations omitted). A court may grant the "extraordinary remedy . . . [only] upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam)).

The preliminary injunction factors are well established: plaintiffs must show that (1) they are "likely to succeed on the merits"; (2) they are "likely to suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of equities tips in [their] favor"; and (4) "an injunction is in the public interest." *Id.* at 20 (citations omitted). Courts in this jurisdiction evaluate these factors on a "sliding scale"—if a "movant makes an unusually strong showing on one of the factors, then it does not necessarily have to make as strong a showing on another factor." *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1291–92 (D.C. Cir. 2009) (citation omitted). *Winter*, however, sparked disagreement over whether the "sliding scale" framework continues to apply, or whether a movant must make a positive showing on all four factors regardless. *See Archdiocese of Wash. v. WMATA*, 897 F.3d 314, 334 (D.C. Cir. 2018) (explaining that the D.C. Circuit "has not yet decided whether *Winter* . . . is properly read to suggest a 'sliding scale' approach to weighing the four factors be abandoned").

AMERICAN OVERSIGHT

Here, application of the sliding scale makes no difference because the court finds that Plaintiffs have met their burden even under a more stringent application of the traditional four-factor test. *See infra* Part IV.

IV. DISCUSSION

A. Personal Jurisdiction

The first factor—success on the merits—includes demonstrating a likelihood of successfully establishing jurisdiction. *See Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 913–14 (D.C. Cir. 2015). The court thus begins with Defendant's personal jurisdictional challenge. *See Kaplan v. Cent. Bank of the Islamic Republic of Iran*, 896 F.3d 501, 510–14 (D.C. Cir. 2018) (holding that the court must determine whether it has personal jurisdiction over the defendant before reaching the merits).

To determine whether the court has personal jurisdiction over a non-resident, it engages in a two-part inquiry: "A court must first examine whether jurisdiction is applicable under the state's long-arm statute and then determine whether a finding of jurisdiction satisfies the constitutional requirements of due process." *GTE New Media Servs. Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1347 (D.C. Cir. 2000).

1. Whether Defendant Is a "Person" under the D.C. Long-Arm Statute

The court starts with a threshold question regarding the applicability of the D.C. long-arm statute. In his sur-reply brief, Defendant argued for the first time that, because he is sued in his official capacity, he should be treated as the State of Texas for jurisdictional purposes and that, because the D.C. Circuit has held that a State is not a "person" under the District's long-arm statute, the court cannot exercise specific jurisdiction over him. Def.'s Sur-Reply at 2–3.

AMERICAN OVERSIGHT

That argument was far from well-developed. Defendant made it in a single sentence with one accompanying citation. *See id.* (citing *United States v. Ferrara*, 54 F.3d 825, 831–32 (D.C. Cir. 1995)). Plaintiffs urge the court to treat the argument as forfeited. Pls.' Suppl. Br. at 9–10. The court declines to do so. Given the threshold importance of the issue, and because the parties later fully briefed it at the court's request, the court will address the contention. *See Smith v. United States*, No. 19-cv-324-BAH, 2022 WL 425059, at *33 (D.D.C. Feb. 11, 2022).

Defendant's argument rests on the D.C. Circuit's decision in *United States v. Ferrara*, 54 F.3d at 825. In *Ferrara*, the United States brought suit in this court against the Chief Counsel of the Disciplinary Board of the New Mexico Supreme Court in her official capacity, seeking to enjoin her from taking disciplinary action against an Assistant United States Attorney barred in New Mexico. *Id.* at 827–28. The D.C. Circuit first held that personal jurisdiction over Ferrara was lacking under the "transacting business" prong of the long-arm statue, D.C. Code § 13-423(a)(1), whose reach is co-extensive with the Due Process Clause, because Ferrara lacked the requisite "minimum contacts" with the forum. *Id.* at 828–31.

The court also rejected the United States' alternative argument—the one relevant here—that "due process considerations [were] inappropriate in this instance" because (1) a State is not a "person" under the Due Process Clause and (2) because Ferrara was sued in her official capacity, she should be treated as if she were the State of New Mexico for due process purposes, making constitutional considerations "not relevant to the question of jurisdiction[.]" *Id.* at 831. The D.C. Circuit avoided "determinin[g] whether a State official sued in his official capacity should be treated as if he were a State for jurisdictional purposes because the United States could not have established jurisdiction over the State of New Mexico in the District of Columbia regardless of whether due process considerations are relevant to the inquiry." *Id.* The court so concluded

AMERICAN OVERSIGHT

because it determined that a State is not a "person" within the meaning of the D.C. long-arm statute. *Id.* at 831–832. That conclusion hinged on the Supreme Court's articulation of the principle in *Will v. Michigan Department of State Police* that "in common usage, the term 'person' does not include the sovereign, and statutes employing the word are ordinarily construed to exclude it[.]" *Id.* at 831. (quoting 491 U.S. 58, 64 (1989)). The court in *Ferrara* also looked to the statutory definition of "person," which did not "clearly indicate" that a "person" included a State. *See id.* at 832 (quoting and citing D.C. Code § 13-421).

Defendant reads *Ferrara* to mean that the court lacks jurisdiction over him. He argues that, because he is sued in his official capacity, he should be treated as if he were the State of Texas, and therefore he is not a "person" under the long-arm statute. Def.'s Suppl. Br. at 3. Plaintiffs, on the other hand, contend that *Ferrara* explicitly declined to answer the question presented here. Pls.' Suppl. Br. at 8. They maintain that the definition of "person" encompasses Defendant under the *Ex Parte Young* legal fiction, which permits suits against a state official when the relief sought is to enjoin a constitutional violation. *See Id.* at 8–9. That fiction permits litigants to avoid the Eleventh Amendment's sovereign immunity bar. *See Vann v. Kempthorne*, 534 F.3d 741, 749 (D.C. Cir. 2008). Applied here, Plaintiffs contend, the doctrine renders Defendant a "person" for purposes of the long-arm statute as well. *See generally* Pls.' Suppl. Br.

The court agrees with Plaintiffs that *Ferrara* does not squarely address the question presented here, and other courts in this District have recognized the same. *See West v. Holder*, 60 F. Supp. 3d 190, 196 (D.D.C. 2014), *aff'd sub nom. West v. Lynch*, 845 F.3d 1228 (D.C. Cir. 2017) (explaining that "[i]t is an open question in this circuit whether, under the D.C. long-arm statute, a court may exercise personal jurisdiction over an official sued under *Ex Parte Young*" and declining to answer the question); *Trump v. Comm. on Ways & Means, U.S. House of*

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001437

Representatives, 415 F. Supp. 3d 98, 106 (D.D.C. 2019) (noting same open question). The court therefore must answer the question whether Defendant should be considered a "person" for purposes of the D.C. long-arm statute.

The court begins, as it must, with the statutory text. As relevant here, a "person" under the long-arm statute includes "an individual . . . whether or not a citizen or domiciliary of the District of Columbia[.]" D.C. Code § 13-421. That text does not resolve whether a state official sued in their official capacity is an "individual," but historical context provides guidance.

The Supreme Court decided *Ex Parte Young* in 1908. *See* 209 U.S. 123. The Court in *Young* held that, "[i]f the act which the state attorney general seeks to enforce be a violation of the Federal Constitution, the officer, in proceeding under such enactment, comes into conflict with the superior authority of the Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct." 209 U.S. 123, 159–60 (1908). In other words, when a plaintiff seeks to enjoin an official defendant from acting unconstitutionally, such suit is "brought against the defendant not as a representative of the state but to restrain him individually from, as it is alleged, wrongfully subjecting plaintiff to such unauthorized prosecutions." *Ex Parte La Prade*, 289 U.S. 444, 455 (1933).

When Congress enacted the D.C. long-arm statute in 1970, it would have understood that the term "person" included official-capacity defendants in suits involving injunctive relief. *See Merck & Co. v. Reynolds*, 559 U.S. 633, 648 (2010) (stating that courts must "assume that, when Congress enacts statutes, it is aware of relevant judicial precedent"). In *Will*, the Supreme addressed whether States and state officials acting in their official capacity are "persons" under § 1983. 491 U.S. at 60. In holding that they were not, the Court explained, "in common usage, the term "person" ordinarily does not include the sovereign, and statutes employing the word are

AMERICAN OVERSIGHT

ordinarily construed to exclude it." 491 U.S. at 58. The Court, however, recognized an exception for suits brought against "a state official in his or her official capacity, when sued for injunctive relief." 491 U.S. at 71 n.10. Such cases "would be [against] a person under § 1983 because 'official-capacity actions for prospective relief are not treated as actions against the State.'" *Id.* (quoting *Kentucky v. Graham*, 473 U.S. 159, 167 n.14 (1985)). That distinction "would not have been foreign to the 19th-century Congress that enacted § 1983," the Court wrote, because it was "commonplace in sovereign immunity doctrine." *Id.* Thus, the Court in *Will* imported the longstanding *Ex Parte Young* fiction into its reading of § 1983. *See id.* If the post-Civil War Congress that enacted § 1983 would have understood the term "person" to include state officials sued for injunctive relief, the Congress that enacted the D.C. long-arm provision nearly a century later would have as well.

And so too would have the D.C. Circuit 25 years later in *Ferrara*. It relied on the "common usage" of the term "person," as articulated in *Will*, to interpret the D.C. long-arm statute not to reach States. *Ferrara*, 54 F.3d at 831 (citing *Will*, 491 U.S. at 64). It stands to reason that, if confronted with the question today, the D.C. Circuit would read the term "person" to include suits against an official-capacity defendant for injunctive relief, just as the Court did in *Will*.

As Plaintiffs point out, a contrary reading would upend years of settled jurisdictional understanding and significantly constrain plaintiffs' ability to sue federal officials for injunctive relief in this District Court. For instance, the term "person" also appears in the D.C. Code's general jurisdiction provision. D.C. Code § 13-422. If Defendant were correct, non-resident federal officials who maintain their primary place of business in the District would not be "persons" because they would be treated as the United States, which is not specifically enumerated as a "person" in § 13-421. Yet, it has long been understood that the court can exercise jurisdiction over

AMERICAN OVERSIGHT

such federal officials under the District's general jurisdiction statute. *See Cameron v. Thornburgh*, 983 F.2d 253, 258 n.4 (D.C. Cir. 1993) (recognizing that the court had personal jurisdiction over the Director of the Bureau of Prisons under § 13-422 because his "office was located in the District"); *cf. Pollack v. Hogan*, 703 F.3d 117, 120–21 (D.C. Cir. 2012) (recognizing that sovereign immunity does not bar suits brought against federal officials for injunctive relief when the official is accused of acting beyond constitutional or statutory authority).

The same is true of a non-resident WMATA official, despite WMATA enjoying the same sovereign immunity as a State. In *Hedgepeth ex rel. Hedgepeth v. WMATA*, the D.C. Circuit rejected the WMATA general manager's assertion that he was not a "person" for purposes of § 1983 when sued only for injunctive relief because "official-capacity actions for prospective relief are not treated as actions against the State." 386 F.3d 1148, 1152 n.3 (D.C. Cir. 2004) (quoting *Will*, 491 U.S. at 71 n.10). Likewise, this court has exercised jurisdiction over federal officials acting under color of D.C. law under the same rationale. *See Roy v. Fulwood*, No. 09-cv-463-HHK, 2010 WL 610275, at *2 (D.D.C. Feb. 22, 2010) (exercising "long-arm personal jurisdiction" over the Chairman of the U.S. Parole Commission "with respect to his duties under the D.C. Revitalization Act") (citing *Fletcher v. District of Columbia*, 481 F. Supp. 2d 156, 169–71 (D.D.C. 2007).

When construing a statute, the court must read it to "avoid absurd results." *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1068 (D.C. Cir. 1998). The court must steer clear of outcomes that are both "contrary to common sense" and "absurd when considered in the particular statutory context." *Id.* Defendant's reading of the term "person" would produce "absurd results." Congress could not have intended to foreclose this District Court from hearing the types of cases described in the preceding paragraph, when for decades prior to 1970 the Supreme Court had recognized that

AMERICAN OVERSIGHT

"official-capacity actions for prospective relief are not treated as actions against the State." *Will*, 491 U.S. at 71 n.10. The court will not read District of Columbia law in a way that would cast doubt on decades of federal court practice and jurisdictional reach.

Defendant maintains that Plaintiffs' suit cannot be construed as anything other than one against the State of Texas because of the "*effect* of the relief sought[.]" Def.'s Suppl. Br. at 2 (quoting *Va. Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 256 (2011)). He notes that the injunctive relief requested seeks to bind not only him but also "his officers, agents, servants, and employees," thus making this a "suit that is functionally against the State." *Id.* But the Court in *Ex Parte Young* said otherwise. It explained that "the use of the name of the state to enforce an unconstitutional act to the injury of complainants is a proceeding without the authority of, and one which does not affect, the state in its sovereign or governmental capacity." 209 U.S. at 159. "It is simply an illegal act upon the part of a state official . . . . The state has no power to impart to him any immunity from responsibility to the supreme authority of the United States." *Id.* at 159–60 (citation omitted). Put differently, when a federal court restrains a state official from pursuing an unconstitutional act, it is not proscribing state action, but the unlawful conduct of a person stripped of his official protections. Thus, the fact that an injunction here would reach not only Defendant but also his agents and employees does not make this a suit against the State of Texas.

Defendant also resorts to statutory construction, asserting that the *expressio unius est exclusio alterius* ("the expression of one thing is the exclusion of the other") and *noscitur a sociis* ("it is known by its associates") canons apply to the definition of "person" to exclude a "statewide official," like the Texas Attorney General. Def.'s Suppl. Br. at 3–4. These canons, however, are of no help here. The former is context-specific and applies only when circumstances support a "sensible inference that the term left out must have been meant to be excluded." *See Chevron*

AMERICAN OVERSIGHT

U.S.A. Inc. v. Echazabal, 536 U.S. 73, 81 (2002). And the latter "requires some context cues indicating that the statutory text should be limited by its company," and "especially holds that words grouped in a list should be given related meanings." *United States v. Fischer*, 64 F.4th 329, 346 (D.C. Cir.), *cert. granted*, 144 S. Ct. 537 (2023) (internal quotation marks and citation omitted). The definition of "person" does not support a "sensible inference" of exclusion or contain any "context cues" of limitation. *See* D.C. Code § 13-421.

Finally, Defendant contends that reading "person" to reach him in this case "would at least raise serious federalism problems under the Constitution." Def.'s Suppl. Br. at 4. He notes that there are few cases of State Attorneys General being sued in out-of-state federal courts, and only one found the exercise of jurisdiction to be appropriate. *See id.* at 5 (citing *Def. Distrib. v. Grewal*, 971 F.3d 485 (5th Cir. 2020)). The court is sensitive to the federalism matters implicated here and does not take lightly the notion of enjoining a State Attorney General. But *Ex Parte Young* struck the federalism balance in favor of enforcing constitutional rights in federal court against state officials. As a panel of the Fifth Circuit observed (albeit in dicta):

> If the *Ex Parte Young* exception applies, sovereign immunity is unavailable—the official is an individual, not the State, so a sister-State court's exercising personal jurisdiction does not offend state sovereignty, even if the challenged conduct was enforcement of a state statute. This anomaly comes from the *Ex Parte Young* "fiction," not the sister State's personal-jurisdiction statute.

Bulkley & Assocs., L.L.C. v. Dep't of Indus. Rels., Div. of Occupational Safety & Health of the State of Cal., 1 F.4th 346, 355 n.2 (5th Cir. 2021).[4] In other words, treating a foreign state official as a "person" under a long-arm statute poses no federalism problem because under *Ex Parte Young*

[4] This passage from *Bulkley* was a direct response to dicta in an earlier Fifth Circuit case, *Stroman Realty, Inc. v. Wercinski*, 513 F.3d 476 (5th Cir. 2008), suggesting that "the Texas [long-arm] statute offers no obvious rationale for including nonresident individuals sued solely in their official capacity under *Ex Parte Young*." *Id.* at 482–83.

AMERICAN OVERSIGHT

a federal court's exercise of jurisdiction over a state official does not infringe upon that state's sovereignty.[5]

2. Grounds for Exercising Personal Jurisdiction

Having determined that Defendant is a "person" in this suit for purposes of the D.C. long-arm statute, the court now turns to the specific jurisdictional grounds asserted by Plaintiffs. The D.C. long-arm statute provides, in relevant part, that "a District of Columbia court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's":

> (1) transacting any business in the District of Columbia; . . .
>
> (3) causing tortious injury in the District of Columbia by causing an act or omission in the District of Columbia;
>
> (4) causing tortious injury in the District of Columbia by an act or omission outside the District of Columbia if he [i] regularly does or solicits business, [ii] engages in any other persistent course of conduct, or [iii] derives substantial revenue from goods used or consumed, or services rendered, in the District of Columbia.

D.C. Code. § 13-423(a). "Section (a)(1)'s 'transacting any business' clause generally has been interpreted to be coextensive with the Constitution's due process requirements[.]" *GTE New Media*, 199 F.3d at 1347. Section (a)(3), on the other hand, "is a precise and intentionally restricted tort section which stops short of the outer limits of due process." *Forras v. Rauf*, 812 F.3d 1102, 1107 (D.C. Cir. 2016) (cleaned up). Section (a)(4) likewise "stop[s] short of the outer limit of the constitutional space." *Crane v. Carr*, 814 F.2d 758, 762 (D.C. Cir. 1987).

---

[5] Although rare, more than one court has found personal jurisdiction over a State Attorney General who projects himself into an outside forum. *See Grewal*, 971 F.3d 491–96; *El Paso Water Utils.-Pub. Serv. Bd. v. Kenney*, No. EP-22-cv-460-DB, 2023 WL 4612549, at *5 (W.D. Tex. July 18, 2023); *Twitter, Inc. v. Paxton*, No. 21-cv-01644-MMC, 2021 WL 1893140, at *2–3 (N.D. Cal. May 11, 2021) (finding personal jurisdiction over Defendant in analogous case involving CID served on a California corporation); *but cf. Wercinski*, 513 F.3d at 482–487 (declining to exercise personal jurisdiction over a State Attorney General that did no more than mail a cease-and-desist letter to a Texas real estate agency about its marketing activities in the Attorney General's own state); *Bulkley & Assocs.*, 1 F.4th at 352–55 (same).

AMERICAN OVERSIGHT

Plaintiffs claim to have established personal jurisdiction under subsections (a)(1), (a)(3), and (a)(4). Pls.' Reply at 2. The court agrees as to subsections (a)(1) and (a)(3) and thus does not reach subsection (a)(4).

a. The "transacting business" prong

1. Minimum contacts analysis

Because the "transacting business" prong has been interpreted to reach the fullest extent permitted by the Due Process Clause, the statutory and constitutional analyses "merge[s] into a single inquiry." *Ferrara*, 54 F.3d at 828. Due process is satisfied if there are "minimum contacts" between the defendant and the forum such that the defendant "should reasonably anticipate being haled into court there[.]" *Thompson Hine, LLP v. Taieb*, 734 F.3d 1187, 1189 (D.C. Cir. 2013) (quoting *World-Wide Volkswagon Corp. v. Woodson*, 444 U.S. 287, 297 (1980)). "Such minimum contacts must show that 'the defendant purposefully avail[ed] [him]self of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.'" *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). "Once it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with notions of 'fair play and substantial justice.'" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 320, (1945)).[6]

First, the court finds that Defendant invoked the benefits and protections of the District's laws when he "caused" service of the CID in the District of Columbia "through a professional

[6] To satisfy subsection (a)(1), the "claim of relief" also must "aris[e] from" the person's transacting of business in the District. D.C. Code § 13-423(b). The D.C. Court of Appeals has interpreted the "arise from" language of § 13-423(b) "flexibly and synonymously with 'relate to' or having a 'substantial connection' with[.]'" *Shoppers Food Warehouse*

AMERICAN OVERSIGHT

process service." Def.'s Opp'n, Decl. of Ass't Att'y Gen. Levi Fuller, Ex. 1, ECF No. 26-1, ¶ 3 [hereinafter Fuller Decl.]. Courts have found that the hiring of a process server creates an agency relationship between the attorney and process server, and that relationship establishes the attorney's presence in the jurisdiction to satisfy the "minimum contacts" requirement. *See Schleit v. Warren*, 693 F. Supp. 416, 419–20 (E.D. Va. 1988) (so holding under Virginia law); *Balsly v. W. Michigan Debt Collections, Inc.*, No. 11-cv-642-DJN, 2012 WL 628490, at *5–7 (E.D. Va. Feb. 27, 2012) (same); *Hamilton, Miller, Hudson & Fayne Travel Corp. v. Hori*, 520 F. Supp. 67, 70 (E.D. Mich. 1981) (so holding under Michigan law). Courts also have held that a person who arranges for personal delivery of process in a State "purposely avail[s] themselves of the privilege of serving process in [the State]." *Hori*, 520 F. Supp. at 70. As one court has put it: "it [is] reasonable to conclude that a lawyer who knowingly serves abusive process in a jurisdiction . . . is 'purposely avail[ing] himself of the privilege of conducting activities within the forum State .'" *Schleit*, 693 F. Supp. at 422–23 (quoting *Luke v. Dalow Indus., Inc.*, 566 F. Supp. 1470, 1472 (E.D. Va. 1983)). Defendant's hiring of a process server in the District of Columbia to effect service on Media Matters therefore created the requisite jurisdictional contacts with the District. *See Smith v. Jenkins*, 452 A.2d 333, 335 (D.C. 1982) ("Generally an agency relationship results when one person authorizes another to act on his behalf subject to his control, and the other consents to do so.") (citations omitted).

Second, Defendant reasonably should have anticipated being haled into court here because the CID established a future course of dealing with a D.C. resident. *Cf. Burger King*, 471 U.S. at 478 (eschewing "mechanical tests" to determine whether an agreement with a forum resident

v. Moreno, 746 A.2d 320, 335 (D.C. 2000). Defendant does not make any argument about § 13-423(b). But even if he had, Plaintiffs' suit plainly "relates to" or has a "substantial connection" with Defendant's hiring of a process server to personally serve the CID on Media Matters in the District.

AMERICAN OVERSIGHT

creates the requisite contacts and looking instead at the contract terms and the parties' actual dealings). Defendant knew that the CID would require negotiations with Media Matters' counsel, who is based in the District. Branch Decl., Ex. F, at 38–40. If Media Matters ultimately agreed to produce records, it could have elected to have Defendant's representatives come to the District to inspect and copy those records. *See* Tex. Bus. & Com. Code § 17.61(e). If the investigation continued beyond the CID, Defendant might have sought to interview Media Matters leadership or employees, with such interviews possibly occurring in the District. And perhaps Defendant would have tried to compel sworn testimony. *Id.* § 17.60(2) (authorizing the Attorney General to "examine under oath any person in connection with this alleged violation"). By targeting a D.C.-based entity for investigation and demanding records from it, Defendant committed himself to a potentially long course of dealing in the District. In such circumstances, Defendant should have reasonably foreseen that he would be called into court here.[7]

Third, asserting jurisdiction here is reasonable "in the context of our federal system of government." *World-Wide Volkswagen*, 444 U.S. at 293 (quoting *Int'l Shoe*, 326 U.S. at 317). The Fifth Circuit's decision in *Grewal* provides a close analogy to this case. There, the Fifth Circuit concluded that Texas state courts had personal jurisdiction over the Attorney General of New Jersey, who had sent a Texas-based business, which published "materials related to the 3D printing of firearms," a letter "threatening action if [it] published its files." *Grewal*, 971 F.3d at 488–89, 497. The court found that the letter created sufficient minimum contacts with the State of Texas because the Attorney General not only sought not merely to enforce New Jersey law but "halt [the company's] activity nationwide, including activity that had no connection to New Jersey

[7] Defendant's service of the CID is analogous to a subpoena served under Federal Rule of Civil Procedure 45, which permits the subpoena's recipient to quash or modify the subpoena in the federal district court where it resides. *See* Fed. R. Civ. P. 45(d)(3). Like a party that issues a Rule 45 subpoena to an out-of-state person, Defendant should have reasonably expected to appear in Media Matter's home forum.

AMERICAN OVERSIGHT

property or residents." *Bulkley & Assocs.*, 1 F.4th at 353–54 (citing *Grewal*, 971 F.3d at 492). The court reasoned that "Grewal's letter had a chilling effect on the exercise of [the plaintiffs'] First Amendment rights . . . . That chilling effect, in turn, caused [the plaintiffs] to cease publication and reduced Texans' access to materials the plaintiffs seek to publish . . . . In this sense, Grewal created contacts with Texas and not just the plaintiffs." *Grewal*, 971 F.3d at 495 (citing *Calder v. Jones*, 465 U.S. 783, 789 (1984)).

That same rationale applies here. Defendant promised to "vigorously enforce" the Texas DTPA against Media Matters for "fraudulent acts" with no apparent connection to Texas. Branch Decl., Ex. B at 13. His issuance of the CID had the effect of chilling Plaintiffs' expressive activities nationwide, which deprived D.C. residents access to Plaintiffs' reporting. The national implications of Defendant's actions were compounded by his calling upon other Attorneys General to investigate Media Matters. *See id.*, Ex. C, at 17. Thus, like the New Jersey Attorney General in *Grewal*, Defendant "projected himself across state lines and asserted a pseudo-national executive authority" that makes exercising jurisdiction over him reasonable and does not offend principles of federalism. *Grewal*, 971 F.3d at 493.

2. Defendant's contentions

Defendant offers three main arguments as to why the "transacting business" prong is inapplicable, but none is persuasive. First, he argues that "transacting business" requires some "'commercial or business-related activity' directed towards D.C. persons." Def.'s Sur-Reply at 1 (quoting *Capel v. Capel*, 272 F. Supp. 3d 33, 39 (D.D.C. 2017)). He concedes that "negotiating or performing contracts" counts, *id.* (quoting *Trump*, 415 F. Supp. 3d 107), but declares without citation that "hiring a process server does not qualify." *id.*

AMERICAN OVERSIGHT

"It is now well-settled that the 'transacting any business' provision embraces those contractual activities of a nonresident defendant which cause a consequence here." *Mouzavires v. Baxter*, 434 A.2d 988, 992 (D.C. 1981) (citation omitted). Defendant's hiring of a process server to hand-deliver the CID did "cause a consequence here": it legally obligated Media Matters to produce records to Defendant absent court intervention. Tex. Bus. & Com. Code § 17.61(h). Such effect is not "too remote or too trivial to be regarded as a consequence" of Defendant's contractual activity. *Cf. Cockrell v. Cumberland Corp.*, 458 A.2d 716, 718 (D.C. 1983) (holding that the plaintiff's "writing of a check on a District of Columbia bank" did not suffice to invoke § 13-423(a)(1)).

In any event, Defendant cites no appellate authority from the D.C. Circuit or the D.C. Court of Appeals for the proposition that only strictly commercial activity qualifies as "transacting business." And persuasive authority from Maryland that pre-dates enactment of the D.C. long-arm statute rejects Defendant's narrow reading. *See Mouzavires*, 434 A.2d at 991 (observing that "Congress intended to vest courts of the District with jurisdictional reach identical to that in effect in Maryland[.]"). In 1967, Maryland's highest court held that a non-profit had sufficient contacts with the state when it regularly employed an agent to inspect a racing track to certify it according to the organization's standards. *Novack v. Nat'l Hot Rod Ass'n*, 231 A.2d 22, 23 (Md. 1967). In so holding, the court observed that "acts done within a State which will support in personam jurisdiction as transacting 'any business' are not necessarily limited to acts which are a part of commerce or of transactions for profit, but include acts which constitute a purposeful activity within the State." *Id.* (quoting *Van Wagenberg v. Van Wagenberg*, 215 A.2d 812, 821 (Md. 1966)). The D.C. Circuit has since cited favorably to *Novack*. *See Steinberg v. Int'l Crim. Police Org.*, 672 F.2d 927, 931 n.7 (D.C. Cir. 1981); *id.* at 932–33 (Wright, J., concurring) (citing *Novack* for

AMERICAN OVERSIGHT

the proposition that "identical Maryland provision covers purposeful activity within the state even if the acts are neither part of commerce nor for profit"). Thus, the sole relevant appellate authorities interpreting the "transacting any business" prong have rejected the rigid commercial–non-commercial distinction Defendant proposes. *See id.* (Wright, J., concurring) (opining that Interpol's activities in the District of Columbia constituted "transacting any business").

Second, Defendant notes that he lacks "a continuing corporate presence" in the District. Def.'s Sur-Reply at 1–2 (citing *AMAF Int'l Corp. v. Ralston Purina Co.*, 428 A.2d 849, 851 (D.C. 1981). But an ongoing course of conduct is not necessary to satisfy § 13-423(a)(1). *See Jackson v. Loews Wash. Cinemas, Inc.*, 944 A.2d 1088, 1093 (D.C. 2008). Even "'a single act may be sufficient to constitute transacting business,' so long as the contact is 'voluntary and deliberate, rather than fortuitous.'" *Id.* at 1093 (quoting *Mouzavires*, 434 A.2d at 992, 995). Defendant's single act of hiring a process server to conduct his business in the District was "voluntary and deliberate." Fuller Decl. ¶ 3.

Finally, citing the D.C. Circuit's decision in *Thompson Hine LLP v. Taieb*, Defendant argues that "simply retaining a process server to serve papers on a D.C. plaintiff is insufficient to establish personal jurisdiction." Def.'s Sur-Reply at 4–5 (citing 734 F.3d 1187, 1194 (D.C. Cir. 2013)).[8] In *Thompson Hine*, the D.C. Circuit held that a non-resident who hired a law firm with a D.C. office, and whose lawyers in the District worked on the matter, without more, had not done business in the District. 734 F.3d at 1191–95. The court so held because of the "quality and nature" of the non-resident client's activities. That is, he never purposely availed himself of the privilege of conducting activities in the District. *Id.* at 1193–94. To buttress this conclusion, the

[8] Defendant makes this argument in connection with his discussion of subsection (a)(3), but *Thompson Hine* has nothing to do with that subsection. It is a "transacting business" case. *Thompson Hine*, 734 F.3d at 1189. So, the court addresses the argument here, where it belongs.

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001449

court quoted from the D.C. Court of Appeals' opinion in *Environmental Research International, Inc. v. Lockwood*: "The mere fact that a nonresident has retained the professional services of a District of Columbia firm, thereby setting into motion the resident party's own activities within the jurisdiction, does not constitute an invocation by the nonresident of the benefits and protections of the District's laws." *Id.* (quoting 355 A.2d 808, 812 (D.C. 1976)). Defendant bases his argument on his quote. Def.'s Sur-Reply at 5.

Thompson Hine is inapposite, however. In *Thompson Hine*, the non-resident client signed the retainer agreement outside the District, the engagement related to a matter in Oregon, and nothing in the retainer required the firm to perform work or receive payment in the District. 734 F.3d at 1192. Further, the Oregon matter was supervised by Atlanta-based lawyers and the record contained no communications between the client and D.C.-based counsel. *Id.* Here, by contrast, Defendant contracted with the process server to carry out a specific task in the District of Columbia directed at a District resident and, presumably, directed the server's fee here. That action was purposefully aimed at the District, and the work contracted for had a direct nexus to this forum, unlike the retainer agreement for legal services in *Thompson Hine*. Defendant's business here was more than the "mere" retention of professional services.[9]

b. Causing tortious injury by an act in the District

The court also finds that it can exercise jurisdiction over Defendant under subsection (a)(3) of the long-arm statute, which reaches a non-resident who "caus[es] tortious injury in the District of Columbia by an act or omission in the District of Columbia[.]" D.C. Code § 13-423(a)(3). Application of that provision is, in a sense, straightforward: Defendant's service of process,

[9] In passing, Defendant cites *Crane v. Carr*, 814 F.2d 758, 762 (D.C. Cir. 1987), to confusingly argue that claims alleging tortious injury "do not fit [the transacting business] description." Def.'s Sur-Reply at 2. But the "transacting business" prong requires no showing of injury in the District of Columbia, whether tortious or otherwise. And, even if it did, as will be discussed, Media Matters has made such showing.

AMERICAN OVERSIGHT

through an agent, was an act in the District of Columbia that injured Plaintiffs' constitutionally protected interests. And, although subsection (a)(3) falls short of the outer perimeter of the Due Process Clause, in the tort context, "minimum contacts exist where a defendant takes 'intentional and allegedly tortious[] actions' 'expressly aimed' at a jurisdiction," *Urquhart-Bradley v. Mobley*, 964 F.3d 36, 48 (D.C. Cir. 2020) (quoting *Calder*, 465 U.S. at 789), and the effects of those actions in the District of Columbia are not "some 'fortuitous' or 'unilateral' choice of the plaintiff's," *id.* (quoting *Walden v. Fiore*, 571 U.S. 277, 286 (2014)). That is precisely the circumstance here, as Defendant's intentional service of the CID is the act that caused chilling effects in the District. *Cf. Ferrara*, 54 F.3d at 829–30 (holding that *Calder* did not apply where the action arose from the attorney's "preexisting relationship" as a member of the New Mexico Bar).

Still, Defendant contends that he committed no act in the District of Columbia. Def.'s Opp'n at 13–15. That is not correct. The process server's in-forum acts are imputed to him as his "agent." D.C. Code § 13-423(a); *see also Walden*, 571 U.S. at 285. For that reason, Defendant's reliance on cases involving limited telephonic or electronic communications with a District resident or the mere mailing of matters into the District is misplaced. Def.'s Opp'n at 14 (citing *Slate v. Kamau*, No. 20-cv-3732 (BAH), 2021 WL 3472438, at * 6 (D.D.C. Aug. 6, 2021) (holding that such mailing is not an "act . . . in the District of Columbia" for purposes of subsection (a)(3)); *Dyson v. Dutok Ragen Homes & Invests.*, No. 21-cv-2280 (APM), 2022 WL 1294484, at *4 (D.D.C. Apr. 27, 2022) (holding that "one text message, a single email, and two phones calls" initiated from outside the District were not acts "in the District")).

The better analogy, as Plaintiffs submit, is to those cases holding that subsection (a)(3) is satisfied when abusive service of process causes injury within the forum. Pls.' Reply at 6–7. The

AMERICAN OVERSIGHT

Fourth Circuit, for instance, has held that "if an out-of-state defendant causes abusive process to be served upon an in-state plaintiff, and the plaintiff subsequently sues the defendant in plaintiff's state . . . , personal jurisdiction exists over the out-of-state defendant." *Vishay Intertechnology, Inc. v. Delta Int'l Corp.*, 696 F.2d 1062, 1067 (4th Cir. 1982). Numerous district courts have held the same. *See, e.g.*, *Guest v. Provident Funding Assocs.*, No. 12-cv-224, 2013 WL 1003524 (WHR), at *4 (S.D. Ohio March 13, 2013); *MHA Fin. Corp. v. Varenko Invs. Ltd.*, 583 F. Supp. 2d 173, 178 (D. Mass. 2008); *Schleit*, 693 F. Supp. at 420–22; *Balsly*, 2012 WL 628490, at *6; *Hori*, 520 F. Supp. at 70.

Defendant resists the force of these authorities on the grounds that, in those cases, "the service itself was tortious because the claim in question was service of *abusive* process," whereas "the CID functioned as an ***official act*** of a state law enforcement officer as part of an investigation." Def.'s Sur-Reply at 4 (emphasis in original). The court finds that factual distinction unpersuasive. In both cases, it is the act of service that caused the alleged injury, whether ordinary tortious injury in the abuse-of-process cases or a constitutional one as alleged here. The fact that service here is an official act is not dispositive. It gave rise to Plaintiffs' claims and, under *Ex Parte Young*, Defendant enjoys no immunity for the act.

Next, Defendant cites *Forras v. Rauf*, 812 F.3d 1102 (D.C. Cir. 2016), for the proposition that under subsection (a)(3) the injury cannot be part of the tort "because such a theory would obliterate subsection (3)'s careful distinction between 'injury' and 'act.'" Def.'s Opp'n at 14 (quoting 812 F.3d at 1107). That principle has no application here. It arises only in the context of defamation or libel actions in which the alleged tortious act takes place outside the District, and the plaintiff claims that an act took place in the District because of a subsequent publication here. *Forras*, 812 F.3d at 1107. In such circumstances, subsection (a)(3) is inapplicable because the

AMERICAN OVERSIGHT

tortious act and injury are one and the same. *See id.* That simply is not the case here, where there is an identifiable act (physically serving the CID on Media Matters) that is separate from the claimed injury (chilling of First Amendment rights).

B. No "Justiciable Injury"

Having determined that Plaintiffs are likely to be successful in establishing personal jurisdiction, the court turns to the remaining threshold issues.

Defendant contends that "Media Matters has suffered no judicially cognizable injury." Def.'s Opp'n at 19. Defendant's argument is based on the Supreme Court's opinion in *Reisman v. Caplin*, 375 U.S. 440 (1964), which, he says, stands for the proposition that "an agency's non-self-executing request for documents is not reviewable until the agency tries to enforce it," Def.'s Opp'n at 19 (arguing that "*Reisman* is now widely understood as having 'announced a rule strongly disfavoring any pre-enforcement review of investigative subpoenas'") (quoting *Belle Fourche Pipeline Co. v. United States*, 751 F.2d 332, 334 (10th Cir. 1984)). He thus contends that *Reisman* forecloses Media Matters from "seek[ing] pre-enforcement review of the CID in federal court." Def.'s Opp'n at 20. In the same section of his brief, Defendant quotes from the Ninth Circuit's decision in *Twitter, Inc. v. Paxton*, 56 F.4th 1170 (9th Cir. 2022), a similar case in which Twitter moved in federal court in California to oppose a CID that Defendant had served on it. The Ninth Circuit wrote there that "Twitter has not suffered an Article III injury because the CID is not self-enforcing." Def.'s Opp'n at 20 (quoting *Twitter*, 56 F.4th at 1176). For that same reason, Defendant argues, "Media Matters has suffered [no] cognizable injury." *Id.*

Defendant's argument conflates two distinct concepts: an adequate remedy at law and Article III standing. The first is an equitable principle, and the latter a constitutional one. *Reisman* concerns the adequacy of an alternative remedy and has nothing to do with justiciability. *Twitter*,

AMERICAN OVERSIGHT

by contrast, is about standing and has nothing to do with the adequacy of an alternative remedy. In any event, both arguments are wrong.

1. Alternative Adequate Remedy at Law

In *Reisman*, attorneys for two taxpayers sued the Internal Revenue Service ("IRS") Commissioner and an accounting firm that had been working on their client's financial records. *See* 375 U.S. at 440. The IRS had issued summonses to the accounting firm calling for the accountants to provide testimony and to produce reports, correspondence, and other materials relating to the taxpayers. *Id.* at 441–42. Their attorneys moved to enjoin the summonses, arguing that "the enforced production of" the requested papers was "an unlawful appropriation of [their] work product and trial preparation as well as an unreasonable seizure[.]" *Id.* at 442. The Court concluded that the "comprehensive procedure of the [IRS] Code, which provides full opportunity for review," either before an administrative hearing officer or a district court, provided adequate remedies that did not warrant judicial interference where the IRS had done no more than issue the summonses. *Id.* at 450. The Court would later make clear that *Reisman* had nothing to do with justiciability requirements. In *Donaldson v. United States*, the Court said that it had held in *Reisman* "that the petitioner-attorneys possessed an *adequate remedy at law* and that the complaint, therefore, was subject to dismissal." 400 U.S. 517, 539 (1971) (emphasis added).

Thus, properly framed, Defendant's argument is as follows: *Reisman* compels dismissal both because his office has not sought to enforce the subpoena and because the Texas Code provides an adequate remedy, permitting Plaintiffs to file an action to modify or set aside the CID in state court in Travis County, Texas. Def.'s Opp'n at 19–20 (citing Tex. Bus. & Com. Code § 17.61(g)).

AMERICAN OVERSIGHT

Reisman is inapplicable for two reasons. First, the sole alternative remedy identified here is judicial relief in a foreign forum. According to Defendant, Media Matters, which is a D.C. resident, would have to go to Texas state court to obtain relief. *See id.* Defendant has not cited any authority holding that an exclusive remedy in foreign state court is an adequate remedy at law. In *Reisman*, the remedy that the Court found to be sufficient involved review before an administrative hearing officer and, if the Commissioner moved to enforce the summons, before a district court "for the district *within which the person so summoned resides or is found*[.]" 375 U.S. at 447 n.7 (emphasis added). The Texas Code contains no equivalent remedies for a non-resident challenging a CID.

Second, "[t]his case is different from *Reisman* because it involves the First Amendment, under which a chilling effect on speech can itself be the harm." *Twitter*, 56 F.4th at 1178. "The key to the holding in *Reisman*," the Ninth Circuit explained in *Twitter*, "was that there had not yet been an injury: The Court held that the remedy specified by Congress (to challenge the document request) 'suffer[ed] no constitutional invalidity." *Id.* (quoting *Reisman*, 375 U.S. at 450). Not so here. As will be discussed below, Plaintiffs' constitutional injury—the chilling effect on their First Amendment rights—has occurred and is ongoing. Plaintiffs cannot "avoid that alleged injury by challenging the document request" in Texas state court. *Id.* at 1179. *Reisman* thus does not compel denying injunctive relief.

2. Cognizable Injury

Defendant says this case is identical to *Twitter*. Def.'s Opp'n at 20. As in that case, Defendant argues, Plaintiffs have suffered no injury because the CID is not self-enforcing and, to the extent they claim a First Amendment injury, any such injury is "self-inflicted[.]" *Id.* at 21

AMERICAN OVERSIGHT

(quoting *Twitter*, 56 F.4th at 1176) (internal quotation marks omitted). Defendant is wrong on both counts.

Where, as here, a plaintiff brings a claim of First Amendment retaliation, "the injury-in-fact element is commonly satisfied by a sufficient showing of self-censorship, which occurs when a claimant is chilled from exercising his right to free expression." *Edgar v. Haines*, 2 F.4th 298, 310 (4th Cir. 2021), *cert. denied*, 142 S. Ct. 2737 (2022) (quoting *Cooksey v. Futrell*, 721 F.3d 226, 235 (4th Cir. 2013)) (internal quotation marks omitted); *see also Twitter*, 56 F.4th at 1174 (citing *Edgar*, 2 F.4th at 310); *Cooksey*, 721 F.3d at 236 (finding justiciable injury where a state official informed plaintiff that she had "statutory authority" to seek an injunction against him if he did not edit his diet-advice website and plaintiff alleged "speech-chilling uncertainty about the legality of private conversations and correspondence"). The chill must be "objectively reasonable." *Edgar*, 2 F.4th at 310 (quoting *Benham v. City of Charlotte*, 635 F.3d 129, 135 (4th Cir. 2011)).

Through sworn affidavits, Plaintiffs have demonstrated the profound chilling impact that the CID has had on its news operations and journalistic mission. Media Matters' Editor-in-Chief, Benjamin Dimiero, declares that the CID has "dramatically changed [his] team's editorial processes[.]" Pls.' Mot., Decl. of Benjamin Dimiero in Supp. of Pls.' Mot., Ex. 4, ECF No. 4-4, ¶ 16 [hereinafter Dimiero Decl.]. Dimiero describes a "new culture of fear" amongst Media Matters staff about research and reporting. *Id.* For example, he avers that the editorial team and leadership now engage in "greater internal scrutiny and risk calculation" when approaching stories that they otherwise would have published after their normal vetting process, such as stories about media coverage of the Defendant's anti-abortion actions in Texas. *Id.* Dimiero further states that other stories, such as one concerning content moderation decisions made by X, "may go unreported on

AMERICAN OVERSIGHT

entirely." *Id.* "There is," he says, "a general sense among our team and organization that we must tread very lightly[] and be careful not to cross lines that would jeopardize our work or our employees' safety . . . because of concern that certain reporting could make us a target for further retaliation." *Id.*

According to Dimiero, since Defendant announced the investigation, "Media Matters's editorial leaders have pared back reporting and publishing, particularly on any topics that could be perceived as relating to the Paxton investigation." *Id.* ¶ 17. Absent the CID, Media Matters would have coordinated follow up research and reporting on Hananoki's November 16 Article, as well as the one that appeared the next day. *Id.* ¶ 18. Media Matters, for instance, "received several tips from people who have seen advertisements for prominent brands placed alongside extremist content," but has limited the scope of its reporting on the subject "for fear of additional retaliation." *Id.* Furthermore, Media Matters otherwise would have published at least two additional articles on the topics of Hananoki's reporting, but his team withheld them due to concerns of further legal action. *Id.* ¶ 19. Writers have expressed concerns that their investigations could serve as the basis for retaliatory legal action and that their work product might be subject to investigative demands. *Id.* ¶ 22; *see also* Padera Decl. ¶¶ 23–24 (same). Media Matters' leadership and editorial team have since assumed a more significant role in publishing decisions, which "has significantly slowed down [their] editorial and publication process." Dimiero Decl. ¶ 21. Media Matters has been taking these steps out of fear of retaliation, not out of legitimate concerns about fairness or accuracy. *Id.* ¶ 16.

The CID also has adversely impacted Hananoki. According to Hananoki, the CID has forced him to curtail his investigation and coverage of X out of fear of harassment, threats, and retaliation. Hananoki Decl. ¶ 29. His editors explicitly have told him that, because of the

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001457

investigation, Media Matters will not publish work that he already has prepared regarding Musk and extremism on X. *Id.* ¶ 30. That includes two pieces concerning X's placement of advertising alongside antisemitic, pro-Nazi accounts. *Id.* ¶ 31. And though he has generated story ideas on related topics, he has "self-censored," *id.* ¶ 34, and "not pursued them due to the fear of further legal retaliation," *id.* ¶ 32. According to Hananoki, the CID also has impeded his relationship with his editor and others at Media Matters, because of concern that their internal communications regarding story ideas could be subject to the CID. *Id.* ¶¶ 33, 35. As a result, Hananoki's reporting has appeared less frequently online. Media Matters used to publish Hananoki's work approximately once or twice a week. Dimiero Decl. ¶ 20. Between the CID's issuance on November 22, 2023, and mid-January 2024, Media Matters had published only two of his articles. *Id.*

Defendant has not challenged these concrete and particularized declarations, and they are what distinguish this case from *Twitter*. Whereas Twitter's complaint and declarations "[did] not quite show chilled speech," Plaintiffs here have offered ample evidence of the chilling effects of the investigation and CID. *Cf.* 56 F.4th at 1175. Moreover, the "self-inflicted" injuries the Ninth Circuit said were insufficient to establish standing were not about self-censorship, but about the "financial costs and diverted employee time" that Twitter expended to produce some records "voluntarily[.]" *Id.* at 1176. And the Ninth Circuit said that Twitter had "not suffered an Article III injury because the CID is not self-enforcing" in order to make the point that in the posture of that case, Twitter's claimed injuries were speculative and "may never occur." *Id.* Here, however, Plaintiffs have offered ample evidence of injury, so the fact that the CID is not self-enforcing is of no moment.

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001458

The other cases to which Defendant cites are similarly inapposite. In *Google v. Hood*, the Mississippi Attorney General issued an administrative subpoena, seeking information on Google's platforms, advertising practices, and efforts to police illegal content. 822 F.3d 212, 218–19 (5th Cir. 2016). Google filed suit, seeking a preliminary injunction and alleging that the Attorney General's investigation violated Google's immunity under the Communications Decency Act and its Fourth and First Amendment rights. *Id.* at 219–20. Addressing the First Amendment claim, the Fifth Circuit observed: "A preliminary injunction is not appropriate [] unless the party seeking it can demonstrate that First Amendment interests are either threatened or in fact being impaired at the time relief is sought." *Id.* at 227–28 (internal quotation marks omitted). The Fifth Circuit did not have before it, as here, self-censorship and other chilling effects experienced by a media organization and journalist. *See id.* at 228; *see also Twitter*, 56 F.4th at 1178 n.3 (explaining that the *Google v. Hood* "court did not recognize that Google could have suffered injury in the form of objectively reasonable chilling of its speech or another legally cognizable harm from the CID").

For this same reason, this case does not present the concern expressed by Judge Wilkey in *Reporters Committee for Freedom of Press*, and relied on by Defendant, that "[a]ny person can establish the existence of a First Amendment right and of an investigative technique that could possibly be employed in bad faith as to violate that right." Def.'s Opp'n at 1 (quoting 593 F.2d 1030, 1070 (D.C. Cir. 1978)). The "person" here is a press organization and a journalist, and they have presented the "real and imminent prospect" of harm that Judge Wilkey demanded. *Reps. Comm. for Freedom of Press*, 593 F.2d at 1070.

Finally, *Laird v. Tatum*, 408 U.S. 1 (1972), offers Defendant no help. *See* Def.'s Opp'n at 21. There, the plaintiffs claimed that an Army data-gathering system chilled their First Amendment rights. *Laird*, 408 U.S. at 13. The Court rejected this claim because it amounted to

AMERICAN OVERSIGHT

a "disagree[ment] with the judgments made by the Executive Branch," and they had presented only an amorphous "subjective 'chill'" and not "a claim of specific present objective harm or a threat of specific future harm." *Id.* at 13–14. Those are not the facts here.

Accordingly, there is no Article III impediment to the court hearing this case, and Plaintiffs are not required to turn to a state court in Texas for relief.

C. Venue

Defendant makes a half-hearted argument that venue is not proper in the District. Def.'s Opp'n at 21–22. Venue is proper here because a "substantial part of the events . . . giving rise to the claim," 28 U.S.C. § 1391(b)(2), occurred here: physical service of the CID on Media Matters and the chilling effect that ensued, *see Twitter, Inc. v. Paxton*, No. 21-cv-01644 (MMC), 2021 WL 1893140, at *2 (N.D. Cal. May 11, 2021) (same).

D. Likelihood of Success on the Merits

The court now turns to Plaintiffs' likelihood of success on the merits. Although Plaintiffs argue that they have established a likelihood of success on all of their claims, Pls.' Mem. at 23–40, the court only addresses one: First Amendment retaliation. To prevail on that claim, a plaintiff must show that (1) they engaged in conduct protected under the First Amendment; (2) "the defendant took some retaliatory action sufficient to deter a person of ordinary firmness in plaintiff's position from speaking again; and (3) a causal link between the exercise of a constitutional right and the adverse action taken against him." *Aref v. Lynch*, 833 F.3d 242, 258 (D.C. Cir. 2016). On this record, Plaintiffs have proven each of these elements.

Protected Conduct. Plaintiffs' reporting on matters of public concern are core First Amendment activities. *See N.Y. Times v. Sullivan*, 376 U.S. 254, 269 (1971) ("The general proposition that freedom of expression upon public questions is secured by the First Amendment

AMERICAN OVERSIGHT

has long been settled by our decisions."); *Snyder v. Phelps*, 562 U.S. 443, 451–52 (2011) ("Speech on matters of public concern is at the heart of the First Amendment's protection.") (cleaned up).

Defendant nevertheless contends that, because Hananoki's articles were "deliberately designed" to mislead, they are not "constitutionally protected." Def.'s Opp'n at 23. Oddly, he cites to a Lanham Act case and a Federal Trade Commission Act case for that proposition, which have no application here. *Id.* (citing *Riggs Inv. Mgmt. Corp. v. Columbia Partners, L.L.C.*, 966 F. Supp. 1250 (D.D.C. 1997); *Novartis Corp. v. FTC*, 223 F.3d 783 (D.C. Cir. 2000)).

Objective Deterrence. Defendant's investigation of Media Matters is "retaliatory action sufficient to deter a person of ordinary firmness in plaintiff's position from speaking again[.]" *Aref*, 833 F.3d at 258. Defendant makes no contrary argument, Def.'s Opp'n at 23, so the court treats as conceded the sufficiency of Plaintiffs' proof as to this element, *see Day v. D.C. Dep't of Consumer & Regul. Affs.*, 191 F. Supp. 2d 154, 159 (D.D.C. 2002) ("If a party fails to counter an argument that the opposing party makes in a motion, the court may treat that argument as conceded."); *see also Wannall v. Honeywell, Inc.*, 775 F.3d 425, 428 (D.C. Cir. 2014) ("[I]f a party files an opposition to a motion and therein addresses only some of the movant's arguments, the court may treat the unaddressed arguments as conceded.").

Still, the court explains why Plaintiffs prevail regardless. "[T]he threat of invoking legal sanctions" is sufficient to deter protected speech. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963). So, too, is the "threat of administrative and judicial intrusion into newsgathering and editorial process" that arises from official process and its possible enforcement. *United States v. LaRouche Campaign*, 841 F.2d 1176, 1182 (1st Cir. 1988) (internal quotation marks omitted). The Texas Code authorizes the Attorney General to seek restraint of future conduct and the imposition of civil penalties of up to $10,000 per violation in a Texas state court if he has "reason to believe"

AMERICAN OVERSIGHT

Plaintiffs violated the DTPA. Tex. Bus. & Com. Code § 17.47(a), (c). He also can seek to have Plaintiffs held in contempt in Texas state court for not complying with the CID. *Id.* § 17.62(c). These potential punitive consequences, as well as possible judicial intervention to enforce the CID, make Plaintiffs' claim of chilled expression objectively reasonable.

There is more. "The compelled production of a reporter's resource materials can constitute a significant intrusion . . . [that] may substantially undercut the public policy in favor of the free flow of information to the public[.]" *United States v. Cuthbertson*, 630 F.2d 139, 147 (3d Cir. 1980). The CID seeks such records. It demands "internal and external communications . . . regarding Elon Musk's purchase of X," X's CEO "Linda Yaccarino," and Hananoki's November 16 Article, as well as external communications with "employees and representatives of X" and the various companies that were the subject of the November 16 Article for a three-week period. Branch Decl., Ex. A, at 11. The compelled disclosure of such "research materials poses a serious threat to the vitality of the newsgathering process." *Shoen v. Shoen*, 48 F.3d 412, 416 (9th Cir. 1995). And, of course, Plaintiffs' actual self-censorship in response to the announced investigation and the CID "provides some evidence of the tendency of [Defendant's] conduct to chill First Amendment activity." *Hartley v. Wilfert*, 918 F. Supp. 2d 45, 54 (D.D.C. 2013) (quoting *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 500 (4th Cir. 2005)). The court need not repeat that uncontested evidence here.

Causation. To establish causal link, "[i]t is not enough to show that an official acted with a retaliatory motive and that the plaintiff was injured—the motive must *cause* the injury. Specifically, it must be a 'but-for' cause, meaning that the adverse action against the plaintiff would not have been taken absent the retaliatory motive." *Nieves v. Bartlett*, 139 S. Ct. 1715, 1722 (2019). Defendant's initial press release establishes that Defendant opened an investigation of

AMERICAN OVERSIGHT

Media Matters in response to its protected media activities. Branch Decl., Ex. B, at 13. Also, Defendant's description of Media Matters as a "radical anti-free speech" and "radical left-wing organization" and his encouraging of other Attorneys General to look into Media Matters' reporting is evidence of retaliatory intent. *See supra* Section II.A.3.

Defendant has not responded to Plaintiffs' causation evidence. *See* Def.'s Opp'n at 22–23. Notably, he has not submitted a sworn declaration that explains his reasons for opening the investigation. By remaining silent, he has conceded the requisite causal link. *See Day*, 191 F. Supp. 2d at 159.

E. Irreparable Harm

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Pursuing Am.'s Greatness v. FEC*, 831 F.3d 500, 511 (D.C. Cir. 2016) (internal quotation marks omitted). "A preliminary injunction is not appropriate, however, unless the party seeking it can demonstrate that First Amendment interests are either threatened or in fact being impaired at the time relief is sought." *Nat'l Treasury Emps. Union v. United States*, 927 F.2d 1253, 1254 (D.C. Cir. 1991) (cleaned up). In *National Employees Treasury Union*, the D.C. Circuit rejected a request for injunctive relief where nothing in the record evinced that the plaintiffs would have "cease[d] speaking or writing before the district court resolve[d] their constitutional challenges." *Id.* at 1255. There is no such absence of evidence here. As discussed above, the investigation and the CID have caused Plaintiffs to self-censor when making research and publication decisions, adversely affected the relationships between editors and reporters, and restricted communications with sources and journalists. Plaintiffs have amply "demonstrate[d]

AMERICAN OVERSIGHT

some likelihood of a chilling effect on their rights" to justify preliminary injunctive relief. *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 301 (D.C. Cir. 2006).

Defendant asserts that Plaintiffs' claimed harm is not irreparable because it is "self-inflicted," as they have not taken the "opportunity to avail themselves of a regulatory scheme [under the DTPA] to avoid the very harm for which they seek injunctive relief[.]" Def.'s Opp'n at 24 (quoting *Safari Club Int'l v. Salazar*, 852 F. Supp. 2d 102, 123 (D.D.C. 2012)). But that argument fails to recognize that Plaintiffs are *already* suffering First Amendment harm in the form of chilled protected activities. Plaintiffs' "constitutional injury has already occurred; there is no way for it to avoid that alleged injury by challenging the document request" in Texas state court. *Twitter*, 56 F.4th at 1179. Only injunctive relief will "prevent the [ongoing] deprivation of free speech rights." *Chaplaincy of Full Gospel Churches*, 454 F.3d at 301 (quoting *Bronx Household of Faith v. Bd. of Educ.*, 331 F.3d 342, 349–50 (2d Cir. 2003)).

Defendant also contends that it is "factually untrue" that Media Matters has had its expression chilled, citing television appearances by Media Matters' President, in which he has defended the organization's reporting and "doubled down" on the accuracy of the X images contained the November 16 Article. Def.'s Opp'n at 24; Fuller Decl., Exs. E & F, at 24–39. But this argument asks too much of Plaintiffs. They "need not show that the government action led them to stop speaking 'altogether,'" only that it would be "likely to deter a person of ordinary firmness from the exercise of First Amendment rights." *Edgar*, 2 F.4th at 310 (quoting *Benham* 635 F.3d at 135). Therefore, the fact that Media Matters' President has publicly defended its work does not mean that Plaintiffs have not suffered irreparable harm.

AMERICAN OVERSIGHT

F. Balance of Equities and the Public Interest

The balance of equities and the public interest favor Plaintiffs.[10] Defendant has not identified any resulting harms to his interests if the court imposes an injunction. Def.'s Opp'n at 25. And "there is always a strong public interest in the exercise of free speech rights otherwise abridged by an unconstitutional regulation[.]" *Pursuing Am.'s Greatness*, 831 F.3d at 511. Defendant does not argue otherwise. Def.'s Opp'n at 25. The court thus finds that the final two *Winter* factors support awarding injunctive relief.

V. CONCLUSION

For the foregoing reasons, the court grants Plaintiffs' motion for a preliminary injunction , ECF No. 4. The Order accompanying this Memorandum Opinion sets forth the terms of the injunction. Fed. R. Civ. P. 65(d).

Additionally, because Defendant has moved to dismiss on the very same grounds that he has opposed injunctive relief, Def.'s Mot. to Dismiss, ECF No. 31, that motion is denied.

Dated: April 12, 2024

Amit P. Mehta
United States District Judge

[10] The court does not presume here that Defendant's interest and the public interest are one and same, *cf. Pursuing Am.'s Greatness*, 831 F.3d at 511, as federalism considerations may create some daylight between the two factors.

AMERICAN OVERSIGHT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MEDIA MATTERS FOR AMERICA, ET AL., Plaintiffs, vs. WARREN KENNETH PAXTON, JR., Defendant.	CV No. 24-00147 Washington, D.C. February 15, 2024 10:00 a.m.

TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING PROCEE DINGS
BEFORE THE HONORABLE AMIT P. MEHTA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiff Media: Aria C. Branch
Christopher Dooley Do dge
Samuel Ward-Packard
ELIAS LAW GROUP LLP
250 Massachusetts Ave nue NW
Suite 400
Washington, D.C. 2000 1
(202) 968-4518
Email: abranch@elias. law

AMERICAN OVERSIGHT

APPEARANCES CONTINUED:

For the Defendant:

Gene C. Schaerr
Kenneth A. Klukowski
SCHAERR JAFFE LLP
1717 K Street NW
Suite 900
Washington, D.C. 2000 6
(202) 787-1060
Email:
gschaerr@schaerr-jaff e.com

Christopher Lavorato
Reuben William Blum
OFFICE OF THE ATTORNE Y GENERAL
General Litigation Di vision
P.O. Box 12548
MC-019-1
Austin, TX 78711
(512) 475-4476
Email:
Chris.lavorato@oag.te xas.gov

Court Reporter:

William P. Zaremba
Registered Merit Repo rter
Certified Realtime Re porter
Official Court Report er
E. Barrett Prettyman CH
333 Constitution Avenue, NW
Washington, D.C. 2000 1
(202) 354-3249

Proceedings recorded by mechanical stenography; tra nscript produced by computer-aided transcription

AMERICAN OVERSIGHT

P R O C E E D I N G S

COURTROOM DEPUTY: This court is now in session; the Honorable Judge Amit P. Mehta presiding.

THE COURT: Good morning. Please be seated, everyone.

COURTROOM DEPUTY: Good morning, Your Honor. We're on the record in Civil Case 24-147, Media Matters for America, et al., versus Warren Kenneth Paxton, Jr.

We have Ms. Aria Branch, Christopher Dodge, and Samuel Ward Packard for plaintiffs.

And we have Mr. Gene Schaerr, Kenneth Klukowski, Chris Lavorato, and Reuben Blum for the defense.

THE COURT: All right. Good morning, Counsel. Nice to be with all of you.

Okay. So we're here this morning to discuss the plaintiffs' motion for preliminary injunction.

So I've read the papers, but I'm happy to hear further argument and have some questions for both sides.

So why don't we begin with the plaintiffs' counsel.

MS. BRANCH: Good morning, Your Honor, and may it please the Court.

THE COURT: Good morning.

MS. BRANCH: Aria Branch for the plaintiffs.

Plaintiffs asked this Court to confirm that

AMERICAN OVERSIGHT

members of the press can do their most essential work, investigative journalism about powerful public figures, without being threatened by high-ranking government officials halfway across the country who disagree with their politics and viewpoints.

Elon Musk declared war against my clients because of their unflinching reporting, and he and his allies have been going around publicly recruiting State Attorneys General to help deliver his payback.

Texas Attorney General Ken Paxton answered the call immediately. But as he himself has said in amicus briefing in the ExxonMobil case, which is cited in our papers, State Attorney Generals certainly have power to investigate, however, "this does not include the power to engage in unrestrained investigative excursions to promulgate a social ideology or chill the expressions of points of view."

Yet that is precisely what Paxton has done here. He has weaponized his state authority and issued a wide-ranging demand for Media Matters to hand over its most sensitive documents, internal documents, internal and external communications, donor lists, and the list goes on.

In the press release announcing his investigation, he did not hide his motive for commencing it. He called Media Matters a radical anti-free speech organization, and

AMERICAN OVERSIGHT

he has not hidden his personal motive throughout the course of this litigation.

Unsurprisingly, his harassment campaign is working. And the plaintiffs are self-muzzling out of fear of further harassment and retaliation. In legal parlance, they are chilled.

There is no free press in America if high-ranking government officials can invite themselves into a journalist's place of business to open the drawers, to go through computer drives and copy the donor lists of any publisher in the country anytime an article is written that they simply disagree with.

We ask that this Court enjoin Paxton's efforts to do just that, and he has made clear that he will not stop unless and until this Court tells him to.

I understand that the key disputes in this case revolve around the where and the when of this lawsuit: Can plaintiffs sue here? And can they sue now? And the answer to both questions is yes.

THE COURT: Ms. Branch, if I could interrupt you.

Am I correct that you have -- you sued Mr. Paxton in his official capacity, correct?

MS. BRANCH: That is correct, Your Honor.

THE COURT: And so would you also agree then I am supposed to treat Mr. Paxton as if he is not an individual

AMERICAN OVERSIGHT

but the State of Texas?

MS. BRANCH: No, Your Honor.

And I would note that this argument that Ken Paxton is not a person under the D.C. long-arm statute is one that was raised in the defendant's surreply. I don't think it was properly raised because I don't think it was responsive to and within the scope of Your Honor's order.

That said, this argument is also wrong. The plaintiffs sued Paxton and not the State of Texas because it is Paxton who has unlawfully and unconstitutionally using his office to retaliate against plaintiffs.

He is indisputably a person within the scope of the long-arm statute. And plaintiffs rely upon his conduct, not any conduct of the State of Texas and not any separate contacts of the State of Texas for personal jurisdiction in this case.

THE COURT: So, I mean, let's sort of get to the heart of it for a moment, which is that -- I mean, it sounds like you are asking me to essentially apply the *Ex parte Young* fiction to the D.C. long-arm statute.

Is that a fair synopsis of what you're suggesting?

MS. BRANCH: So I don't think that is necessary, but I do think that is a way to resolve this question.

THE COURT: So help me out then because I want to understand how I get to where you want me to go, because,

AMERICAN OVERSIGHT

one, I don't -- look, I think there are a couple of things that really can't be disputed.

One is that he's being sued in his official capacity. And at least for immunity purposes, we treat that as a -- we treat that as a suit against him -- we don't treat -- typically, he is -- somebody who is sued in their official capacity is essentially sued as the State, right? I mean, that is the idea.

There is a carve-out under *Ex parte Young* for constitutional violations in prospective relief, and that's where we had ourselves, right?

So you haven't sued Texas. You sued Ken Paxton in his official capacity, *Ex parte Young*. Great. You're in good shape there. No immunity issue.

So there's two issues.

One is, D.C. Circuit clearly said that D.C. long-arm statute does not reach states. So what we're then left with is this question, it seems to me -- or tell me if you agree with this.

Do I then have to treat him as sort of this -- under this *Ex parte Young* fiction under the long-arm statute in order to ensure that that inquiry is satisfied, separate and apart from the constitutional inquiry?

MS. BRANCH: So I think the plain text of the long-arm statute under that -- I think Paxton is a person

AMERICAN OVERSIGHT

under that. And we have sued Paxton and relied on his contacts with D.C., not the State of Texas.

So I think he is a person, not only as a matter of plain language and common sense, but also under the logic of *Ex parte Young*. *Young* recognizes --

THE COURT: Sorry to interrupt you.

He can't be a person in the context of just a plain language, because he's being sued in his official capacity. And so he's essentially being sued as the State. I mean, I think that that goes without saying. Judge Bates recognized that in -- I can't remember what case it was -- West? I can't remember.

MS. BRANCH: *West v. Holder*.

THE COURT: Right.

So I don't think there's any real dispute about that.

I mean, I really do think you are sort of in a place where you do have to rely on the *Ex parte Young* fiction to apply under the long-arm. And I guess the question is: Why should I read essentially what is a judicial exception into a state statute or a local statute?

MS. BRANCH: Well, Your Honor, as Your Honor has recognized, under *Ex parte Young*, claims brought against state officials acting in violation of the Constitution strips that official of their official and representative

AMERICAN OVERSIGHT

capacity and subjects them to the consequences of their individual conduct, and that is precisely what we allege here, that Paxton has violated the Constitution. We're suing for injunctive and prospective relief.

And, you know, as Your Honor noted, several judges in this District have recognized that the logic of *Young* also extends to the long-arm statute. And --

THE COURT: Well, I don't know that I'd go that far. I think they've identified the issue. I don't know that they've said that *Young* actually will go that far.

Look, here's the other question, which is, that by the logic you've put forward, isn't that essentially an end run around the statute -- the fact that the statute doesn't reach states?

In other words, if somebody who's sued in their official capacity is always treated as an individual for purposes of the long-arm, doesn't that then effectively get around the long-arm's -- the fact that the long-arm doesn't reach states?

MS. BRANCH: I don't think it does, Your Honor, because there's a reason why the *Ex parte Young* doctrine exists, right? It's that when an official-capacity defendant -- yes, they're acting -- they're not acting in their official capacity when they are -- when there are plausible allegations that they have violated the

AMERICAN OVERSIGHT

Constitution.

And so in a case like this one where we have alleged that Paxton has violated our client's First Amendment rights, he doesn't get the protection of sovereign immunity; he doesn't get the protection of, you know, acting in the cloak of his official capacity.

We're not suing the State of Texas. We're suing him. And all of the contacts that we've identified in our briefing are based on his contacts with the state, not the state of Texas. And I think --

THE COURT: Is there any case that you're aware of that has gone as far as you want me to go? Because I can tell you I have looked far and wide and have not found a single one.

In fact, there is at least some language in a Fifth Circuit case that suggests that I should not -- that there is not a basis to sort of import the *Ex parte Young* fiction into a long-arm statute.

This is *Stroman versus Wercinski*, W-e-r-c-i-n-s-k-i, from the Fifth Circuit. I'm not sure -- you're probably familiar with it.

Now, what the Fifth Circuit there said was entirely in dicta, truth be told. And the Fifth Circuit itself even seemingly recognized that in a more recent case called *Bulkley*, B-u-l-k-l-e-y, which is at 1 F.4th 346. And

AMERICAN OVERSIGHT

in a footnote, the last footnote in the opinion, it says, "Don't believe the dicta that we used earlier."

There have been some District Courts that have followed the *Stroman versus Wercinski* dicta. But I have not found a single case that applies *Ex parte Young* to a state long-arm statute.

MS. BRANCH: So, Your Honor, I would point you to Chief Boasberg's language in the *Wisconsin Voters Alliance v. Pence* case where he said, "It is true that in certain limited cases, a suit against a state official in her capacity may be considered a suit against her in her individual capacity for purposes of the D.C. long-arm statute."

And in that case, admittedly, the Court did not find jurisdiction, but it recognized that this exception applies; the logic of Ex parte Young exists. And we know --

THE COURT: I'm sorry. What's the -- do you have a citation, or can you just restate the --

MS. BRANCH: I do. That is *Wisconsin Voters Alliance v. Pence*. It's 2021 Westlaw 686359 at page 1. That's a 2021 case, Your Honor.

THE COURT: Okay.

MS. BRANCH: And we know that the statute does reach official-capacity defendants in part through the general jurisdiction statute, which also uses the word

AMERICAN OVERSIGHT

"person" and relies on the exact same definition of "person" that applies to the specific jurisdiction statute.

And so, you know, we know that official-capacity defendants can be subject to general jurisdiction in D.C. I think to hold otherwise would lead to very absurd consequences.

It would mean that individual defendants couldn't even be persons under the District's general jurisdiction statute which would, for example, bar Section 1983 suits against D.C. police officers in their official capacity, because such officers would no longer be persons. But as Your Honor knows, those types of suits are extremely common.

So, you know, I don't know that there is a case in D.C. that specifically applies *Ex parte Young*. But the Wisconsin Alliance -- *the Wisconsin Voters Alliance* case --

THE COURT: I'm sorry.

So your point is or what you suggested -- and maybe this isn't even really going to come up -- but is that, say, hypothetically, there's a Monell claim against the District of Columbia. You sue -- or you've sued the chief of police in her official capacity, and the personal jurisdictional analysis in that case would be general jurisdiction, you think?

MS. BRANCH: Yes, Your Honor.

THE COURT: Because --

AMERICAN OVERSIGHT

MS. BRANCH: Because that -- the police officer is presumably at home, basically at home in the District of Columbia. And the general jurisdiction statute, 13-422, shares the same statutory definition of "person" as does the specific jurisdiction statute.

And I think --

THE COURT: Is there a case that sort of stands for that proposition that -- you know, we could -- I mean, say, hypothetically, the chief of police doesn't reside in the District, lives in Virginia or Maryland; do you still think that there would be general jurisdiction over the chief of police?

MS. BRANCH: I think so, Your Honor.

And I think we have identified a couple of cases that I can reference.

THE COURT: Okay.

MS. BRANCH: I don't have them at my fingertips.

THE COURT: I sort of say this to both sides, and I don't want to be overly critical here.

This is sort of the key threshold issue. And I find it problematic that the defendants didn't raise it in their opposition.

I mean, you didn't cite the sort of key D.C. Circuit case on this issue until the surreply, which, I mean, raises questions of whether you've even waived the

AMERICAN OVERSIGHT

issue altogether. And so I'm really left with a set of briefs that do not really address what is the key issue here.

I mean, you know, the *Ferrara* case clearly says that states aren't subject to the D.C. long-arm statute. That wasn't cited until I invited you to bring out a brief. And even then, you cited in a single line, in a single sentence. It's really quite sort of astonishing to me that this wasn't vetted more thoroughly. But here we are, in any event.

MS. BRANCH: Yeah, and, Your Honor, I think that the defendants have waived the issue. And I know, you know, it is an important one. And I think, you know, given the case law that's out there, it would be -- you know, the Court would be well within its bounds to reject it as waived. This is obviously a far-reaching and sequential holding.

THE COURT: I mean, I know that.

I think the difficulty I'm having with going that route is that tomorrow I'll get a motion to dismiss from them that raises the very same issue.

So, okay, you win in the short run, but we're still going to need to address that issue tomorrow.

MS. BRANCH: And, Your Honor, you raised the *Ferrara* case, which I think is important here.

AMERICAN OVERSIGHT

In that case, the D.C. Circuit -- the defendant in that case was -- she was sued in her official copy. And in that case, the D.C. Circuit went forward and analyzed her contacts with the District of Columbia without regard to this "person" issue.

It was only when the plaintiffs argued that she was acting in her capacity -- she was acting on behalf of the State that the Court determined and, you know, stated that states don't have -- states are not persons under the long-arm statute.

So I think Your Honor could do the same thing here, which is proceed with analyzing Paxton's contacts with the District of Columbia because we have sued him, yes, in his official capacity; but under *Ex parte Young*, he is stripped of his official and representative sort of cloak because of the plausible allegations that he has violated the Constitution.

And just to go back to the point about the general jurisdiction statute, it does say that the District of Columbia court may exercise personal jurisdiction over a person who maintains its principle place of business in D.C.

So I think with respect to D.C. police officers, that would be a basis to find that the Court has general jurisdiction. And certainly in constitutional 1983 suits,

AMERICAN OVERSIGHT

they're subject to jurisdiction -- to suit in D.C. with regularity.

And at bottom, you know, I think this case is a unique case. It is the reason why sort of *Ex parte Young* exists. It's the reason why, you know, Ken Paxton should be treated as a person under the long-arm statute. And I think to do so otherwise would have -- would lead to absurd consequences.

It would mean that officials like Paxton could never be held accountable in D.C. courts, no matter what type of injury they impose on D.C. residents. If they direct their injury to D.C. residents, as they have done in this lawsuit, he cannot be subject to suit here; and we have to go to Texas or some other foreign jurisdiction to defend our rights.

And I think this is, you know, really important in this type of case where other Attorney Generals heard Ken Paxton's call and may be interested in potentially, you know, investigating Media Matters further. What this would mean is that Media Matters, my clients, would have to go to defend themselves in courts around the country, despite the fact that these demands are retaliatory, clearly retaliatory, and are directed at them in the District of Columbia.

They seek documents that are located in the

AMERICAN OVERSIGHT

District of Columbia. It is clear that Media Matters is located here. There's been no dispute about that. And, in fact, when we were in Maryland, the way that the defendants defended against personal jurisdiction in Maryland was to say that we should have brought suit -- they essentially said that we should have brought suit in D.C.

THE COURT: Right.

MS. BRANCH: So here we are.

THE COURT: So help me then move past the Ex parte Young long-arm issue, and let's say we get past that and we're now focused on the question of minimum contacts and satisfying due process.

Is it -- help me understand your position. How is it that you would say that Mr. Paxton has availed himself of the protections of D.C. law?

MS. BRANCH: So, I mean, I would first point Your Honor to the statements that were made by defendant's counsel in the Maryland proceedings. When they were asked whether or not they directed their investigation at Media Matters in D.C., Mr. Lavorato, I believe, said, in response to that question, "Absolutely."

In fact, the defendants pushed jurisdiction in D.C. so much that Judge Xinis in Maryland thought that they had conceded the issue, and they had to correct her on that.

So, you know, at the end of the day, personal

AMERICAN OVERSIGHT

jurisdiction really is about fairness. It's about whether or not being subject to suit here offends traditional notions of fair play and substantial justice.

And I would suggest, Your Honor, that it is absolutely not unfair for Ken Paxton to be subject to suit here.

He serves the demand here in D.C. where Media Matters is located, where its documents are, and where it is suffering the injury. He purposefully targeted his tortious act at the District, and due process is absolutely satisfied, which means --

THE COURT: But, I'm sorry, but help me out again. I want to go back to my question.

I understand what your arguments are with respect to the conducting business here. You're conducting business or transacting business under (a)(1). Your theory is that by sending the subpoena into the District, that essentially constitutes conducting business?

Am I right about that?

MS. BRANCH: Correct, Your Honor.

THE COURT: And then in terms of (a)(3), your tortious interference is what you've just described, by sending the subpoena into D.C., that that was a tort here and has caused injury here. That I got.

MS. BRANCH: Correct.

AMERICAN OVERSIGHT

THE COURT: But I think the question is the one I'm still grappling with that these Fifth Circuit cases have -- or it seems to be really the only circuit that has addressed this issue in terms of an out-of-state official being brought into court in a different state -- in a federal court and whether there are sufficient contacts. And you all have cited the *Grewal* decision, which I'll ask defense counsel about in a moment.

But help me out again. Go back and just tell me how you think Mr. Paxton has availed himself of the protections of the District of Columbia by sending subpoena here.

MS. BRANCH: Well, so the process server that he sent directly to Media Matters' office, who had several contacts within the District, including with counsel at my law firm, was governed by state law, right, when she served the demand.

And I think, you know, under each of the long-arm statutes under (a)(1), (a)(3), (a)(4), Ken Paxton has, you know, availed himself of D.C. law by serving the demand in D.C. She was governed by D.C. law when she did so.

THE COURT: Are process servers licensed; do you know?

MS. BRANCH: I don't know if process servers are licensed, but certainly --

AMERICAN OVERSIGHT

THE COURT: I'm just curious.

Go ahead.

MS. BRANCH: -- she completed an affidavit of service, which the Attorney General can rely on to, you know, if there's ever a dispute about whether or not service was effective.

And so I think that by hiring the process server and serving the demand on Media Matters in D.C., th Attorney General availed himself of the District of Columbia.

THE COURT: Would it have made a difference in this case if the subpoena was mailed as opposed to personally served?

MS. BRANCH: So the subpoena actually was mailed first.

THE COURT: Right.

MS. BRANCH: It was first mailed.

THE COURT: But if that was the only service -- say there was no personal sufferance; do you think that would make a difference?

MS. BRANCH: I think that would make a difference with respect to the long-arm statute, at least with respect to (a)(3), right, because the case law is clear that there has to be an act that takes place in the District.

And there are cases that the defendants have

AMERICAN OVERSIGHT

relied on to say that, you know, mail is the same a in-person service. And they're just inapposite. The *Dyson* case does not support that, and there's several cases that we cited that indicate that personal service in the District constitutes an act for purposes of (a)(3).

THE COURT: Yeah, I mean, just to -- but to stick with the minimum contacts, due-process issue, I mean, again, there's this trio of Fifth Circuit cases -- I guess there's really four of them.

But it's *Stroman*, *Grewal*, the more recent case of *Bulkley*. And in each of those cases, the out-of-state official mailed a cease and desist order into the State of Texas. And in all of those cases except for in *Grewal*, the Circuit said the mere mailing of a cease and desist order that is intended to enforce state law isn't enough in terms of minimum contacts.

So is it dispositive, in your view, the fact that there was actually personal service here versus mai service?

MS. BRANCH: I do think that is an important fact, both with respect to due process and the long-arm statute.

And I think that the ways in which the *Grewal* case distinguished *Stroman* apply to this case as well.

And we briefed this. But, you know, in the *Grewal* case -- and I think that was authored by the same judge who

AMERICAN OVERSIGHT

authored *Stroman*, but it came later.

THE COURT: Right.

MS. BRANCH: It was clear that, you know, he found jurisdiction over the New Jersey Attorney General because he projected himself across state lines, and he asserted a pseudo-national executive authority.

And that was a cease and desist, right? It was about stopping specific conduct.

In *Stroman*, the issue was that the plaintiff had actually availed -- the business, the plaintiff, ha actually availed itself of Arizona law, and the official that was the defendant in *Stroman* was actually just trying to enforce Arizona law.

Here we have a wide-ranging civil investigative demand that doesn't just say stop doing certain things. It actually asks for all of their donors, their organizational chart, internal and external communications.

It is creating an enormous chill on their business, and we submitted declarations in support of that. And so we think this case is on all fours with *Grewal* and *Defense Distributed*. And the fact that the demand was actually served on our clients in the District of Columbia makes it an even stronger case than *Grewal*.

What this required was Ken Paxton hiring the process server, who went to the Media Matters office, who

AMERICAN OVERSIGHT

called our client, who wasn't present, but, you know, even that created chill, right?

It was the process server standing outside of our client's office saying, "I'm here to serve you with something. You've got reams of documents that are going to be due to the State of Texas in a matter of days. And not only that, you don't have the protections of Texas civil procedure. You can't argue that this demand is overbroad or that it's seeking irrelevant documents. And in order to defend yourself against this demand, you're going to have to waive your -- or essentially waive your personal -- your jurisdictional defenses by coming to the state of Texas to defend yourself."

THE COURT: Well, can I ask you a question?

What is your view on -- say Media Matters does nothing and the Attorney General for the state of Texas files suit in Texas state court to compel compliance with the investigative demand -- if I've been saying "subpoena," sorry about that -- but civil investigative demand? What is your position on whether that could be accomplished

MS. BRANCH: So I think that --

THE COURT: Let me just ask the question very precisely: Do you think a Texas state court would have personal jurisdiction over Media Matters?

MS. BRANCH: No. And we've argued as such in the

AMERICAN OVERSIGHT

case that Twitter, X, has brought against Media Matters. We filed a motion to dismiss in that case because Media Matters has no contacts with the state of Texas. It doesn't have an office there. It's not registered to do business there. It has no registered agent there. It has no business in Texas, which is why the investigative demand is so retaliatory.

THE COURT: And what's the status of the case in Texas brought by X or Mr. Musk or both?

MS. BRANCH: It is in the briefing of the motion to dismiss phase.

THE COURT: Okay. So it hasn't been ruled on?

MS. BRANCH: Correct, Your Honor.

THE COURT: Okay.

MS. BRANCH: And I think the difference between that case and this one is that this is a demand for documents immediately.

And if you look at the January 29th -- sorry, December 29th letter that Ken Paxton sent, he's very clear that he has broad discretion to enforce this demand. He's not interested in negotiating it.

And even if he were, Your Honor, you don't negotiate with extortionists. And that's akin to what's happening here. This is retaliatory conduct that our clients should not be subject to this demand, and they should not have to go to a foreign forum to defend

AMERICAN OVERSIGHT

themselves.

THE COURT: I think the Judge in Maryland broached this. But let me just do the same, which is you talked about negotiating. And is that something Media Matters has considered, whether it would be prepared to produce records with a narrower CID?

MS. BRANCH: Media Matters does not believe that it should be subject to this demand at all for the reasons that we've explained in our papers. It is retaliatory. It violates their constitutional rights. It is causing a chill right now.

And we don't believe that we should be required to negotiate with the State of Texas because there is no basis for this investigation. This is akin to, you know, someone coming to your house and searching around --

THE COURT: Right.

MS. BRANCH: -- and then justifying --

THE COURT: Sorry interrupt you.

I understand your position and the lack of authority or the lack of factual foundation for it or the good-faith basis for the investigation.

That's not something I can resolve today. I'm not being asked to resolve that today.

And so, again, where I'm just sort of broaching the question of whether Media Matters would be prepared to

AMERICAN OVERSIGHT

produce some documents in response to a narrowed CID and whether that discussion has been had at all.

MS. BRANCH: That discussion has not been had, Your Honor, because, you know, we believe that we're here asking Your Honor to enjoin enforcement of the demand because of its lack of good-faith basis.

And, you know, we don't -- first of all, requiring us to negotiate would not alleviate the present harm of our First Amendment rights.

THE COURT: I'm not requiring anything. I'm just asking.

MS. BRANCH: Sure.

THE COURT: I don't think I can require you to do that, but I can ask at least.

MS. BRANCH: But there is no basis for them to exercise jurisdiction or process over us, and so there isn't a reason to negotiate.

THE COURT: Okay.

MS. BRANCH: We shouldn't have to concede as much by negotiating, which is what I think that would be equivalent to.

THE COURT: Okay.

I don't have any other questions, Ms. Branch, but if there's additional argument you wish to make that we haven't touched upon, I'm happy to hear it.

AMERICAN OVERSIGHT

MS. BRANCH: No. I think if Your Honor doesn't have any further questions, I would, you know, like to have rebuttal if Your Honor would like to hear that.

THE COURT: Of course.

MS. BRANCH: Thank you.

THE COURT: I guess one more question, which is to go back and complete the circle here, to go back to the long-arm issue.

Well, let me ask you: Would you agree with me that your burden at this point is to establish personal jurisdiction -- a substantial likelihood of success on establishing personal jurisdiction?

MS. BRANCH: Yes, Your Honor, I think that's correct.

THE COURT: That's the standard at this point.

And so have you done that on a set of briefs that don't address the question that we talked about earlier and have talked about a fair amount, which is that question of this *Ex parte Young* exception or fiction being applied to a long-arm statute?

MS. BRANCH: I mean, as Your Honor noted, that argument was raised very late.

And in response to the surreply, it was, I think, a paragraph-and-a-half argument that they made in their brief. So, obviously, we didn't have a chance to respond to

AMERICAN OVERSIGHT

it in writing. I've given the response that I have here --

THE COURT: No. I appreciate it.

MS. BRANCH: -- today.

THE COURT: I don't mean to put you on the spot.

MS. BRANCH: If Your Honor would want additional briefing on that, we could certainly do that.

THE COURT: It is, to me at least, obviously, given the time and attention I've devoted to it, an important issue. And the way this all unfolded, it didn't get the airing that it ought to have.

And I'm a little reluctant to go down the road of being the first court that I'm aware of to apply th *Ex parte Young* exception to a state long-arm statute maybe without some more fulsome explanation of why I should do that.

MS. BRANCH: Understood, Your Honor.

THE COURT: Okay. All right. Well, we can talk about next steps.

MS. BRANCH: Okay.

THE COURT: Thank you, Counsel.

MS. BRANCH: Thank you.

THE COURT: All right. I'll hear from the defense now.

MR. BLUM: May it please the Court. Reuben Blum, Your Honor, for defendant.

AMERICAN OVERSIGHT

THE COURT: Mr. Blum.

MR. BLUM: I'm just going to briefly respond to counsel. And aside from that, I don't have a tremendous amount more to add that's not currently in our briefing.

But I want to go through a few points counsel mentioned, and I would like to start where you began, Your Honor, on the long-arm statute and *Ex parte Young*.

And you mentioned several cases. I'd like to raise them again, starting with *West v. Holder*.

Not only are you correct that we agree we have not been able to find any courts that apply *Ex parte Young* to a long-arm statute; but in *West v. Holder*, the Court specifically stated that the application of *Ex parte Young* to an out-of-state official sued in official capacity is an open question. And that case was in 2014.

THE COURT: Right. That's why I'm being asked to close it, resolve it.

MR. BLUM: Yes.

THE COURT: Tell me why you haven't waived the issue. I mean, you didn't raise it until I invited you to file a surreply. And even then, it wasn't an issue that you flagged.

I mean, you did cite *Ferrara*, but you didn't then sort of take the next step and discuss this *Ex parte Young* issue. So why isn't this entire discussion that I've been

AMERICAN OVERSIGHT

having with plaintiffs' counsel waived?

MR. BLUM: As an initial matter, we have not waived the issue of personal jurisdiction because we've been clear from the outset that --

THE COURT: Well, fine, for purposes of this motion. I'm not saying that it's waived for all time. But what about for purposes of this motion?

MR. BLUM: Sure. For purposes of this motion, we've been consistent in our position that there is no personal jurisdiction in this Court. And so --

THE COURT: Right.

MR. BLUM: -- we are not waiving the issue.

THE COURT: I get that. But you haven't made the argument that is the one that we've been talking about, which is Mr. Paxton is a state for purposes of this suit; the long-arm statute doesn't apply to a state; and the *Ex parte Young* fiction should not be applied to the long-arm statute.

So that's the argument. That should have been Roman numeral I, Roman numeral I(a) in your brief, and it wasn't. And it wasn't even in your surreply.

I mean, this is something that has come up because you cited *Ferrara*, thankfully, finally, and then I sort of looked at the cases that followed on *Ferrara* and understood that this was an issue.

AMERICAN OVERSIGHT

So help me again understand why the argument isn't waived.

MR. BLUM: Sure.

Well, from the --

THE COURT: Or why I should reach it today in the context of this preliminary injunction motion and then save resolving it, you know, for another day perhaps on a motion to dismiss or in some other context.

MR. BLUM: Sure.

Your Honor, from the outset of these briefings on the preliminary injunction, we have been clear that Attorney General Paxton was sued in his official capacity.

And then when we raised the issue specifically of that being a suit against the State -- and as you're correct, we did that in the surreply -- we reiterated that that was because Attorney General Paxton was sued in his official capacity. And we did so specifically in reference to the long-arm statute at issue here.

THE COURT: Okay.

MR. BLUM: And so as I mentioned, it's an open question in this Circuit as to whether *Ex parte Young* applies in these circumstances.

THE COURT: It seems to be an open question everywhere.

MR. BLUM: Yes, but -- that's true.

AMERICAN OVERSIGHT

THE COURT: At least no Circuit has resolved the issue.

MR. BLUM: Correct.

And mentioning other Circuits, you know, I do want to respond to the *Grewal* case that you mentioned. And I think *Defense Distributed v. Grewal* is importantly distinguishable from *Stroman*.

THE COURT: Here's another question I have for you: Why didn't you cite it in your brief?

MR. BLUM: We were focused on --

THE COURT: I mean, you know, you'll have to forgive me, Counsel, and I don't want to be difficult here, but the plaintiffs cited *Grewal* -- again, it's "*Grewal*" -- specifically said, *Grewal* is on all fours with this case. It's squarely applicable. One would have thought your opposition brief would have told me why *Grewal* is distinguishable. And now I'm -- and you didn't. You didn't even cite the case. So tell me why now you think it's distinguishable.

MR. BLUM: Sure. I will tell you why it's distinguishable.

I also want to mention that we were focused, A, on the long-arm statute; and then, B, the discussion o personal jurisdiction in *Grewal* is in relation to *Calder* and the effects test. And our discussion of *Calder* and the

AMERICAN OVERSIGHT

effects test was on discrete and more-isolated issues.

But the reason that *Defense Distributed v. Grewal* is distinguishable from *Stroman* is because that court did not find personal jurisdiction because the statements by the Attorney General of New Jersey in and around the case and desist letter went so much further than in *Stroman*, because the Court said that the Attorney General of New Jersey was trying to "close shop," in quotes, "on *Stroman*."

And that's not at all analogous to what's going on in this case. The CID was not issued with any intention other than to investigate whether or not there was fraudulent or misleading conduct.

And it was in no way analogous to the attempt in *Grewal* to close shop on *Defense Distributed*, which was the reason cited in that case.

THE COURT: Can I ask you a question: What's Texas's interest here in regulating Media Matters?

MR. BLUM: Well --

THE COURT: There are -- Media Matters -- let me say X is not headquartered in Texas. It doesn't have -- it's not incorporated in Texas. I understand there may be some number of employees, although you haven't identified how many.

So help me under why this isn't like *Grewal*, because this seems a lot more like *Grewal* than not in the

AMERICAN OVERSIGHT

sense that the plaintiff here hasn't directed any conduct to Texas. They're an online platform that publishes nationally and worldwide.

So help me understand why this is not like *Grewal* in the sense that this is causing a chill, not just in Texas, but everywhere.

And as far as I can tell, Mr. Paxton has not really articulated a reason why folks in Texas, whether it's X or somebody else, have been particularly harmed by this article.

MR. BLUM: Sure.

Well, there are several responses.

First of all, Your Honor, X is a major employer in Texas. It has offices in Texas.

THE COURT: How many employees?

MR. BLUM: And many Texans get --

THE COURT: How many employees?

MR. BLUM: I'd have to respond to that in briefing, Your Honor.

But, nonetheless, many Texans separately get their news from X.

And specifically with regard to this case, the allegations that Media Matters made with regard to anti-Semitic conduct that appeared next to advertisements on X involved some --

AMERICAN OVERSIGHT

THE COURT: Can I ask you a question?

MR. BLUM: Yes.

THE COURT: I'll just be direct: How is this anything other than a proxy defamation fight?

MR. BLUM: Because the civil investigative demand is -- was issued from the Texas just to investigate whether or not --

THE COURT: Just, for example, do you think, for example, that a court in Texas or somewhere else would say this is First Amendment-protected activity? And if Texas is going to attempt to use a state statute to regulate First Amendment activity, you are going to be subject to the *New York Times v. Sullivan* test, right?

MR. BLUM: While not conceding that that is what Attorney General Paxton is trying to do, sure.

THE COURT: No, no, no. Would you agree with me that would be the legal construct?

MR. BLUM: Yes.

THE COURT: And you have reason to believe that they have acted with actual malice?

MR. BLUM: We would like to investigate that, and that's the purpose of issuing the CID.

THE COURT: And that's the purpose of an Attorney General to do that as opposed to the person that's allegedly defamed or the entity that's allegedly defamed?

AMERICAN OVERSIGHT

MR. BLUM: Well, under the Texas Deceptive Trade Practices Act --

THE COURT: Has there ever been a CID issued to a media organization under the Texas State -- the Deceptive Trade Practices Act? Has that ever happened?

MR. BLUM: It has happened, Your Honor, yes.

THE COURT: To a media organization?

MR. BLUM: In fact, to Twitter. And my colleague, Mr. Lavorato, could speak in greater detail to the Twitter case.

THE COURT: Right.

MR. BLUM: And it is in some ways analogous but in other ways importantly distinguishable from the case at bar today.

THE COURT: Okay.

Right. Go ahead. I'm sorry. I interrupted you.

MR. BLUM: Yeah. I just wanted to respond briefly to a few more points that counsel made.

First, on this *Wisconsin Voters Alliance* case, the District Court in D.C. actually stated in that case that it must pause at personal jurisdiction. It ended up resolving the case on not finding likelihood to succeed on the merits. So it didn't resolve the case on personal jurisdiction, but it strongly suggested that there would not be personal jurisdiction.

AMERICAN OVERSIGHT

And it said that, nonetheless, D.C. courts must find personal jurisdiction over each defendant. So it's just not applicable to the facts at issue today with regard to personal jurisdiction and the long-arm statute under personal jurisdiction.

And, finally, I wanted to speak to plaintiffs' raising of the hearing in Maryland, and we have a hearing transcript for Your Honor if you would like to take a look.

THE COURT: I've read it. Don't worry about it.

MR. BLUM: Sure.

THE COURT: I'm not worried about the characterizations of whether you conceded or didn't concede. That's not for me to determine right now.

MR. BLUM: Okay.

THE COURT: Let me ask you a different question: What is, in your sense, the fundamental violation of due process?

Or let me put it differently: What would be unreasonable about hailing Attorney General Paxton into court here?

Let me give you an example. The Federal Rules of Civil Procedure, if a subpoena under Rule 45 issues to a non-party in a different state from where the litigation is happening, that non-party is going to be subject to the jurisdiction of the state where the federal court is located

AMERICAN OVERSIGHT

if the third party moves to quash the subpoena, right?

MR. BLUM: Correct.

THE COURT: So if the Federal Rules contemplate that scenario, why isn't it -- why is it unreasonable to hail Attorney General Paxton into court here when he effectively is sending a subpoena to an out-of-state party -- Counsel, this is to both sides.

If those of you who are doing the whispering and posting want to argue, come on up. I'll invite you to do it. But you've offered a lawyer to make the arguments, and presumably they know what they're doing. So let's go.

MR. BLUM: I would be happy to hand it over to Mr. Lavorato after I speak, but I'm going to answer that.

You know, first, plaintiff did have a statutory remedy to move to quash the CID within two weeks, and plaintiff did not take advantage of that statutory remedy. Instead, we find ourselves here in court today.

Now, more specifically to the question in your hypo, you know, presumably the potential witness being brought into the Court in another state has some connection with that lawsuit in a way that's separate from what's going on here with the CID. Attorney General Paxton issued the CID from Texas to investigate whether or not there was misrepresentation or fraudulent conduct.

THE COURT: I don't understand your point; I don't

AMERICAN OVERSIGHT

understand the distinction you're making.

I mean, say, hypothetically, there's a suit in the Southern District in New York. The plaintiff in th Southern District of New York issues a document subpoena to a company that's in the District of Columbia, okay? That company moves to quash the subpoena, right?

MR. BLUM: Yes.

THE COURT: Would you agree with me that the plaintiff would be subject to the jurisdiction of this Court?

MR. BLUM: I would have to agree, Your Honor.

THE COURT: Okay.

So if that's the case in that scenario, why isn't the case any different here? It seems to me to be perfectly reasonable if Attorney General Paxton wants to drop a subpoena on a D.C. resident, that he ought to expect that that D.C. resident would come to a court in his foreign state to defend itself against the subpoena. I don't see why that's a problem from a due process standpoint.

MR. BLUM: Well, an important difference between your hypothetical and the statutory scheme of the CID here is that the parties here, I don't believe, even dispute that the CID is not self-executing and it follows on from that that the alleged chill that plaintiff claims it is experiencing is self-inflicted.

AMERICAN OVERSIGHT

THE COURT: It's not alleged.

I've got sworn declarations under penalty of perjury that they are chilled. They have said that there are articles that have been written but not published. There are articles they would like to write that they have not pursued.

It's not alleged. There's evidence to support the chill, and you haven't presented any evidence to contradict it.

MR. BLUM: So even assuming --

THE COURT: I should correct that. I take that back. You have identified some statements from the President to suggest that there hasn't been a chill.

MR. BLUM: Sure.

And, again, I can hand it over to my colleague, Mr. Lavorato, to speak further on that issue as it relates to their chilled speech, at least their claims to that effect.

But, you know, nonetheless, when we discuss due process, the due process analysis of personal jurisdiction, plaintiffs have cited both *Walden* and *Calder* and taken them wildly out of context, you know.

In fact, there is no purposeful direction here or purposeful availment --

THE COURT: Let me ask you this:

AMERICAN OVERSIGHT

Say Media Matters said we want to play ball. We'll produce some documents. We recognize you've sent us this CID.

Hasn't the Attorney General, by issuing the CID here, committed himself to a course of conduct in the District of Columbia with respect to the CID?

In other words, his lawyers from his office are going to be in regular communication with Media Matters and its counsel. They are going to be receiving documents from the District of Columbia. They are going to be negotiating about the scope of the CID with the target which is in the District of Columbia. That's very different than simply sending a cease and desist letter in and not contemplating anything more than that.

I mean, I assume the Attorney General would like the documents and so, therefore, is contemplating some ongoing activity involving a District of Columbia resident.

MR. BLUM: The Attorney General is absolutely anticipating some ongoing activity and, in fact, has offered to discuss and work with Media Matters around the contours of the CID to agree on contours that might be more favorable to what they would be willing to work with.

But as to the activity of the investigation once that agreement is made, the brunt of the activity would actually be in Texas and conducted in the offices of the Attorney General in Texas.

AMERICAN OVERSIGHT

THE COURT: So there would be no activity in the District of Columbia? Or at least equal amount of activity in the District of Columbia?

MR. BLUM: I wouldn't concede that it would be equal.

THE COURT: Do you think -- is it your position that a Texas federal or state court would have personal jurisdiction over Media Matters?

MR. BLUM: Well, assuming it's the same case, Media Matters has sued my client, the Attorney General --

THE COURT: No, no, no, no, no, no.

You're not happy. They don't do anything. The Attorney General wants to enforce the CID. Can you do it in a Texas state court or a Texas federal court?

MR. BLUM: In all likelihood, yes, our position would be in that case were we acting as plaintiff suing in Texas, there would be personal jurisdiction over th defendant but we haven't briefed that.

THE COURT: Based on what?

I know you haven't, but based on what?

MR. BLUM: Based on, first of all, the Texas long-arm statute is different than the D.C. long-ar statute. So the analysis would be wholly different as to the degree of which under the circumstances Media Matters would be engaging in Texas by sending the documents to

AMERICAN OVERSIGHT

Texas, by making phone calls to Texas.

Under the D.C. long-arm statute, such activities from out of the District into the District, just like phone calls and emails, have been routinely held not to constitute either transacting business or --

THE COURT: What phone calls has Media Matters made into Texas?

MR. BLUM: Well, assuming we reach the point where the two parties are collaborating on the CID or at least seeking to collaborate, that may --

THE COURT: I don't think you can count those contacts even under Texas law. I would be surprised if those contacts would count. But maybe I'm --

MR. BLUM: I would have to brief this issue further on the facts as they developed in that situation.

THE COURT: Fair enough.

Here's a further question: Isn't the consequences of your position that a media company could be subject to 50 CIDs and would have to go to each state in order to challenge them?

MR. BLUM: I can't definitively say that, Your Honor, because our position has been based on the DTPA which is Texas law. And so it would have to be an analysis based on the analogous statutes under each of the 50 states.

THE COURT: No, but you're looking at it wrong.

AMERICAN OVERSIGHT

You've now said that you can't be brought into court here, right? So, presumably, the only place you could be brought into court is Texas, right?

MR. BLUM: Absolutely, there would be general jurisdiction.

THE COURT: Okay.

So why wouldn't that be the case for every other Attorney General in the land if they were to send a CID to a D.C.-based media company?

I mean, why couldn't they come in and make the same arguments you're making, which is the long-arm statute doesn't reach us; we don't have enough contacts with the District of Columbia; you've got to come to our home state? I mean, that is the upshot of your argument.

MR. BLUM: Under the facts at bar in this case, absolutely, that's our argument.

So if you were to present to me a case with a nearly identical Deceptive Trade Practices Act in another state and a nearly identical isolated and really non-contact by the process server and with no more, then it would be hard for me to argue that another Attorney General under those facts would be subject to personal jurisdiction here in the District.

THE COURT: I'll ask you another question, which is: Why isn't the act of sending a process server to serve

AMERICAN OVERSIGHT

the subpoena enough to satisfy minimum contacts for the reasons that plaintiff counsel has said?

I mean, you hired somebody here. Presumably, you paid that person. That person acted on the Attorney General's behalf. And if that person failed to act, presumably, you could have sued under the laws of District of Columbia to get money back.

Why isn't that enough?

MR. BLUM: Well, first, I'll address that with regard to the D.C. long-arm statute.

And plaintiffs cited a case out of Virginia *Schleit v. Warren*, where they allege personal jurisdiction was found with regard to a service of process.

But in that case, it was actually the tort of abusive service of process based on service that was made with false affidavits. And then in the *Schleit* case, the defendant only accepted reservice under duress.

So that's highly, highly distinguishable from what's going on here. That's on the long-arm statute, right?

Then under due process, plaintiff has cited *Walden*, as I mentioned a few moments ago. But *Walden* actually contemplates contacts that are far more sustained, such as the facts in *Burger King* mentioned in *Walden* where there was a contract with the foreign -- forum state and

AMERICAN OVERSIGHT

ongoing interaction based on that contact.

THE COURT: Right. That's why I asked you about the ongoing interaction you're going to have to get documents.

MR. BLUM: Again, we'd have to see what the facts of such ongoing contact would be. If it were to be raised to the level of *Walden* or *Burger King*, that would be a different analysis.

THE COURT: Look, would you agree with me that a tort doesn't arise in this case until service is executed?

MR. BLUM: Assuming, arguendo, that there even is a tort?

THE COURT: Right.

MR. BLUM: A tort was the issue that -- hypothetical tort was the issuance of the CID, whic happened in Texas. And then the process server merely delivered the CID.

THE COURT: Does the CID have any effect unless it's served?

MR. BLUM: No, but the nature of a legal document is that it's delivered by service of process. If this were not such a legal document, it would be delivered by U.S. Mail or another postal method, and there wouldn't even be a physical entrance by a person into the District to make such delivery.

AMERICAN OVERSIGHT

THE COURT: Okay.

All right. Anything else, Counsel?

MR. BLUM: Not unless you have any further questions, Your Honor. Thank you.

THE COURT: I don't. Thank you very much.

Ms. Branch?

MS. BRANCH: Thank you, Your Honor. Just a couple points.

On the person issue that we've spent some time on here, I just wanted to note for Your Honor that we have an opposition to the motion to dismiss due next week, and we can fully brief the "person" issue there since we didn't get an opportunity to do so within the confines of the PI briefing.

That said, it is our position that they have waived that argument for purposes of this motion; and, therefore, it should not prevent Your Honor from granting preliminary injunctive relief, especially given the extraordinary nature of this case and the chill that our clients are under.

They also didn't separately brief the motion to dismiss. They filed a motion that appears to adopt the arguments that they made in their PI briefing. And so they have waived this issue there as well. And a reply brief, I think, would be too late to raise it.

AMERICAN OVERSIGHT

Your Honor, you asked a question earlier about a case regarding a police officer sued under 1983 that I raise, and I would point Your Honor to *Anderson versus Reilly*. The cite for that is 691 F.Supp.2d 89.

And in that case, the Court found specific jurisdiction over the U.S. Parole Commissioner, who was sued in his official capacity under 1983. That can only be right if that defendant, who's acting in his official capacity, is a person under the long-arm statute and not the D.C government.

Your Honor asked -- and I think on the person issue, there is a lack of precedent on this, because this is extraordinary. What's happened here for an out-of-state Attorney General to so flagrantly exceed his jurisdiction by coming into another state issuing these CIDs, I just -- that doesn't happen frequently.

And so, you know, you have the *Grewal* case. And there are some that address this, but the long-arm statutes are different.

THE COURT: Can I ask you just to think through this with me.

Say the defendant is right and that an individual sued in their official capacity cannot -- is not a person for purposes of the long-arm statute. Does that mean no federal defendant could be sued in a D.C. District Court?

AMERICAN OVERSIGHT

MS. BRANCH: I think it might, Your Honor, unless there is some other statute that would provide jurisdiction over them, and that's something we can look into.

THE COURT: I mean, because you'd have to -- I mean, I'm just sort of thinking.

I suppose federal statutes that do grant the authority to sue, I suppose they are -- anyway, I'm sorry to sit here and pontificate, but go ahead.

MS. BRANCH: Sure. It is a complicated issue.

Your Honor asked a couple of questions earlier about due process. And the one thing I wanted to point out that I don't think I did before, but we certainly point it out in our briefing, is that the (a)(1) section of the long-arm statute is co-extensive with the limits of due process. And so the *Mouzavires v. Baxter* case says that that, given that under (a)(1), the long-arm statute and the due process analysis come -- collapse into a single inquiry.

And so we think that Your Honor could also resolve this issue on due process under (a)(1), given that they have clearly transacted business in the District by hiring the process server who served our clients. And defendant's counsel just admitted that, absent service, the demand has no effect.

THE COURT: Can I just offer the following for your consideration on that argument. I mean, if I

AMERICAN OVERSIGHT

understand, what you're saying is I can kind of ignore the long-arm question. There's a Circuit case, albeit unpublished. It's called *Collingsworth versus Drummond Company*, 839 F.App'x 567 from 2021. I'll just read you what the Circuit wrote.

It's unpublished, but they said, "The plaintiffs maintain the Court need not consider the text of th long-arm statute at all because subsection (a)(1) i coextensive with the due process clauses of the Constitution of the United States, meaning the Court should skip straight to the Constitutional inquiry. As the D.C. Court of Appeals has said, this interpretation cannot be correct. While it is true the 'transacting any business' provision reaches to the constitutional limit in cases where it applies, this means only that the provision covers any transaction of business in the District of Columbia that can be reached jurisdictionally without offending the Due Process Clause."

And that's citing the *Mouzavires* case that we were just talking about.

MS. BRANCH: Okay.

So we didn't find that case.

THE COURT: That's okay. I just wanted to make sure you're aware of it.

MS. BRANCH: Okay. Thank you, Your Honor.

So the argument has been made that, you know, the

AMERICAN OVERSIGHT

Attorney General didn't transact business in the District because his activity wasn't commercial.

And the definition of "commercial" that the defendants provide is consistent with the case law, which is contractual activities that cause an effect in the District. That's from the Baxter case as well. That's precisely what happened here. They engaged a process server who served our clients and caused a tort to occur in the District.

Your Honor, the defendants have also tried to distinguish the *Schleit* case based on the claim at issue in that case. But we really cited that for the language in that case that makes clear that where an act -- where an agent of the defendant is physically present in the state, that nullifies the argument that the act requirement was not fulfilled. The *Schleit* case says that. The *Balsly* case that we also cite in our papers say that.

So it really didn't turn on the type of claim in those cases. We really were looking at the fact that service of process constitutes an act under (a)(3). And, of course, that was the Virginia long-arm statute. But that has been interpreted -- the D.C. long-arm statute is based off of that one.

THE COURT: I mean, is the analysis, in your view, essentially one and the same under (a)(1) and (a)(3) here? In other words, your claim arises out of the hiring of and

AMERICAN OVERSIGHT

the service of the CID? By the same token, your contention is that a tort was committed by virtue of the service of the CID in the District of Columbia?

MS. BRANCH: That's correct, Your Honor.

THE COURT: Okay.

MS. BRANCH: They're essentially the same.

And we did point to some other cases in our briefing that involve service constituting in act that causes injury outside of the *Schleit* and abuse of process types of claims.

I also wanted to discuss this idea that, you know, we could go to Texas court to seek relief. And, you know, I discussed this a little bit earlier, but affirmatively seeking relief there, I think, would potentially waive our jurisdictional defenses. And Paxton's own communications to our clients have limited -- have indicated that the limits of, you know, civil procedure don't apply there. He has said that we can't actually oppose the CID unless we have no basis at all. And so we basically have no --

THE COURT: That's a public statement or just something that's been said.

MS. BRANCH: It is a letter that he sent to our clients. It's a December 29th letter. I think it's in the record.

THE COURT: Okay.

AMERICAN OVERSIGHT

MS. BRANCH: But -- so, you know, basically he holds all the cards, and we are subject to the demand without the protections of civil procedure and other things that would ordinarily apply.

And with respect to the chill and the Twitter case, I think we have briefed this, unless Your Honor wants to hear more on that.

But I will just emphasize the harm and the threat that our clients are under. This is affecting, as the declarations state, every editorial decision that they make, every document they create, every story they decide to publish, every article that may implicate acts.

And so this is a real issue. They are being chilled now, and I don't think there's actually any dispute about that.

With respect to the statements that Angelo Carusone, who is the president of Media Matters, has made, I mean, I think those are just completely distinguishable. He's made limited statements on cable news really defending the organization against the attacks by X and by Ken Paxton. They are backward-looking.

They have no bearing on what the editorial department is doing, no effect on the ability of the editors and the reporters and the writers to actually do their jobs. They are just unable, frankly, to do their jobs while this

AMERICAN OVERSIGHT

CID is hanging in the air.

And it's remarkable, frankly, that Ken Paxton argues that the plaintiffs are not chilled when he has taken the exact opposite position in the *Exxon* case where he said, you know, in quasi-criminal matters like this when a CID is issued, it effectively hangs in the air and it chills speech. That is the position he took. He takes the exact opposite position here. It is not consistent with the case law or, frankly, the facts.

And just to quote, the letter -- the December 29th letter that I referenced is on the docket as Document 4-5 filed on January 18th.

THE COURT: I'm sorry. Document 4?

MS. BRANCH: 4-5.

THE COURT: Okay.

MS. BRANCH: It was an exhibit to, I think, our motion.

And in it, Attorney General Paxton says, "Indeed, to resist the Attorney General's investigation, Media Matters would have needed to establish that there were zero permissible justifications for the investigation." And he cites two cases. So I think this idea that he's willing to negotiate and all of that is really sort of false.

I think that I have covered everything. You know, I can't sort of underscore enough the threat that our

AMERICAN OVERSIGHT

clients feel. And that's the reason why we moved for a TRO. That's the reason why we moved for a preliminary injunction.

I think that, you know, as Your Honor recognized earlier, this is akin to, you know, a Rule 45 subpoena where, you know, Rule 45(d)(3)(A) would allow us to file a motion to quash here in D.C. had this been a subpoena served pursuant to the Federal Rules.

So, Your Honor, we would ask that you grant our motion, enjoin enforcement of the demand, and declare it unconstitutional. Thank you.

THE COURT: All right. Thank you, Counsel.

MR. LAVORATO: Your Honor, may I be heard briefly just to respond to some of those comments?

THE COURT: Umm ...

MR. LAVORATO: I promise I won't take more than five minutes.

THE COURT: Okay. Go ahead.

MS. BRANCH: Your Honor --

THE COURT: I'll give you a chance to rebut.

MR. LAVORATO: She made some statements that I think I just need to respond to.

Thank you, Your Honor.

Your Honor, if I may, if you would look at that December 29th letter and read the last paragraph of it -- it's in the record -- and it specifically goes into

AMERICAN OVERSIGHT

invitations to the plaintiffs that we will work with them, tell us what the problem is with the CID that you have. If it's too broad, let us know. We'll work with you.

That part they didn't mention to you. They didn't put that piece into their brief. That's the first thing that I wanted to mention.

The second thing is, with regard to the waiver issue, Your Honor, they have the burden to show you and to use a clear showing here in this District that the relief they're seeking is necessary. They have the burden

THE COURT: That's true, but -- that's true, but personal jurisdiction can be waived.

MR. LAVORATO: Understood.

THE COURT: And I don't know you haven't waived it for all purposes or as a general matter, but it's also not an argument that you've put forward.

MR. LAVORATO: Understood, Your Honor. And I appreciate that.

On the other hand, if their pleadings in and of themselves, if you go back to the complaint and you go back to their motion, are deficient, then there's not a clear showing in order to get to personal jurisdiction or to make a finding of personal jurisdiction. That's my only comment with regard to that issue. And I don't think that that has happened here.

AMERICAN OVERSIGHT

The only other thing I want to talk about is this *Exxon* amicus brief, because, to some degree, I think the think they have a gold nugget there. But the *Exxon* amicus brief had to do with the Attorney General of Texas making a statement in connection with a global issue known as global warming.

Exxon had made a statement that global warming wasn't able to be proven scientifically at the time the statement was made. From that statement, which is political position statement, an Attorney General issued a CID. That's largely different than publicizing a particular article about X where you say and you allege that X is purposefully putting major advertisers like Oracle -- Oracle, by the way, is headquartered in Texas, in Austin -- next to anti-Semitic articles.

And that's exactly what they did. That's a specific target, an allegation against X, who, by the way, it's no secret Elon Musk has a lot of business interests in Texas, not to mention the fact that Tesla is there.

THE COURT: Right, but --

MR. LAVORATO: So it's hugely different.

THE COURT: That may be, but that's not what we're talking about.

MR. LAVORATO: The last thing I'll say is the Twitter case does lay out a framework for this particular

AMERICAN OVERSIGHT

case. The Twitter case is the closest case you're going to find to this one.

The only difference between Twitter and their case is that they have cited some particular chilled speech. And I don't dispute that. They have.

But if you look at the retaliation framework in Twitter, which they don't dispute would apply in this case, it lays out:

No. 1, an injury-in-fact. They've alleged it. I'll give them that.

2, sufficient causal connection between injury and the conduct complained of.

The conduct complained of is this CID issuance, right? Well, there has to be causation. If the CID is issued for a proper purpose under statutory law, which it was in Texas, and the Texas AG has a reasonable belief that unlawful conduct has occurred, then guess what. Their injury is self-inflicted. There's no causation there. And so, therefore, you wouldn't be able to find for a preliminary injunction in this particular matter.

The last thing I'll say is --

THE COURT: But that assumes that they lose on the merits.

MR. LAVORATO: I'm sorry?

THE COURT: That assumes they lose on the merits.

AMERICAN OVERSIGHT

In other words, your argument is based upon the premise that they haven't made a First Amendmen retaliation claim.

MR. LAVORATO: Yes, but at this point in time, Your Honor, I don't think they've had --

THE COURT: In other words, that the CID was not motivated by their First Amendment expression, whic seemingly it was. I mean, that's what the Attorney General said when he issued a public statement about launching the investigation.

MR. LAVORATO: Understood, Your Honor. I see where you're going.

But that assumes that the First Amendment expression is protected in the first place, because if it's not protected, if it's a fraudulent statement or if it's a misrepresentation --

THE COURT: Right. So now we're back to what I said to your counsel, which is that this is a defamation or a libel case by proxy -- during investigation, I should say, but in any event.

MR. LAVORATO: Well, it's not -- it's the Texas Attorney General who is looking into the issue of whether or not this public statement that affects not only Texas, by the way, everybody that receives this kind of information, and affects the folks like X and people who read the news in

AMERICAN OVERSIGHT

Texas and other advertisers that are in Texas -- it affects all those folks.

So it is squarely in the realm of what the Texas AG would be concerned with. Texas is concerned about protecting business interests in its -- within its sovereign borders. And that's what this is all about.

So to the extent that that CID was for a proper purpose -- and they don't have a clear showing that it wasn't, other than conclusory allegations and maybe a temporal issue where the CID was issued a day or so after Elon Musk made this statement about suing them.

But, Your Honor when was he supposed to issue the CID? Two weeks later? I mean, it seems reasonable that he would have issued the CID and launched the investigation at or near the time of the article. That's exactly what he did.

And I don't think they've made a clear showing that the purpose of that CID under statutory law within the state of Texas was violated in any way. And that's why they didn't sue him in his individual capacity. That would have certainly been improper.

But, clearly, they can't get around the fact that they've sued him in his official capacity, which, by and large, does away with (a)(1) right away. That's where you stop at (a)(1).

AMERICAN OVERSIGHT

In any event, with regard to the *Exxon*, it's completely different issue there. And I just wanted to make mention of that.

Pending your questions --

THE COURT: Thank you, Your Honor.

MR. LAVORATO: -- I'll submit. Thank you.

THE COURT: Ms. Branch, I'll give you an opportunity if you'd like.

MS. BRANCH: No. Thank you, Your Honor.

THE COURT: All right, everyone. I want to just think through how I want to manage this. When is your opposition due to the motion to dismiss?

MS. BRANCH: I think it's due in, what, eight days?

THE COURT: Okay.

MS. BRANCH: 23rd, I believe.

THE COURT: Okay.

MS. BRANCH: A week from tomorrow.

THE COURT: All right.

Let me give some thought about how I want to handle this long-arm issue. It's not an issue that's going to go away. So that in some sense may be a reason to try and resolve it sooner rather than later, but I also understand that it's not one that I think has been properly put forward, at least in the context of this motion and

AMERICAN OVERSIGHT

maybe even the motion to dismiss. But let me think about it, and I'll let you all know in short order, okay?

MR. LAVORATO: Yes, Your Honor.

THE COURT: Thank you, everyone. Appreciate your time, and I appreciate the briefing and presentations.

COURTROOM DEPUTY: All rise.

This Court is adjourned.

(Proceedings concluded at 11:21 a.m.)

AMERICAN OVERSIGHT

C E R T I F I C A T E

I, William P. Zaremba, RMR, CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-titled matter.

Date: February 15, 2024



William P. Zaremba, RMR, CRR

AMERICAN OVERSIGHT

COURTROOM DEPUTY: [3] 3/2 3/6 62/6
MR. BLUM: [52] 28/24 29/2 29/18 30/2 30/8 30/12 31/3 31/9 31/20 31/25 32/3 32/10 32/20 33/18 34/11 34/16 34/18 35/2 35/5 35/14 35/18 35/21 36/1 36/6 36/8 36/12 36/17 37/10 37/14 38/2 38/12 39/7 39/11 39/20 40/10 40/14 41/17 42/4 42/9 42/15 42/21 43/8 43/14 43/21 44/4 44/15 45/9 46/5 46/11 46/14 46/20 47/3
MR. LAVORATO: [13] 55/12 55/15 55/20 56/13 56/17 57/21 57/24 58/24 59/4 59/11 59/21 61/6 62/3
MS. BRANCH: [66]
THE COURT: [133]

'

'transacting [1] 50/13

0

00147 [1] 1/4

1

1060 [1] 2/5
10:00 [1] 1/6
11:21 [1] 62/8
12548 [1] 2/9
13-422 [1] 13/3
147 [1] 3/7
15 [2] 1/5 63/7
1717 [1] 2/3
18th [1] 54/12
1983 [4] 12/9 15/25 48/2 48/7

2

20001 [2] 1/15 2/15
20006 [1] 2/4
2014 [1] 29/15
202 [3] 1/15 2/5 2/16
2021 [3] 11/20 11/21 50/4
2024 [2] 1/5 63/7
23rd [1] 61/16
24-00147 [1] 1/4
24-147 [1] 3/7
250 [1] 1/14
29th [5] 24/17 24/18 52/23 54/10 55/24

3

3249 [1] 2/16
333 [1] 2/15
346 [1] 10/25
354-3249 [1] 2/16

4

4-5 [1] 54/14
400 [1] 1/14
422 [1] 13/3
4476 [1] 2/10
45 [3] 37/22 55/4 55/5
4518 [1] 1/15
475-4476 [1] 2/10

5

50 [1] 43/24
50 CIDs [1] 43/19
512 [1] 2/10
567 [1] 50/4

6

686359 [1] 11/20
691 F.Supp.2d 89 [1] 48/4

7

787-1060 [1] 2/5
78711 [1] 2/10

8

839 [1] 50/4
89 [1] 48/4

9

900 [1] 2/4
968-4518 [1] 1/15

A

a.m [2] 1/6 62/8
ability [1] 53/23
able [3] 29/11 57/8 58/19
about [35] 4/2 8/16 15/18 17/2 18/1 18/1 18/19 19/8 20/5 22/8 23/19 25/4 27/17 27/18 28/18 30/7 30/14 37/9 37/11 37/19 41/10 46/2 48/1 49/11 50/19 53/15 57/1 57/12 57/23 59/9 60/4 60/6 60/11 61/20 62/1
about that [1] 8/16
above [1] 63/4
above-titled [1] 63/4
abranch [1] 1/16
absent [1] 49/22
absolutely [6] 17/21 18/5 18/10 41/17 44/4 44/16
absurd [2] 12/5 16/7
abuse [1] 52/9
abusive [1] 45/15
accepted [1] 45/17
accomplished [1] 23/20
accountable [1] 16/10
across [2] 4/4 22/5
act [12] 18/10 20/24 21/5 36/2 36/5 44/18 44/25 45/6 51/12 51/14 51/19 52/8
acted [2] 35/20 45/4
acting [8] 8/24 9/23 9/23 10/6 15/7 15/7 42/16 48/8
activities [2] 43/2 51/5
activity [9] 35/10 35/12 41/16 41/18 41/22 41/23 42/1 42/2 51/2
acts [1] 53/12
actual [1] 35/20
actually [15] 9/10 20/14 21/18 22/10 22/11 22/12 22/16 22/22 36/20 41/24 45/14 45/23 52/18 53/14 53/24
add [1] 29/4
additional [2] 26/24 28/5
address [5] 14/2 14/23 27/17 45/9 48/18
addressed [1] 19/4
adjourned [1] 62/7
admitted [1] 49/22
admittedly [1] 11/14
adopt [1] 47/22
advantage [1] 38/16
advertisements [1] 34/24
advertisers [2] 57/13 60/1
affecting [1] 53/9
affects [3] 59/23 59/25 60/1
affidavit [1] 20/3
affidavits [1] 45/16
affirmatively [1] 52/13
after [2] 38/13 60/10
AG [2] 58/16 60/4
again [9] 18/12 19/9 21/7 25/24 29/9 31/1 32/13 40/15 46/5
against [15] 4/6 6/11 7/5 8/23 11/10 11/11 12/10 12/19 17/4 23/10 24/1 31/14 39/18 53/20 57/17
agent [2] 24/5 51/13
ago [1] 45/22
agree [9] 5/24 7/19 27/9 29/10 35/16 39/8 39/11 41/20 46/9
agreement [1] 41/23
ahead [4] 20/2 36/16 49/8 55/17
aided [1] 2/17
air [2] 54/1 54/6
airing [1] 28/10
akin [3] 24/22 25/14 55/4
al [2] 1/3 3/8
albeit [1] 50/2
all [32] 3/13 3/14 10/8 19/7 21/13 22/16 22/20 25/8 26/2 26/7 28/9 28/17 28/22 30/6 32/14 33/9 34/13 42/15 42/21 47/2 50/8 52/19 53/2 54/23 55/11 56/15 60/2 60/6 61/10 61/19 62/2 62/6
All right [1] 61/10
allegation [1] 57/17
allegations [4] 9/25 15/16 34/23 60/9
allege [3] 9/2 45/12 57/12
alleged [5] 10/3 39/24 40/1 40/7 58/9
allegedly [2] 35/25 35/25
alleviate [1] 26/8
Alliance [5] 11/9 11/20 12/15 12/15 36/19
Alliance v [1] 11/9
allies [1] 4/7
allow [1] 55/5
also [13] 5/24 6/8 8/4 9/7 11/25 32/22 47/21 49/18 51/9 51/16 52/11 56/15 61/23
although [1] 33/22
altogether [1] 14/1
always [1] 9/16
am [3] 5/21 5/24 18/19
Amendment [7] 10/4 26/9 35/10 35/12 59/2 59/7 59/13
AMERICA [3] 1/3 3/8 5/7
amicus [3] 4/11 57/2 57/3
AMIT [2] 1/9 3/3
amount [3] 27/18 29/4 42/2
analogous [4] 33/9 33/13 36/12 43/24
analysis [7] 12/22 40/20 42/23 43/23 46/8 49/17 51/23
analyzed [1] 15/3
analyzing [1] 15/12
Anderson [1] 48/3
Angelo [1] 53/17
Angelo Carusone [1] 53/17
announcing [1] 4/23
another [8] 31/7 32/8 38/20 44/18 44/21 44/24 46/23 48/15
answer [2] 5/18 38/13
answered [1] 4/10
anti [3] 4/25 34/24 57/15
anti-free [1] 4/25
anti-Semitic [2] 34/24 57/15
anticipating [1] 41/18
any [21] 5/10 6/14 6/14 8/15 10/11 14/10 26/23 27/2 29/11 33/10 34/1 39/14 40/8 46/18 47/3 50/13 50/15 53/14 59/20 60/19 61/1
any event [1] 14/10
anything [5] 26/10 35/4 41/13 42/12 47/2
anytime [1] 5/11
anyway [1] 49/7
apart [1] 7/23
Appeals [1] 50/11
APPEARANCES [2] 1/11 1/17
appeared [1] 34/24
appears [1] 47/22
applicable [2] 32/15 37/3
application [1] 29/13
applied [2] 27/19 30/17
applies [6] 11/5 11/16 12/2 12/14 31/22 50/14
apply [9] 6/19 8/19 21/23 28/12 29/11 30/16 52/17 53/4 58/7
appreciate [4] 28/2 56/18 62/4 62/5
are [49] 5/4 5/6 6/19 7/1 8/17 9/24 9/24 10/9 12/12 14/9 15/9 16/22 16/23 16/25 17/8 18/8 18/14 19/6 19/22 19/24 20/25 23/5 29/10 30/12 33/19 34/12 35/12 38/8 40/3 40/4 40/5 41/6 41/8 41/9 43/9 45/23 47/20 48/18 48/19 49/7 53/2 53/9 53/13 53/18 53/21 53/25 54/3 56/21 60/1
aren't [1] 14/5
argue [3] 23/8 38/9 44/21
argued [2] 15/6 23/25
arguendo [1] 46/11
argues [1] 54/3
argument [17] 3/18 6/3 6/8 26/24 27/22 27/24 30/14 30/19 31/1 44/14 44/16 47/16 49/25 50/25 51/14 56/16 59/1
arguments [4] 18/14 38/10 44/11 47/23
Aria [3] 1/12 3/9 3/24
Aria Branch [1] 3/24
arise [1] 46/10
arises [1] 51/25
Arizona [2] 22/11 22/13
arm [46] 6/4 6/13 6/20 7/17 7/21 7/25 8/19 9/7 9/17 9/18 10/18 11/6 11/12 14/5 15/10 16/6 17/10 19/18 20/22 21/21 27/8 27/20 28/13 29/7 29/12 30/16 30/17 31/18 32/23 37/4 42/22 42/22 43/2 44/11 45/10 45/19 48/9 48/18 48/24 49/14 49/16 50/2 50/8 51/20 51/21 61/21
arm's [1] 9/18
around [9] 4/8 5/17 9/13 9/18 16/21 25/15 33/5 41/19 60/22
article [5] 5/11 34/10

AMERICAN OVERSIGHT

A

article... [3] 53/12 57/12 60/15
articles [3] 40/4 40/5 57/15
articulated [1] 34/8
as [46] 4/11 5/25 7/5 7/5 7/7 7/20 8/3 8/9 8/22 9/5 9/16 10/12 10/12 12/11 13/4 14/15 16/6 16/12 20/12 21/1 21/23 23/25 26/19 27/21 30/2 31/14 31/20 31/21 34/7 34/7 35/24 40/16 41/22 42/16 42/23 43/15 45/22 45/24 47/24 50/11 51/6 53/9 54/11 55/3 56/15 57/5
aside [1] 29/3
ask [13] 5/13 19/7 23/14 23/22 26/14 27/9 33/16 35/1 37/15 40/25 44/24 48/20 55/8
asked [8] 3/25 17/18 25/23 29/16 46/2 48/1 48/11 49/10
asking [3] 6/19 26/5 26/11
asks [1] 22/16
asserted [1] 22/5
assume [1] 41/14
assumes [3] 58/22 58/25 59/13
assuming [4] 40/10 42/9 43/8 46/11
astonishing [1] 14/8
attacks [1] 53/20
attempt [2] 33/13 35/11
attention [1] 28/8
ATTORNEY [35] 2/8 4/10 4/13 16/17 20/4 20/9 22/4 23/16 31/12 31/16 33/5 33/7 35/15 35/24 37/19 38/5 38/22 39/15 41/3 41/14 41/17 41/25 42/10 42/13 44/8 44/21 45/5 48/14 51/1 54/18 54/19 57/4 57/10 59/8 59/22
Attorney General [25] 4/10 20/4 20/9 22/4 33/5 33/7 35/15 35/24 38/5 38/22 39/15 41/3 41/14 41/17 41/25 42/10 42/13 44/8 44/21 48/14 51/1 54/18 57/4 57/10 59/8
Attorney General Paxton [3] 31/12 31/16 37/19
Attorney General's [2] 45/5 54/19
Attorneys [1] 4/8
Austin [2] 2/10 57/14
authored [2] 21/25 22/1
authority [4] 4/19 22/6 25/20 49/7
availed [6] 17/14 19/10 19/20 20/9 22/10 22/11
availment [1] 40/24
Avenue [2] 1/14 2/15
aware [3] 10/11 28/12 50/23
away [3] 60/24 60/24 61/22

B

B-u-l-k-l-e-y [1] 10/25
back [10] 15/18 18/13 19/9 27/7 27/7 40/12 45/7 56/20 56/20 59/17
backward [1] 53/21
backward-looking [1] 53/21
ball [1] 41/1
Balsly [1] 51/15
bar [3] 12/9 36/14 44/15
bar today [1] 36/14
Barrett [1] 2/14
based [12] 10/9 42/19 42/20 42/21 43/22 43/24 44/9 45/15 46/1 51/10 51/21 59/1
basically [3] 13/2 52/19 53/1
basis [7] 10/17 15/24 25/13 25/21 26/6 26/15 52/19
Bates [1] 8/10
Baxter [2] 49/15 51/6
be [82]
bearing [1] 53/22
because [34] 4/6 6/6 6/9 6/24 6/25 8/8 9/21 10/12 12/11 12/25 13/1 15/13 15/16 20/23 22/4 24/2 25/13 26/4 26/6 30/3 30/22 31/16 33/3 33/4 33/6 33/25 35/5 43/22 48/12 49/4 50/8 51/2 57/2 59/14
been [26] 4/8 11/3 17/2 23/18 24/11 26/2 26/3 29/11 29/25 30/3 30/9 30/14 30/19 31/11 34/9 36/3 40/4 40/13 43/4 43/22 50/25 51/21 52/21 55/6 60/21 61/24
before [2] 1/9 49/12
began [1] 29/6
begin [1] 3/19
behalf [2] 15/7 45/5
being [13] 4/3 7/3 8/8 8/9 18/2 19/5 25/23 27/19 28/12 29/16 31/14 38/19 53/13
belief [1] 58/16
believe [8] 11/2 17/20 25/7 25/12 26/4 35/19 39/22 61/16
between [4] 24/14 39/20 58/3 58/11
bit [1] 52/13
Blum [4] 2/7 3/12 28/24 29/1
Boasberg's [1] 11/8
borders [1] 60/6
both [7] 3/18 5/19 13/18 21/21 24/8 38/7 40/21
bottom [1] 16/3
bounds [1] 14/15
Box [1] 2/9
Branch [7] 1/12 3/9 3/24 5/20 26/23 47/6 61/7
brief [12] 14/6 27/25 30/20 32/9 32/16 43/14 47/12 47/21 47/24 56/5 57/2 57/4
briefed [3] 21/24 42/18 53/6
briefing [11] 4/12 10/9 24/9 28/6 29/4 34/19 47/14 47/23 49/13 52/8 62/5
briefings [1] 31/10
briefly [3] 29/2 36/17 55/12
briefs [2] 14/2 27/16
bring [1] 14/6
broached [1] 25/2
broaching [1] 25/24
broad [2] 24/19 56/3
brought [9] 8/23 17/5 17/6 19/5 24/1 24/8 38/20 44/1 44/3
brunt [1] 41/23
Bulkley [2] 10/25 21/11
burden [3] 27/10 56/8 56/10
Burger [2] 45/24 46/7
Burger King [1] 46/7
business [16] 5/9 15/22 18/15 18/15 18/16 18/18 22/10 22/19 24/4 24/5 43/5 49/20 50/16 51/1 57/18 60/5
business' [1] 50/13

C

cable [1] 53/19
Calder [3] 32/24 32/25 40/21
call [2] 4/11 16/18
called [4] 4/24 10/25 23/1 50/3
calls [3] 43/1 43/4 43/6
came [1] 22/1
campaign [1] 5/3
can [28] 4/1 5/8 5/17 5/18 10/12 11/18 12/4 13/15 20/4 23/14 25/22 26/13 26/14 28/17 33/16 34/7 35/1 40/15 42/13 43/11 47/12 48/7 48/20 49/3 49/24 50/1 50/16 56/12
can't [10] 7/2 8/7 8/11 8/12 23/8 43/21 44/1 52/18 54/25 60/22
cannot [3] 16/13 48/23 50/12
capacity [26] 5/22 7/4 7/7 7/13 8/9 9/1 9/16 9/22 9/24 10/6 11/11 11/12 11/24 12/3 12/10 12/21 15/7 15/14 29/14 31/12 31/17 48/7 48/8 48/23 60/20 60/23
cards [1] 53/2
Carusone [1] 53/17
carve [1] 7/9
carve-out [1] 7/9
case [89]
cases [14] 11/10 13/14 19/2 20/25 21/3 21/8 21/11 21/13 29/8 30/24 50/14 51/18 52/7 54/22
causal [1] 58/11
causation [2] 58/14 58/18
cause [1] 51/5
caused [2] 18/24 51/8
causes [1] 52/9
causing [2] 25/10 34/5
cease [5] 21/12 21/14 22/7 33/5 41/12
certain [2] 11/10 22/15
certainly [6] 4/13 15/25 19/25 28/6 49/12 60/21
Certified [1] 2/13
certify [1] 63/2
CH [1] 2/14
challenge [1] 43/20
chance [2] 27/25 55/19
characterizations [1] 37/12
chart [1] 22/17
chief [4] 11/8 12/21 13/9 13/12
Chief Boasberg's [1] 11/8
chill [10] 4/16 22/18 23/2 25/10 34/5 39/24 40/8 40/13 47/19 53/5
chilled [6] 5/6 40/3 40/17 53/14 54/3 58/4
chills [1] 54/6
Chris [1] 3/12
Chris Lavorato [1] 3/12
Chris.lavorato [1] 2/11
Christopher [3] 1/12 2/7 3/9
Christopher Dodge [1] 3/9
CID [36] 25/6 26/1 33/10 35/22 36/3 38/15 38/22 38/23 39/21 39/23 41/2 41/3 41/5 41/10 41/20 42/13 43/9 44/8 46/15 46/17 46/18 52/1 52/3 52/18 54/1 54/5 56/2 57/11 58/13 58/14 59/6 60/7 60/10 60/13 60/14 60/18
CIDs [2] 43/19 48/15
circle [1] 27/7
circuit [16] 7/16 10/16 10/20 10/22 10/23 13/24 15/1 15/3 19/2 19/3 21/8 21/14 31/21 32/1 50/2 50/5
Circuits [1] 32/4
circumstances [2] 31/22 42/24
citation [1] 11/18
cite [6] 13/23 29/23 32/9 32/18 48/4 51/16
cited [13] 4/12 14/6 14/7 19/7 21/4 30/23 32/13 33/15 40/21 45/11 45/21 51/11 58/4
cites [1] 54/22
citing [1] 50/18
civil [8] 3/7 22/14 23/7 23/19 35/5 37/22 52/17 53/3
claim [5] 12/19 51/10 51/17 51/25 59/3
claims [4] 8/23 39/24 40/17 52/10
Clause [1] 50/17
clauses [1] 50/9
clear [12] 5/14 17/1 20/23 22/3 24/18 30/4 31/11 51/12 56/9 56/21 60/8 60/17
clearly [5] 7/16 14/4 16/22 49/20 60/22
client [2] 23/1 42/10
client's [2] 10/3 23/4
clients [11] 4/6 16/20 22/22 24/24 47/20 49/21 51/8 52/16 52/23 53/9 55/1
cloak [2] 10/6 15/15
close [3] 29/17 33/8 33/14
closest [1] 58/1
co [1] 49/14
co-extensive [1] 49/14
coextensive [1] 50/9
collaborate [1] 43/10
collaborating [1] 43/9
collapse [1] 49/17
colleague [2] 36/8 40/15
Collingsworth [1] 50/3
COLUMBIA [22] 1/1 12/20 13/3 15/4 15/13 15/20 16/24 17/1 19/11 20/10 22/22 39/5 41/5 41/9 41/11 41/16 42/2 42/3 44/13 45/7 50/16 52/3
come [7] 12/18 30/22 38/9 39/17 44/10 44/13 49/17
coming [3] 23/12 25/15 48/15
commencing [1] 4/24
comment [1] 56/23
comments [1] 55/13

AMERICAN OVERSIGHT

C

commercial [2] 51/2 51/3
Commissioner [1] 48/6
committed [2] 41/4 52/2
common [2] 8/4 12/12
communication [1] 41/7
communications [3] 4/22 22/17 52/15
company [5] 39/5 39/6 43/18 44/9 50/4
compel [1] 23/17
complained [2] 58/12 58/13
complaint [1] 56/20
complete [1] 27/7
completed [1] 20/3
completely [2] 53/18 61/2
compliance [1] 23/17
complicated [1] 49/9
computer [2] 2/17 5/10
computer-aided [1] 2/17
concede [3] 26/19 37/12 42/4
conceded [2] 17/24 37/12
conceding [1] 35/14
concerned [2] 60/4 60/4
concluded [1] 62/8
conclusory [1] 60/9
conduct [13] 6/13 6/14 9/2 22/8 24/23 33/12 34/1 34/24 38/24 41/4 58/12 58/13 58/17
conducted [1] 41/24
conducting [3] 18/15 18/15 18/18
confines [1] 47/13
confirm [1] 3/25
connection [3] 38/20 57/5 58/11
consequences [4] 9/1 12/6 16/8 43/17
consider [1] 50/7
consideration [1] 49/25
considered [2] 11/11 25/5
consistent [3] 30/9 51/4 54/8
constitute [1] 43/4
constitutes [3] 18/18 21/5 51/19
constituting [1] 52/8
Constitution [6] 2/15 8/24 9/3 10/1 15/17 50/9
constitutional [6] 7/10 7/23 15/25 25/10 50/11 50/14
construct [1] 35/17
contact [2] 46/1 46/6
contacts [17] 6/15 8/2 10/8 10/9 15/4 15/12 17/12 19/6 19/15 21/7 21/16 24/3 43/12 43/13 44/12 45/1 45/23
contemplate [1] 38/3
contemplates [1] 45/23
contemplating [2] 41/12 41/15
contention [1] 52/1
context [5] 8/7 31/6 31/8 40/22 61/25
CONTINUED [1] 2/1
contours [2] 41/19 41/20
contract [1] 45/25
contractual [1] 51/5
contradict [1] 40/9
contradict it [1] 40/9
copy [2] 5/10 15/2
correct [16] 5/21 5/22 5/23 17/24 18/20 18/25 24/12 27/14 29/10 31/15 32/3 38/2 40/11 50/12 52/4 63/3
could [13] 5/20 13/8 15/11 16/9 23/20 28/6 36/9 43/18 44/2 45/6 48/25 49/18 52/12
couldn't [2] 12/7 44/10
counsel [18] 3/13 3/20 17/18 19/8 19/15 28/20 29/3 29/5 30/1 32/12 36/18 38/7 41/8 45/2 47/2 49/22 55/11 59/18
count [2] 43/11 43/13
country [3] 4/4 5/11 16/21
couple [4] 7/1 13/14 47/8 49/10
couple points [1] 47/8
course [4] 5/1 27/4 41/4 51/20
court [44] 1/1 2/12 2/14 3/2 3/22 3/25 5/13 5/15 11/14 14/15 15/8 15/20 15/24 19/5 19/6 23/17 23/23 28/12 28/24 29/12 30/10 33/3 33/7 35/9 36/20 37/20 37/25 38/5 38/17 38/20 39/10 39/17 42/7 42/14 42/14 44/2 44/3 48/5 48/25 50/7 50/10 50/11 52/12 62/7
courts [5] 11/3 16/10 16/21 29/11 37/1
covered [1] 54/24
covers [1] 50/15
create [1] 53/11
created [1] 23/2
creating [1] 22/18
criminal [1] 54/5
critical [1] 13/19
CRR [2] 63/2 63/8
curious [1] 20/1
currently [1] 29/4
CV [1] 1/4

D

D.C [40] 1/5 1/15 2/4 2/15 6/4 6/20 7/16 8/2 11/12 12/4 12/10 12/14 14/5 15/22 15/23 16/1 16/10 16/11 16/12 17/6 17/15 17/20 17/23 18/7 18/23 19/20 19/21 19/21 20/8 36/20 37/1 39/16 39/17 42/22 43/2 45/10 48/9 48/25 51/21 55/6
D.C. [6] 7/16 13/24 15/1 15/3 44/9 50/11
D.C. Circuit [4] 7/16 13/24 15/1 15/3
D.C. Court [1] 50/11
D.C.-based [1] 44/9
Date [1] 63/7
day [3] 17/25 31/7 60/10
days [2] 23/6 61/14
December [4] 24/18 52/23 54/10 55/24
Deceptive [3] 36/1 36/4 44/18
decide [1] 53/11
decision [2] 19/7 53/10
declarations [3] 22/19 40/2 53/10
declare [1] 55/9
declared [1] 4/6
defamation [2] 35/4 59/18
defamed [2] 35/25 35/25
defend [6] 16/14 16/21 23/10 23/13 24/25 39/18
defendant [13] 1/7 2/2 9/23 15/1 22/12 28/25 37/2 42/18 45/17 48/8 48/22 48/25 51/13
defendant's [3] 6/5 17/17 49/21
defendants [10] 11/24 12/4 12/7 13/21 14/12 17/3 17/22 20/25 51/4 51/9
defended [1] 17/4
defending [1] 53/20
defense [7] 3/12 19/8 22/21 28/23 32/6 33/2 33/14
defense now [1] 28/23
defenses [2] 23/12 52/15
deficient [1] 56/21
definition [3] 12/1 13/4 51/3
definitively [1] 43/21
degree [2] 42/24 57/2
deliver [1] 4/9
delivered [3] 46/17 46/21 46/22
delivery [1] 46/25
demand [24] 4/20 8/7 19/17 19/20 20/8 22/15 22/21 23/8 23/10 23/18 23/19 24/6 24/15 24/19 24/24 25/8 26/5 35/5 49/22 53/2 55/9
demands [1] 16/22
department [1] 53/23
described [1] 18/22
desist [5] 21/12 21/14 22/7 33/6 41/12
despite [1] 16/21
detail [1] 36/9
determine [1] 37/13
determined [1] 15/8
developed [1] 43/15
devoted [1] 28/8
dicta [3] 10/23 11/2 11/4
did [13] 4/24 11/14 19/21 29/23 31/15 31/17 33/3 38/14 38/16 49/12 52/7 57/16 60/16
didn't [19] 13/21 13/23 27/25 28/9 29/20 29/23 32/9 32/17 32/17 36/23 37/12 47/12 47/21 50/21 51/1 51/17 56/4 56/4 60/20
difference [6] 20/11 20/20 20/21 24/14 39/20 58/3
different [12] 19/5 37/15 37/23 39/14 41/11 42/22 42/23 46/8 48/19 57/11 57/21 61/2
differently [1] 37/18
difficult [1] 32/12
difficulty [1] 14/19
direct [2] 16/12 35/3
directed [3] 16/23 17/19 34/1
direction [1] 40/23
directly [1] 19/14
disagree [2] 4/4 5/12
discrete [1] 33/1
discretion [1] 24/19
discuss [5] 3/15 29/24 40/19 41/19 52/11
discussed [1] 52/13
discussion [5] 26/2 26/3 29/25 32/23 32/25
dismiss [8] 14/20 24/2 24/10 31/8 47/11 47/22 61/12 62/1
dispositive [1] 21/17
dispute [7] 8/15 17/2 20/5 39/22 53/14 58/5 58/7
disputed [1] 7/2
disputes [1] 5/16
distinction [1] 39/1
distinguish [1] 51/10
distinguishable [8] 32/7 32/17 32/19 32/21 33/3 36/13 45/18 53/19
distinguished [1] 21/23
Distributed [4] 22/21 32/6 33/2 33/14
Distributed v [1] 32/6
DISTRICT [45] 1/1 1/1 1/10 9/6 11/3 12/20 13/2 13/10 15/4 15/13 15/20 16/23 17/1 18/10 18/17 19/11 19/15 20/10 20/24 21/4 22/22 36/20 39/3 39/4 39/5 41/5 41/9 41/11 41/16 42/2 42/3 43/3 43/3 44/13 44/23 45/7 46/24 48/25 49/20 50/16 51/1 51/5 51/8 52/3 56/9
District's [1] 12/8
Division [1] 2/8
do [34] 4/1 5/14 6/23 7/20 8/17 8/18 11/17 11/19 13/10 14/2 15/11 16/7 19/23 20/19 21/20 23/23 24/4 25/3 26/13 28/6 28/15 32/4 35/8 35/15 35/24 38/9 42/6 42/12 42/13 47/13 49/6 53/24 53/25 57/4
do that [1] 28/15
do you [1] 13/10
do you have [1] 11/17
do you know [1] 19/23
docket [1] 54/11
doctrine [1] 9/21
document [6] 39/4 46/20 46/22 53/11 54/11 54/13
Document 4-5 [1] 54/11
documents [13] 4/21 4/21 16/25 18/8 23/5 23/9 24/16 26/1 41/2 41/8 41/15 42/25 46/4
Dodge [2] 1/12 3/9
does [13] 4/14 7/17 9/20 11/23 13/4 15/19 21/3 23/15 25/7 46/18 48/24 57/25 60/24
doesn't [14] 9/13 9/17 9/18 10/4 10/5 13/9 22/15 24/3 27/1 30/16 33/20 44/12 46/10 48/16
doing [4] 22/15 38/8 38/11 53/23
don't [45] 3/19 6/5 6/6 6/22 7/1 7/5 8/15 9/8 9/9 9/20 11/2 12/13 13/17 13/19 15/9 19/24 23/7 24/21 25/12 26/7 26/13 26/23 27/17 28/4 29/3 32/12 37/9 38/25 38/25 39/18 39/22 42/12 43/11 44/12 47/5 49/12 52/17 53/14 56/14 56/24 58/5 58/7 59/5 60/8 60/17
done [3] 4/18 16/12 27/16
donor [2] 4/22 5/10

AMERICAN OVERSIGHT

D

donors [1] 22/16
Dooley [1] 1/12
down [1] 28/11
drawers [1] 5/9
drives [1] 5/10
drop [1] 39/15
Drummond [1] 50/4
Drummond Company [1] 50/4
DTPA [1] 43/22
due [19] 17/12 18/10 21/7 21/21 23/6 37/16 39/19 40/19 40/20 45/21 47/11 49/11 49/14 49/17 49/19 50/9 50/17 61/12 61/13
due-process [1] 21/7
duress [1] 45/17
during [1] 59/19
Dyson [1] 21/2

E

each [5] 19/18 21/11 37/2 43/19 43/24
earlier [6] 11/2 27/17 48/1 49/10 52/13 55/4
editorial [2] 53/10 53/22
editors [1] 53/23
effect [5] 40/18 46/18 49/23 51/5 53/23
effective [1] 20/6
effectively [3] 9/17 38/6 54/6
effects [2] 32/25 33/1
efforts [1] 5/13
eight [1] 61/14
eight days [1] 61/14
either [1] 43/5
ELIAS [1] 1/13
elias.law [1] 1/16
Elon [3] 4/6 57/18 60/11
Elon Musk [3] 4/6 57/18 60/11
else [3] 34/9 35/9 47/2
Email [3] 1/16 2/5 2/11
emails [1] 43/4
emphasize [1] 53/8
employees [3] 33/22 34/15 34/17
employer [1] 34/13
end [2] 9/12 17/25
ended [1] 36/21
enforce [4] 21/15 22/13 24/19 42/13
enforcement [2] 26/5 55/9
engage [1] 4/15
engaged [1] 51/7
engaging [1] 42/25
enjoin [3] 5/13 26/5 55/9
enormous [1] 22/18
enough [6] 21/15 43/16 44/12 45/1 45/8 54/25
ensure [1] 4/22
entire [1] 29/25
entirely [1] 10/23
entity [1] 35/25
entrance [1] 46/24
equal [2] 42/2 42/5
equivalent [1] 26/21
especially [1] 47/18
essential [1] 4/1
essentially [10] 6/19 7/7 8/9 8/20 9/12 17/5 18/17 23/11 51/24 52/6
establish [2] 27/10 54/20
establishing [1] 27/12
et [2] 1/3 3/8
et al [1] 3/8
even [17] 10/24 12/8 12/18 13/25 14/7 22/23 23/1 24/21 29/21 30/21 32/18 39/22 40/10 43/12 46/11 46/23 62/1
event [3] 14/10 59/20 61/1
ever [3] 20/5 36/3 36/5
every [5] 44/7 53/10 53/11 53/11 53/12
everybody [1] 59/24
everyone [3] 3/5 61/10 62/4
everything [1] 54/24
everywhere [2] 31/24 34/6
evidence [2] 40/7 40/8
Ex [23] 6/20 7/9 7/13 7/21 8/5 8/18 8/23 9/21 10/17 11/5 11/16 12/14 15/14 16/4 17/10 27/19 28/13 29/7 29/11 29/13 29/24 30/17 31/21
Ex parte Young [23] 6/20 7/9 7/13 7/21 8/5 8/18 8/23 9/21 10/17 11/5 11/16 12/14 15/14 16/4 17/10 27/19 28/13 29/7 29/11 29/13 29/24 30/17 31/21
exact [3] 12/1 54/4 54/7
exactly [2] 57/16 60/15
example [4] 12/9 35/8 35/9 37/21
exceed [1] 48/14
except [1] 21/13
exception [4] 8/21 11/15 27/19 28/13
excursions [1] 4/15
executed [1] 46/10
executing [1] 39/23
executive [1] 22/6
exercise [2] 15/20 26/16
exhibit [1] 54/16
exists [3] 9/22 11/16 16/5
expect [1] 39/16
experiencing [1] 39/25
explained [1] 25/9
explanation [1] 28/14
expression [2] 59/7 59/14
expressions [1] 4/16
extends [1] 9/7
extensive [1] 49/14
extent [1] 60/7
external [2] 4/22 22/17
extortionists [1] 24/22
extraordinary [2] 47/19 48/13
extremely [1] 12/12
Exxon [5] 54/4 57/2 57/3 57/7 61/1
ExxonMobil [1] 4/12

F

F.4th [1] 10/25
F.App'x [1] 50/4
F.Supp.2d [1] 48/4
fact [16] 9/13 9/18 10/15 16/22 17/3 17/22 21/17 21/20 22/21 36/8 40/23 41/18 51/18 57/19 58/9 60/22
facts [7] 37/3 43/15 44/15 44/22 45/24 46/5 54/9
factual [1] 25/20
failed [1] 45/5
fair [4] 6/21 18/3 27/18 43/16
fairness [1] 18/1
faith [2] 25/21 26/6
false [2] 45/16 54/23
familiar [1] 10/21
far [7] 9/9 9/10 10/12 10/13 14/16 34/7 45/23
far-reaching [1] 14/16
favorable [1] 41/20
fear [1] 5/4
February [2] 1/5 63/7
federal [9] 19/6 37/21 37/25 38/3 42/7 42/14 48/25 49/6 55/7
feel [1] 55/1
Ferrara [5] 14/4 14/25 29/23 30/23 30/24
few [3] 29/5 36/18 45/22
fiction [6] 6/20 7/21 8/19 10/18 27/19 30/17
Fifth [6] 10/16 10/20 10/22 10/23 19/2 21/8
Fifth Circuit [6] 10/16 10/20 10/22 10/23 19/2 21/8
fight [1] 35/4
figures [1] 4/2
file [2] 29/21 55/5
filed [3] 24/2 47/22 54/12
files [1] 23/17
finally [2] 30/23 37/6
find [10] 11/15 13/21 15/24 29/11 33/4 37/2 38/17 50/21 58/2 58/19
finding [2] 36/22 56/23
fine [1] 30/5
fingertips [1] 13/17
firm [1] 19/16
first [19] 10/4 17/16 20/15 20/17 26/7 26/9 28/12 34/13 35/10 35/12 36/19 38/14 42/21 45/9 56/5 59/2 59/7 59/13 59/14
First Amendment [6] 10/4 26/9 35/12 59/2 59/7 59/13
First Amendment-protected [1] 35/10
five [1] 55/16
flagged [1] 29/22
flagrantly [1] 48/14
focused [3] 17/11 32/10 32/22
folks [3] 34/8 59/25 60/2
followed [2] 11/4 30/24
following [1] 49/24
follows [1] 39/23
footnote [2] 11/1 11/1
foregoing [1] 63/3
foreign [4] 16/14 24/25 39/17 45/25
forgive [1] 32/12
forum [2] 24/25 45/25
forward [4] 9/12 15/3 56/16 61/25
found [5] 10/13 11/5 22/3 45/13 48/5
foundation [1] 25/20
four [1] 21/9
fours [2] 22/20 32/14
framework [2] 57/25 58/6
frankly [3] 53/25 54/2 54/9
fraudulent [3] 33/12 38/24 59/15
free [2] 4/25 5/7
frequently [1] 48/16
fulfilled [1] 51/15
fully [1] 47/12
fulsome [1] 28/14
fundamental [1] 37/16
further [9] 3/18 5/5 16/19 27/2 33/6 40/16 43/15 43/17 47/3

G

Gene [2] 2/2 3/11
general [43] 2/8 2/8 4/9 4/10 11/25 12/4 12/8 12/22 13/3 13/11 15/18 15/24 20/4 20/9 22/4 23/16 31/12 31/16 33/5 33/7 35/15 35/24 37/19 38/5 38/22 39/15 41/3 41/14 41/17 41/25 42/10 42/13 44/4 44/8 44/21 48/14 51/1 54/18 56/15 57/4 57/10 59/8 59/22
General's [2] 45/5 54/19
Generals [2] 4/13 16/17
get [16] 6/17 6/25 9/17 10/4 10/5 14/20 17/10 28/10 30/13 34/16 34/20 45/7 46/3 47/12 56/22 60/22
give [5] 37/21 55/19 58/10 61/7 61/20
given [6] 14/13 28/1 28/8 47/18 49/16 49/19
global [3] 57/5 57/5 57/7
go [25] 5/9 6/25 9/8 9/10 10/12 15/18 16/14 16/20 18/13 19/9 20/2 24/25 27/7 27/7 28/11 29/5 36/16 38/11 43/19 49/8 52/12 55/17 56/20 56/20 61/22
go ahead [4] 20/2 36/16 49/8 55/17
goes [3] 4/22 8/10 55/25
going [21] 4/8 12/18 14/19 14/23 23/5 23/10 29/2 33/9 35/11 35/12 37/24 38/13 38/21 41/7 41/8 41/9 45/19 46/3 58/1 59/12 61/21
gold [1] 57/3
gone [1] 10/12
good [8] 3/4 3/6 3/13 3/21 3/23 7/14 25/21 26/6
Good morning [3] 3/4 3/21 3/23
good-faith [2] 25/21 26/6
got [4] 18/24 23/5 40/2 44/13
governed [2] 19/16 19/21
government [3] 4/3 5/8 48/10
grant [2] 49/6 55/8
granting [1] 47/17
grappling [1] 19/2
Great [1] 7/13
greater [1] 36/9
Grewal [20] 19/7 21/10 21/13 21/22 21/24 22/20 22/23 32/5 32/6 32/13 32/13 32/14 32/16 32/24 33/2 33/14 33/24 33/25 34/4 48/17
GROUP [1] 1/13
gschaerr [1] 2/6
guess [4] 8/19 21/8 27/6 58/17

H

had [12] 7/11 17/24 17/24 19/14 22/9 22/10 26/2 26/3 55/6 57/4 57/7 59/5

AMERICAN OVERSIGHT

H

hail [1] 38/5
hailing [1] 37/19
half [1] 27/24
halfway [1] 4/4
hand [4] 4/20 38/12 40/15 56/19
handle [1] 61/21
hanging [1] 54/1
hangs [1] 54/6
happen [1] 48/16
happened [6] 36/5 36/6 46/16 48/13 51/7 56/25
happening [2] 24/23 37/24
happy [4] 3/17 26/25 38/12 42/12
harassment [2] 5/3 5/5
hard [1] 44/21
harm [2] 26/8 53/8
harmed [1] 34/9
has [53] 4/11 4/18 4/19 5/1 5/14 6/10 8/22 9/3 10/3 10/12 15/16 15/24 17/14 18/24 19/3 19/10 19/19 20/24 24/1 24/3 24/5 24/5 24/19 25/4 26/2 26/3 30/22 32/1 34/7 34/14 36/3 36/5 36/6 38/20 41/18 42/10 43/6 43/22 45/2 45/21 49/22 50/12 50/25 51/21 52/17 53/17 54/3 56/24 57/18 58/14 58/16 58/17 61/24
hasn't [4] 24/11 34/1 40/13 41/3
have [105]
haven't [10] 7/12 26/25 29/19 30/13 33/22 40/8 42/18 42/20 56/14 59/2
having [2] 14/19 30/1
he [41] 4/7 4/11 4/19 4/24 4/24 5/1 5/14 5/14 5/25 6/12 7/6 8/3 8/7 10/4 10/5 11/9 15/14 15/16 16/13 18/7 18/9 19/13 22/3 22/4 22/5 24/19 24/21 38/5 39/16 52/17 52/22 53/1 54/3 54/4 54/7 54/7 54/22 59/9 60/12 60/13 60/16
he did [1] 60/16
he said [2] 11/9 54/4
he's [7] 7/3 8/8 8/9 24/18 24/19 53/19 54/22
headquartered [2] 33/20 57/14
hear [5] 3/17 26/25 27/3 28/22 53/7
heard [2] 16/17 55/12
hearing [3] 1/9 37/7 37/7
heart [1] 6/18
held [2] 16/10 43/4
help [9] 4/9 6/24 17/9 18/12 19/9 31/1 33/24 34/4
her [8] 11/11 11/11 11/11 12/21 15/2 15/3 15/7 17/24
here [52] 3/15 4/18 5/18 9/3 13/19 14/3 14/9 14/25 15/12 16/13 17/2 17/8 18/2 18/6 18/7 18/15 18/23 18/24 19/12 21/18 22/14 23/4 24/23 26/4 27/7 28/1 31/18 32/12 33/17 34/1 37/20 38/5 38/17 38/22 39/14 39/21 39/22 40/23 41/4 44/2 44/22 45/3 45/19 47/10 48/13 49/8 51/7 51/24 54/8 55/6 56/9 56/25
here's [3] 9/11 32/8 43/17
hidden [1] 5/1
hide [1] 4/24
high [2] 4/3 5/7
high-ranking [2] 4/3 5/7
highly [2] 45/18 45/18
him [7] 5/15 7/5 7/20 10/8 15/13 60/20 60/23
himself [7] 4/11 17/14 19/10 19/20 20/9 22/5 41/4
hired [1] 45/3
hiring [4] 20/7 22/24 49/20 51/25
his [30] 4/7 4/9 4/19 4/23 4/24 5/1 5/3 5/22 6/11 6/13 7/3 7/13 8/1 8/8 10/6 10/9 15/14 15/15 18/9 31/12 31/16 39/17 41/6 41/6 48/7 48/8 48/14 51/2 60/20 60/23
hold [1] 12/5
Holder [3] 8/13 29/9 29/12
holding [1] 14/17
holds [1] 53/2
home [3] 13/2 13/2 44/13
Honor [66]
Honor's [1] 6/7
HONORABLE [2] 1/9 3/3
house [1] 25/15
how [9] 6/25 17/13 19/10 33/23 34/15 34/17 35/3 61/11 61/20
however [1] 4/14
hugely [1] 57/21
hypo [1] 38/19
hypothetical [2] 39/21 46/15
hypothetically [3] 12/19 13/9 39/2

I

I also [3] 32/22 52/11 61/23
I am [1] 5/24
I assume [1] 41/14
I believe [2] 17/20 61/16
I can [8] 10/12 13/15 25/22 26/13 26/14 34/7 40/15 50/1
I can't [2] 43/21 54/25
I did [1] 49/12
I don't [21] 6/5 6/6 6/22 7/1 8/15 9/8 9/9 9/20 12/13 19/24 26/13 39/22 43/11 47/5 49/12 53/14 56/14 56/24 58/5 59/5 60/17
I don't have [3] 13/17 26/23 29/3
I guess [3] 8/19 21/8 27/6
I have [5] 10/13 11/4 28/1 32/8 54/24
I just [3] 36/17 50/22 55/21
I know [3] 14/12 14/18 42/20
I mean [25] 6/17 6/18 7/8 8/10 8/17 13/23 13/25 14/4 14/18 21/6 21/7 27/21 29/20 29/23 30/22 32/11 41/14 44/14 45/3 49/4 49/5 49/25 51/23 59/8 60/13
I should [5] 10/16 28/14 31/5 40/11 59/19
I think [38] 7/1 7/25 8/10 9/9 12/5 13/6 13/14 14/11 14/13 14/19 14/25 16/3 16/6 16/16 19/1 19/18 20/21 21/22 21/25 25/2 26/20 27/1 27/13 27/23 32/6 47/25 48/11 49/1 52/14 52/23 53/6 53/18 54/24 55/3 55/21 57/2 61/13 61/24
I understand [3] 5/16 18/14 33/21
I want [7] 6/24 18/13 29/5 57/1 61/10 61/11 61/20
I wanted [1] 37/6
I will [2] 32/20 53/8
I'd [3] 9/8 29/8 34/18
I'll [15] 14/20 19/7 28/22 35/3 38/9 44/24 45/9 50/4 55/19 57/24 58/10 58/21 61/6 61/7 62/2
I'm [29] 3/17 10/20 11/17 12/16 14/1 14/19 18/12 19/2 20/1 23/4 25/22 25/24 26/10 26/10 26/25 28/11 28/12 29/2 29/16 30/6 32/17 36/16 37/11 38/13 43/13 49/5 49/7 54/13 58/24
I'm going [1] 38/13
I'm just [4] 20/1 26/10 29/2 49/5
I'm not [4] 25/22 26/10 30/6 37/11
I'm not sure [1] 10/20
I'm sorry [6] 11/17 12/16 18/12 36/16 49/7 54/13
I've [7] 3/17 23/18 28/1 28/8 29/25 37/9 40/2
idea [3] 7/8 52/11 54/22
identical [2] 44/18 44/19
identified [5] 9/9 10/8 13/14 33/22 40/12
ideology [1] 4/16
ignore [1] 50/1
immediately [2] 4/11 24/16
immunity [3] 7/4 7/14 10/5
implicate [1] 53/12
import [1] 10/17
important [6] 14/13 14/25 16/16 21/20 28/9 39/20
importantly [2] 32/6 36/13
impose [1] 16/11
improper [1] 60/21
inapposite [1] 21/2
include [1] 4/14
including [1] 19/15
incorporated [1] 33/21
Indeed [1] 54/18
indicate [1] 21/4
indicated [1] 52/16
indisputably [1] 6/12
individual [7] 5/25 9/2 9/16 11/12 12/7 48/22 60/20
inflicted [2] 39/25 58/18
information [1] 59/24
initial [1] 30/2
injunction [6] 1/9 3/16 31/6 31/11 55/2 58/20
injunctive [2] 9/4 47/18
injury [8] 16/11 16/12 18/9 18/24 52/9 58/9 58/11 58/18
inquiry [4] 7/22 7/23 49/17 50/11
Instead [1] 38/17
intended [1] 21/15
intention [1] 33/10
interaction [2] 46/1 46/3
interest [1] 33/17
interested [2] 16/18 24/20
interests [2] 57/18 60/5
interference [1] 18/22
internal [3] 4/21 4/21 22/17
interpretation [1] 50/12
interpreted [1] 51/21
interrupt [3] 5/20 8/6 25/18
interrupted [1] 36/16
investigate [5] 4/14 33/11 35/6 35/21 38/23
investigating [1] 16/19
investigation [10] 4/23 17/19 25/14 25/21 41/22 54/19 54/21 59/10 59/19 60/14
investigative [7] 4/2 4/15 22/14 23/18 23/19 24/6 35/5
invitations [1] 56/1
invite [2] 5/8 38/9
invited [2] 14/6 29/20
involve [1] 52/8
involved [1] 34/25
involving [1] 41/16
irrelevant [1] 23/9
is [205]
Is there [2] 10/11 13/7
isn't [12] 9/12 12/18 21/15 26/16 29/25 31/2 33/24 38/4 39/13 43/17 44/25 45/8
isn't waived [1] 31/2
isolated [2] 33/1 44/19
issuance [2] 46/15 58/13
issue [47] 7/14 9/9 13/20 13/24 14/1 14/2 14/12 14/21 14/23 15/5 17/10 17/24 19/4 21/7 22/9 27/8 28/9 29/20 29/21 29/25 30/3 30/12 30/25 31/13 31/18 32/2 37/3 40/16 43/14 46/14 47/9 47/12 47/24 48/12 49/9 49/19 51/10 53/13 56/8 56/24 57/5 59/22 60/10 60/12 61/2 61/21 61/21
issued [11] 4/19 33/10 35/6 36/3 38/22 54/6 57/10 58/15 59/9 60/10 60/14
issues [4] 7/15 33/1 37/22 39/4
issuing [3] 35/22 41/3 48/15
it [133]
it would be [5] 14/14 25/5 42/4 44/20 46/22
it's [41] 9/22 11/20 14/8 16/5 18/1 21/10 23/9 24/4 30/6 31/20 32/13 32/15 32/18 32/20 33/21 34/8 37/2 40/1 40/7 42/9 46/19 46/21 50/3 50/6 52/23 52/23 54/2 55/25 56/3 56/15 57/18 57/21 59/14 59/15 59/15 59/21 59/21 61/1 61/13

AMERICAN OVERSIGHT

I

it's... [2] 61/21 61/24
its [8] 4/20 14/15 15/21 18/8 26/6 41/8 60/5 60/5
itself [3] 10/24 22/11 39/18

J

JAFFE [1] 2/3
jaffe.com [1] 2/6
January [2] 24/17 54/12
Jersey [3] 22/4 33/5 33/7
jobs [2] 53/24 53/25
journalism [1] 4/2
journalist's [1] 5/9
JR [2] 1/6 3/8
judge [6] 1/10 3/3 8/10 17/23 21/25 25/2
Judge Bates [1] 8/10
judges [1] 9/5
judicial [1] 8/21
jurisdiction [47] 6/15 11/15 11/25 12/2 12/4 12/8 12/23 13/3 13/5 13/11 15/19 15/21 15/25 16/1 16/14 17/4 17/22 18/1 22/4 23/24 26/16 27/11 27/12 30/3 30/10 32/24 33/4 36/21 36/23 36/25 37/2 37/4 37/5 37/25 39/9 40/20 42/8 42/17 44/5 44/22 45/12 48/6 48/14 49/2 56/12 56/22 56/23
jurisdictional [3] 12/22 23/12 52/15
jurisdictionally [1] 50/17
just [42] 5/14 8/7 11/18 15/18 18/22 19/9 20/1 21/2 21/6 22/12 22/15 23/22 25/3 25/24 26/10 29/2 34/5 35/3 35/6 35/8 36/17 37/3 43/3 47/7 47/10 48/15 48/20 49/5 49/22 49/24 50/4 50/19 50/22 52/20 53/8 53/18 53/25 54/10 55/13 55/21 61/2 61/10
justice [1] 18/3
justifications [1] 54/21
justifying [1] 25/17

K

Ken [11] 4/10 6/4 7/12 16/5 16/18 18/5 19/19 22/24 24/18 53/21 54/2
Ken Paxton [9] 6/4 7/12 16/5 18/5 19/19 22/24 24/18 53/21 54/2
Ken Paxton's [1] 16/18
KENNETH [4] 1/6 2/2 3/8 3/11
Kenneth Klukowski [1] 3/11
key [4] 5/16 13/20 13/23 14/2
kind [2] 50/1 59/24
King [2] 45/24 46/7
Klukowski [2] 2/2 3/11
know [59] 9/5 9/8 9/9 10/6 11/16 11/23 12/3 12/3 12/13 12/13 13/8 14/4 14/12 14/12 14/13 14/14 14/18 15/8 16/3 16/5 16/16 16/19 17/25 19/18 19/20 19/23 19/24 20/5 21/1 21/24 22/3 23/1 25/14 26/4 26/7 27/2 31/7 32/4 32/11 38/11 38/14 38/19 40/19 40/22 42/20 48/17 50/25 52/11 52/12 52/17 53/1 54/5 54/24 55/3 55/4 55/5 56/3 56/14 62/2
known [1] 57/5
knows [1] 12/12

L

lack [4] 25/19 25/20 26/6 48/12
land [1] 44/8
language [5] 8/4 8/8 10/15 11/8 51/11
large [1] 60/24
largely [1] 57/11
last [4] 11/1 55/24 57/24 58/21
late [2] 27/22 47/25
later [3] 22/1 60/13 61/23
launched [1] 60/14
launching [1] 59/9
Lavorato [6] 2/7 3/12 17/20 36/9 38/13 40/16
law [17] 1/13 14/14 17/15 19/16 19/16 19/20 19/21 20/23 21/15 22/11 22/13 43/12 43/23 51/4 54/9 58/15 60/18
laws [1] 45/6
lawsuit [3] 5/17 16/13 38/21
lawyer [1] 38/10
lawyers [1] 41/6
lay [1] 57/25
lays [1] 58/8
lead [2] 12/5 16/7
least [10] 7/4 10/15 20/22 26/14 28/7 32/1 40/17 42/2 43/9 61/25
left [2] 7/18 14/1
legal [4] 5/5 35/17 46/20 46/22
let [12] 23/22 25/3 27/9 33/19 37/15 37/18 37/21 40/25 56/3 61/20 62/1 62/2
let's [3] 6/17 17/10 38/11
letter [8] 24/18 33/6 41/12 52/22 52/23 54/10 54/11 55/24
level [1] 46/7
libel [1] 59/19
licensed [2] 19/22 19/25
like [19] 6/19 10/2 16/9 27/2 27/3 29/6 29/8 33/24 33/25 34/4 35/21 37/8 40/5 41/14 43/3 54/5 57/13 59/25 61/8
likelihood [3] 27/11 36/22 42/15
limit [1] 50/14
limited [3] 11/10 52/16 53/19
limits [2] 49/14 52/16
line [1] 14/7
lines [1] 22/5
list [1] 4/22
lists [2] 4/22 5/10
litigation [3] 2/8 5/2 37/23
little [2] 28/11 52/13
lives [1] 13/10
LLP [2] 1/13 2/3
local [1] 8/21
located [4] 16/25 17/2 18/8 37/25
logic [4] 8/4 9/6 9/12 11/16
long [47] 6/4 6/13 6/20 7/17 7/21 7/25 8/19 9/7 9/17 9/18 9/18 10/18 11/6 11/12 14/5 15/10 16/6 17/10 19/18 20/22 21/21 27/8 27/20 28/13 29/7 29/12 30/16 30/17 31/18 32/23 37/4 42/22 42/22 43/2 44/11 45/10 45/19 48/9 48/18 48/24 49/14 49/16 50/2 50/8 51/20 51/21 61/21
long-arm [45] 6/4 6/13 7/17 7/21 7/25 8/19 9/7 9/17 9/18 10/18 11/6 11/12 14/5 15/10 16/6 17/10 19/18 20/22 21/21 27/8 27/20 28/13 29/7 29/12 30/16 30/17 31/18 32/23 37/4 42/22 42/22 43/2 44/11 45/10 45/19 48/9 48/18 48/24 49/14 49/16 50/2 50/8 51/20 51/21 61/21
long-arm statute [1] 6/20
long-arm's [1] 9/18
longer [1] 12/11
look [8] 7/1 9/11 24/17 37/8 46/9 49/3 55/23 58/6
looked [2] 10/13 30/24
looking [4] 43/25 51/18 53/21 59/22
lose [2] 58/22 58/25
lot [2] 33/25 57/18

M

made [20] 5/14 17/17 20/11 27/24 30/13 34/23 36/18 41/23 43/7 45/15 47/23 50/25 53/18 53/19 55/20 57/7 57/9 59/2 60/11 60/17
mail [3] 21/1 21/18 46/23
mailed [4] 20/12 20/15 20/17 21/12
mailed first [1] 20/15
mailing [1] 21/14
maintain [1] 50/7
maintains [1] 15/21
major [2] 34/13 57/13
make [10] 20/20 20/21 26/24 38/10 44/10 46/24 50/22 53/10 56/22 61/2
makes [2] 22/23 51/12
making [4] 39/1 43/1 44/11 57/4
malice [1] 35/20
manage [1] 61/11
many [5] 33/23 34/15 34/16 34/17 34/20
Maryland [7] 13/10 17/3 17/4 17/18 17/23 25/2 37/7
Massachusetts [1] 1/14
matter [7] 8/3 16/10 23/6 30/2 56/15 58/20 63/4
matters [31] 1/3 3/7 4/20 4/25 16/19 16/20 17/1 17/20 18/8 20/8 22/25 23/15 23/24 24/1 24/2 25/4 25/7 25/25 33/17 33/19 34/23 41/1 41/7 41/19 42/8 42/10 42/24 43/6 53/17 54/5 54/20
Matters' [1] 19/14
may [12] 3/21 11/11 15/20 16/18 28/24 33/21 43/10 53/12 55/12 55/23 57/22 61/22
maybe [5] 12/18 28/13 43/13 60/9 62/1
MC [1] 2/9
MC-019-1 [1] 2/9
me [39] 6/19 6/24 6/25 7/18 7/18 10/12 14/8 17/9 17/13 18/12 19/9 19/9 23/22 25/3 27/9 27/9 28/7 29/19 31/1 32/12 32/16 32/18 33/19 33/24 34/4 35/16 37/13 37/15 37/18 37/21 39/8 39/14 40/25 44/17 44/21 46/9 48/21 61/20 62/1
mean [35] 6/17 6/18 7/8 8/10 8/17 12/7 13/8 13/23 13/25 14/4 14/18 16/9 16/20 17/16 21/6 21/7 27/21 28/4 29/20 29/23 30/22 32/11 39/2 41/14 44/10 44/14 45/3 48/24 49/4 49/5 49/25 51/23 53/18 59/8 60/13
meaning [1] 50/10
means [2] 18/11 50/15
mechanical [1] 2/17
media [36] 1/3 1/12 3/7 4/20 4/25 16/19 16/20 17/1 17/20 18/8 19/14 20/8 22/25 23/15 23/24 24/1 24/2 25/4 25/7 25/25 33/17 33/19 34/23 36/4 36/7 41/1 41/7 41/19 42/8 42/10 42/24 43/6 43/18 44/9 53/17 54/20
Media Matters [27] 4/20 4/25 16/19 16/20 17/1 17/20 18/8 20/8 22/25 23/15 23/24 24/1 24/2 25/4 25/7 25/25 33/17 33/19 34/23 41/7 41/19 42/8 42/10 42/24 43/6 53/17 54/20
Media Matters' [1] 19/14
MEHTA [2] 1/9 3/3
members [1] 4/1
mention [5] 32/22 56/4 56/6 57/19 61/3
mentioned [6] 29/6 29/8 31/20 32/5 45/22 45/24
mentioning [1] 32/4
mere [1] 21/14
merely [1] 46/16
Merit [1] 2/13
merits [3] 36/22 58/23 58/25
method [1] 46/23
might [2] 41/20 49/1
minimum [4] 17/11 21/7 21/16 45/1
minutes [1] 55/16
misleading [1] 33/12
misrepresentation [2] 38/24 59/16
moment [2] 6/18 19/8
moments [1] 45/22
Monell [1] 12/19
Monell claim [1] 12/19
money [1] 45/7
more [16] 10/24 14/9 21/10 27/6 28/14 29/4 33/1 33/25 36/18 38/18 41/13 41/20 44/20 45/23 53/7 55/15
more-isolated [1] 33/1
morning [6] 3/4 3/6 3/13 3/15 3/21 3/23
most [2] 4/1 4/20
motion [20] 3/16 14/20 24/2 24/9 30/6 30/7 30/8 31/6 31/7 47/11 47/16 47/21 47/22

AMERICAN OVERSIGHT

M

motion... [7] 54/17 55/6 55/9 56/21 61/12 61/25 62/1
motivated [1] 59/7
motive [2] 4/24 5/1
Mouzavires [2] 49/15 50/18
Mouzavires v [1] 49/15
move [2] 17/9 38/15
moved [2] 55/1 55/2
moves [2] 38/1 39/6
Mr. [13] 3/11 5/21 5/25 17/14 17/20 19/10 24/8 29/1 30/15 34/7 36/9 38/13 40/16
Mr. Blum [1] 29/1
Mr. Gene Schaerr [1] 3/11
Mr. Lavorato [4] 17/20 36/9 38/13 40/16
Mr. Musk [1] 24/8
Mr. Paxton [6] 5/21 5/25 17/14 19/10 30/15 34/7
Ms. [5] 3/9 5/20 26/23 47/6 61/7
Ms. Aria Branch [1] 3/9
Ms. Branch [4] 5/20 26/23 47/6 61/7
much [4] 17/23 26/19 33/6 47/5
Musk [4] 4/6 24/8 57/18 60/11
must [2] 36/21 37/1
muzzling [1] 5/4
my [9] 4/6 13/17 16/20 18/13 19/15 36/8 40/15 42/10 56/23

N

narrowed [1] 26/1
narrower [1] 25/6
nation [1] 34/2
national [1] 22/6
nature [2] 46/20 47/19
near [1] 60/15
nearly [2] 44/18 44/19
necessary [2] 6/22 56/10
need [3] 14/23 50/7 55/21
needed [1] 54/20
negotiate [5] 24/22 25/13 26/8 26/17 54/23
negotiating [4] 24/20 25/4 26/20 41/9
never [1] 16/10
New [6] 22/4 33/5 33/7 35/13 39/3 39/4
New Jersey [3] 22/4 33/5 33/7
New York [3] 35/13 39/3 39/4
news [3] 34/21 53/19 59/25
next [5] 28/18 29/24 34/24 47/11 57/15
Nice [1] 3/14
no [43] 1/4 5/7 6/2 7/14 12/11 16/10 17/2 20/19 23/25 24/3 24/5 24/5 25/13 26/15 27/1 28/2 30/9 32/1 33/13 35/16 35/16 35/16 40/23 42/1 42/11 42/11 42/11 42/11 42/11 42/11 43/25 44/20 46/20 48/24 49/23 52/18 52/19 53/22 53/23 57/18 58/9 58/18 61/9
non [2] 37/23 37/24
non-party [2] 37/23 37/24
noncontact [1] 44/19
nonetheless [3] 34/20 37/1 40/19
not [93]
note [2] 6/3 47/10
noted [2] 9/5 27/21
nothing [1] 23/16
notions [1] 18/3
now [13] 3/2 5/18 10/22 17/11 25/11 28/23 32/17 32/18 37/13 38/18 44/1 53/14 59/17
nugget [1] 57/3
nullifies [1] 51/14
number [1] 33/22
numeral [2] 30/20 30/20
NW [3] 1/14 2/3 2/15

O

oag.texas.gov [1] 2/11
obviously [3] 14/16 27/25 28/7
occur [1] 51/8
occurred [1] 58/17
off [1] 51/22
offending [1] 50/17
offends [1] 18/2
offer [1] 49/24
offered [2] 38/10 41/18
office [7] 2/8 6/11 19/14 22/25 23/4 24/4 41/6
officer [2] 13/1 48/2
officers [3] 12/10 12/11 15/23
offices [2] 34/14 41/24
official [31] 2/14 5/22 7/3 7/7 7/13 8/8 8/25 8/25 9/16 9/22 9/24 10/6 11/10 11/24 12/3 12/10 12/21 15/2 15/14 15/15 19/4 21/12 22/11 29/14 29/14 31/12 31/17 48/7 48/8 48/23 60/23
official-capacity [3] 9/22 11/24 12/3
officials [4] 4/4 5/8 8/24 16/9
okay [27] 3/15 14/22 13/16 14/22 24/11 24/13 26/18 26/22 28/17 28/19 31/19 36/15 37/14 39/5 39/12 44/6 47/1 50/20 50/22 50/24 52/5 52/25 54/15 55/17 61/15 61/17 62/2
once [1] 41/22
one [17] 6/5 7/1 7/3 7/16 10/2 10/14 14/13 19/1 24/15 27/6 30/14 32/15 49/11 51/22 51/24 58/2 61/24
ongoing [5] 41/16 41/18 46/1 46/3 46/6
online [1] 34/2
only [14] 8/3 15/6 19/3 20/18 23/7 29/10 44/2 45/17 48/7 50/15 56/23 57/1 58/3 59/23
open [4] 5/9 29/15 31/20 31/23
opinion [1] 11/1
opportunity [2] 47/13 61/8
oppose [1] 52/18
opposed [2] 20/12 35/24
opposite [2] 54/4 54/8
opposition [4] 13/22 32/16 47/11 61/12
Oracle [2] 57/13 57/14
order [8] 6/7 7/22 21/12 21/14 23/9 43/19 56/22 62/2
ordinarily [1] 53/4
organization [4] 4/25 36/4 36/7 53/20
organizational [1] 22/16
other [22] 9/11 9/15 16/14 16/17 26/23 31/8 32/4 33/11 35/4 36/13 41/6 44/7 49/2 51/25 52/7 53/3 56/19 57/1 59/1 59/6 60/1 60/9
otherwise [2] 12/5 16/7
ought [2] 28/10 39/16
our [31] 4/12 10/3 10/8 16/15 22/22 23/1 23/3 24/23 25/9 26/8 29/4 30/9 32/25 42/15 43/22 44/13 44/16 47/15 47/19 49/13 49/21 51/7 51/16 52/7 52/14 52/16 52/22 53/9 54/17 54/25 55/8
our motion [1] 54/17
ourselves [2] 7/11 38/17
out [20] 5/4 6/24 7/9 14/6 14/14 18/12 19/4 19/9 21/11 29/14 38/6 40/22 43/3 45/11 48/13 49/11 49/13 51/25 57/25 58/8
outset [2] 30/4 31/10
outside [2] 23/3 52/9
over [13] 4/20 13/11 15/21 22/4 23/24 26/16 37/2 38/12 40/15 42/8 42/17 48/6 49/3
overbroad [1] 23/8
overly [1] 13/19
own [1] 52/15

P

P.O [1] 2/9
Packard [2] 1/13 3/10
page [1] 11/20
page 1 [1] 11/20
paid [1] 45/4
papers [4] 3/17 4/13 25/9 51/16
paragraph [2] 27/24 55/24
parlance [1] 5/5
Parole [1] 48/6
part [2] 11/24 56/4
parte [23] 6/20 7/9 7/13 7/21 8/5 8/18 8/23 9/21 10/17 11/5 11/16 12/14 15/14 16/4 17/10 27/19 28/13 29/7 29/11 29/13 29/24 30/17 31/21
particular [4] 57/11 57/25 58/4 58/20
particularly [1] 34/9
parties [2] 39/22 43/9
party [4] 37/23 37/24 38/1 38/7
past [2] 17/9 17/10
pause [1] 36/21
PAXTON [34] 1/6 3/8 4/10 4/18 5/21 5/25 6/4 6/9 6/10 7/12 7/25 8/1 9/3 10/3 16/5 16/9 17/14 18/5 19/10 19/19 22/24 24/18 30/15 31/12 31/16 34/7 35/15 37/19 38/5 38/22 39/15 53/21 54/2 54/18
Paxton's [4] 5/13 15/12 16/18 52/15
payback [1] 4/9
penalty [1] 40/2
Pence [2] 11/9 11/20
Pending [1] 61/4
people [1] 59/25
perfectly [1] 39/14
perhaps [1] 31/7
perjury [1] 40/3
permissible [1] 54/21
person [22] 6/4 6/12 7/25 8/3 8/7 12/1 12/1 13/4 15/5 15/21 16/6 21/2 35/24 45/4 45/4 45/5 46/24 47/9 47/12 48/9 48/11 48/23
personal [31] 5/1 6/15 12/21 15/20 17/4 17/25 20/19 21/4 21/18 23/11 23/24 27/10 27/12 30/3 30/10 32/24 33/4 36/21 36/23 36/24 37/2 37/4 37/5 40/20 42/7 42/17 44/22 45/12 56/12 56/22 56/23
personally [1] 20/13
persons [3] 12/8 12/11 15/9
phase [1] 24/10
phone [3] 43/1 43/3 43/6
physical [1] 46/24
physically [1] 51/13
PI [2] 47/13 47/23
piece [1] 56/5
place [6] 5/9 8/18 15/21 20/24 44/2 59/14
plain [3] 7/24 8/4 8/8
plaintiff [12] 1/12 22/9 22/10 34/1 38/14 38/16 39/3 39/9 39/24 42/16 45/2 45/21
plaintiffs [16] 1/4 3/10 3/24 3/25 5/4 5/18 6/9 6/11 6/13 15/6 32/13 40/21 45/11 50/6 54/3 56/1
plaintiffs' [4] 3/16 3/19 30/1 37/6
platform [1] 34/2
plausible [2] 9/25 15/16
play [2] 18/3 41/1
pleadings [1] 56/19
please [3] 3/4 3/22 28/24
point [13] 11/7 12/17 15/18 17/16 27/10 27/15 38/25 43/8 48/3 49/11 49/12 52/7 59/4
points [4] 4/17 29/5 36/18 47/8
police [7] 12/10 12/21 13/1 13/9 13/12 15/23 48/2
political [1] 57/10
politics [1] 4/5
pontificate [1] 49/8
position [13] 17/13 23/20 25/19 30/9 42/6 42/15 43/18 43/22 47/15 54/4 54/7 54/8 57/10
postal [1] 46/23
posting [1] 38/9
potential [1] 38/19
potentially [2] 16/18 52/14
power [2] 4/13 4/14
powerful [1] 4/2
Practices [3] 36/2 36/5 44/18
precedent [1] 48/12
precisely [4] 4/18 9/2 23/23 51/6
preliminary [7] 1/9 3/16 31/6 31/11 47/18 55/2 58/20
premise [1] 59/2

AMERICAN OVERSIGHT

P

prepared [2] 25/5 25/25
present [4] 23/1 26/8 44/17 51/13
presentations [1] 62/5
presented [1] 40/8
president [2] 40/13 53/17
presiding [1] 3/3
press [3] 4/1 4/23 5/7
presumably [6] 13/2 38/11 38/19 44/2 45/3 45/6
Prettyman [1] 2/14
prevent [1] 47/17
principle [1] 15/21
probably [1] 10/21
problem [2] 39/19 56/2
problematic [1] 13/21
procedure [4] 23/8 37/22 52/17 53/3
proceed [1] 15/12
proceedings [5] 1/9 2/17 17/18 62/8 63/4
process [32] 17/12 18/10 19/13 19/22 19/24 20/7 21/7 21/21 22/25 23/3 26/16 37/17 39/19 40/20 40/20 44/20 44/25 45/13 45/15 45/21 46/16 46/21 49/11 49/15 49/17 49/19 49/21 50/9 50/17 51/7 51/19 52/9
produce [3] 25/5 26/1 41/1
produced [1] 2/17
projected [1] 22/5
promise [1] 55/15
promulgate [1] 4/16
proper [2] 58/15 60/7
properly [2] 6/6 61/24
proposition [1] 13/8
prospective [2] 7/10 9/4
protected [3] 35/10 59/14 59/15
protecting [1] 60/5
protection [2] 10/4 10/5
protections [4] 17/15 19/11 23/7 53/3
proven [1] 57/8
provide [2] 49/2 51/4
provision [2] 50/13 50/15
proxy [2] 35/4 59/19
pseudo [1] 22/6
pseudo-national [1] 22/6
public [4] 4/2 52/20 59/9 59/23
publicizing [1] 57/11
publicly [1] 4/8
publish [1] 53/12
published [1] 40/4
publisher [1] 5/11
publishes [1] 34/2
purpose [5] 35/22 35/23 58/15 60/8 60/18
purposeful [2] 40/23 40/24
purposefully [2] 18/9 57/13
purposes [11] 7/4 9/17 11/12 21/5 30/5 30/7 30/8 30/15 47/16 48/24 56/15
pursuant [1] 55/7
pursued [1] 40/6
pushed [1] 17/22
put [6] 9/12 28/4 37/18 56/5 56/16 61/25
putting [1] 57/13

Q

quash [4] 38/1 38/15 39/6 55/6
quasi [1] 54/5
quasi-criminal [1] 54/5
question [26] 6/23 7/18 8/20 9/11 17/11 17/21 18/13 19/1 23/14 23/22 25/25 27/6 27/17 27/18 29/15 31/21 31/23 32/8 33/16 35/1 37/15 38/18 43/17 44/24 48/1 50/2
questions [8] 3/18 5/19 13/25 26/23 27/2 47/4 49/10 61/4
quite [1] 14/8
quote [1] 54/10
quotes [1] 33/8

R

radical [1] 4/25
raise [5] 13/21 29/9 29/20 47/25 48/3
raised [6] 6/5 6/6 14/24 27/22 31/13 46/6
raises [2] 13/25 14/21
raising [1] 37/7
ranging [2] 4/20 22/14
ranking [2] 4/3 5/7
rather [1] 61/23
reach [7] 7/17 9/14 9/19 11/24 31/5 43/8 44/12
reached [1] 50/16
reaches [1] 50/13
reaching [1] 14/16
read [6] 3/17 8/20 37/9 50/4 55/24 59/25
real [2] 8/15 53/13
really [17] 7/2 8/17 12/18 14/1 14/2 14/8 16/16 18/1 19/3 21/9 34/8 44/19 51/11 51/17 51/18 53/20 54/23
realm [1] 60/3
Realtime [1] 2/13
reams [1] 23/5
reason [11] 9/21 16/4 16/5 26/17 33/2 33/15 34/6 35/19 55/1 55/2 61/22
reasonable [3] 39/15 58/16 60/13
reasons [2] 25/8 45/2
rebut [1] 55/19
rebuttal [1] 27/3
receives [1] 59/24
receiving [1] 41/8
recent [2] 10/24 21/10
recognize [1] 41/2
recognized [6] 8/11 8/23 9/6 10/24 11/15 55/3
recognizes [1] 8/5
record [4] 3/7 52/24 55/25 63/3
recorded [1] 2/17
records [1] 25/5
recruiting [1] 4/8
reference [2] 13/15 31/17
referenced [1] 54/11
regard [9] 15/4 34/22 34/23 37/3 45/10 45/13 56/7 56/24 61/1
regarding [1] 48/2
registered [3] 2/13 24/4 24/5
regular [1] 41/7
regularity [1] 16/2
regulate [1] 35/11
regulating [1] 33/17
Reilly [1] 48/4
reiterated [1] 31/15
reject [1] 14/15
relates [1] 40/16
relation [1] 32/24
release [1] 4/23
relied [2] 8/1 21/1
relief [6] 7/10 9/4 47/18 52/12 52/14 56/9
relies [1] 12/1
reluctant [1] 28/11
rely [3] 6/13 8/18 20/4
remarkable [1] 54/2
remedy [2] 38/15 38/16
remember [2] 8/11 8/12
reply [1] 47/24
Reporter [4] 2/12 2/13 2/13 2/14
reporters [1] 53/24
reporting [1] 4/7
representative [2] 8/25 15/15
require [1] 26/13
required [2] 22/24 25/12
requirement [1] 51/14
requiring [2] 26/7 26/10
reservice [1] 45/17
reside [1] 13/9
resident [3] 39/16 39/17 41/16
residents [2] 16/11 16/12
resist [1] 54/19
resolve [7] 6/23 25/22 25/23 29/17 36/23 49/18 61/23
resolved [1] 32/1
resolving [2] 31/7 36/21
respect [8] 15/23 18/14 20/22 20/22 21/21 41/5 53/5 53/16
respond [7] 27/25 29/2 32/5 34/18 36/17 55/13 55/21
response [4] 17/21 26/1 27/23 28/1
responses [1] 34/12
responsive [1] 6/7
restate [1] 11/18
retaliate [1] 6/11
retaliation [3] 5/5 58/6 59/3
retaliation claim [1] 59/3
retaliatory [5] 16/22 16/23 24/6 24/23 25/9
Reuben [3] 2/7 3/12 28/24
Reuben Blum [1] 3/12
revolve [1] 5/17
right [40] 3/13 7/7 7/11 8/14 9/22 17/7 18/19 19/16 20/16 20/23 22/2 22/7 23/2 25/11 25/16 28/17 28/22 29/16 30/11 35/13 36/11 36/16 37/13 38/1 39/6 44/2 44/3 45/20 46/2 46/13 47/2 48/7 48/22 55/11 57/20 58/14 59/17 60/24 61/10 61/19
rights [4] 10/4 16/15 25/10 26/9
rise [1] 62/6
RMR [2] 63/2 63/8
road [1] 28/11
Roman [2] 30/20 30/20
route [1] 14/20
routinely [1] 43/4
Rule [3] 37/22 55/4 55/5
Rule 45 [2] 55/4 55/5
ruled [1] 24/11
Rules [3] 37/21 38/3 55/7
run [2] 9/13 14/22

S

said [24] 4/11 6/8 7/16 9/10 10/22 11/9 17/6 17/20 21/14 32/14 33/7 37/1 40/3 41/1 44/1 45/2 47/15 50/6 50/12 52/18 52/21 54/4 59/9 59/18
same [12] 12/1 13/4 14/21 15/11 21/1 21/25 25/3 42/9 44/11 51/24 52/1 52/6
Samuel [2] 1/13 3/10
Samuel Ward Packard [1] 3/10
satisfied [2] 7/22 18/11
satisfy [1] 45/1
satisfying [1] 17/12
save [1] 31/6
say [22] 12/19 13/9 13/18 15/19 17/5 17/10 17/14 20/19 21/1 22/15 23/15 33/20 35/9 39/2 41/1 43/21 48/22 51/16 57/12 57/24 58/21 59/19
Say Media Matters [1] 41/1
saying [5] 8/10 23/4 23/18 30/6 50/1
says [5] 11/1 14/4 49/15 51/15 54/18
scenario [2] 38/4 39/13
schaerr [4] 2/2 2/3 2/6 3/11
schaerr-jaffe.com [1] 2/6
scheme [1] 39/21
Schleit [5] 45/12 45/16 51/10 51/15 52/9
Schleit v [1] 45/12
scientifically [1] 57/8
scope [3] 6/7 6/12 41/10
searching [1] 25/15
seated [1] 3/4
second [1] 56/7
secret [1] 57/18
section [2] 12/9 49/13
Section 1983 [1] 12/9
see [3] 39/18 46/5 59/11
seek [2] 16/25 52/12
seeking [4] 23/9 43/10 52/14 56/10
seemingly [2] 10/24 59/8
seems [6] 7/18 19/3 31/23 33/25 39/14 60/13
self [4] 5/4 39/23 39/25 58/18
self-executing [1] 39/23
self-inflicted [2] 39/25 58/18
self-muzzling [1] 5/4
Semitic [2] 34/24 57/15
send [1] 44/8
sending [7] 18/17 18/23 19/11 38/6 41/12 42/25 44/25
sense [5] 8/4 34/1 34/5 37/16 61/22
sensitive [1] 4/21
sent [4] 19/14 24/18 41/2 52/22
sentence [1] 14/8
separate [3] 6/14 7/22

AMERICAN OVERSIGHT

S

separate... [1] 38/21
separately [2] 34/20 47/21
sequential [1] 14/16
serve [2] 23/4 44/25
served [7] 19/16 20/13 22/22 46/19 49/21 51/7 55/6
server [9] 19/13 20/7 22/25 23/3 44/20 44/25 46/16 49/21 51/7
servers [2] 19/22 19/24
serves [1] 18/7
service [17] 20/4 20/5 20/18 21/2 21/4 21/18 21/19 45/13 45/15 45/15 46/10 46/21 49/22 51/19 52/1 52/2 52/8
serving [2] 19/20 20/8
session [1] 3/2
set [2] 14/1 27/16
several [5] 9/5 19/14 21/3 29/8 34/12
shape [1] 7/14
shares [1] 13/4
she [8] 15/2 15/6 15/7 19/16 19/21 19/21 20/3 55/20
shop [2] 33/8 33/14
short [2] 14/22 62/2
should [17] 8/20 10/16 16/5 17/5 17/6 24/24 24/25 25/8 25/12 28/14 30/17 30/19 31/5 40/11 47/17 50/10 59/19
shouldn't [1] 26/19
show [1] 56/8
showing [4] 56/9 56/22 60/8 60/17
sides [3] 3/18 13/18 38/7
simply [2] 5/12 41/11
since [1] 47/12
single [5] 10/14 11/5 14/7 14/7 49/17
sit [1] 49/8
situation [1] 43/15
skip [1] 50/10
so [88]
so I think [7] 7/24 8/3 15/11 15/23 20/7 23/21 54/22
So it's [2] 37/2 57/21
so this is [1] 53/13
social [1] 4/16
some [25] 3/18 10/15 11/3 16/14 26/1 28/14 31/8 33/22 34/25 36/12 38/20 40/12 41/2 41/15 41/18 47/9 48/18 49/2 52/7 55/13 55/20 57/2 58/4 61/20 61/22
somebody [4] 7/6 9/15 34/9 45/3
someone [1] 25/14
something [6] 23/5 26/4 26/22 36/22 48/3 52/21
somewhere [1] 35/9
sooner [1] 61/23
sorry [11] 8/6 11/17 12/16 18/12 23/19 24/17 25/18 36/16 49/7 54/13 58/24
sort [17] 6/17 7/20 8/17 10/17 13/7 13/18 13/20 13/23 14/8 15/15 16/4 25/24 29/24 30/23 49/5 54/23 54/25
sounds [1] 6/18
Southern [2] 39/3 39/4
sovereign [2] 10/5 60/5
speak [4] 36/9 37/6 38/13 40/16
specific [5] 12/2 13/5 22/8 48/5 57/17
specifically [8] 12/14 29/13 31/13 31/17 32/14 34/22 38/18 55/25
speech [4] 4/25 40/17 54/7 58/4
spent [1] 47/9
spot [1] 28/4
squarely [2] 32/15 60/3
standard [1] 27/15
standing [1] 23/3
standpoint [1] 39/19
stands [1] 13/7
start [1] 29/6
starting [1] 29/9
state [55] 4/8 4/13 4/19 6/1 6/9 6/14 6/15 7/7 8/2 8/9 8/21 8/24 10/7 10/9 10/10 11/5 11/10 15/8 19/4 19/5 19/16 21/11 21/12 21/15 22/5 23/6 23/12 23/16 23/17 23/23 24/3 25/13 28/13 29/14 30/15 30/16 31/14 35/11 36/4 37/23 37/25 38/6 38/20 39/18 42/7 42/14 43/19 44/13 44/19 45/25 48/13 48/15 51/13 53/10 60/19
stated [3] 15/8 29/13 36/20
statement [10] 52/20 57/5 57/7 57/9 57/9 57/10 59/9 59/15 59/23 60/11
statements [6] 17/17 33/4 40/12 53/16 53/19 55/20
states [10] 1/1 1/10 7/17 9/14 9/19 14/5 15/9 15/9 43/24 50/10
status [1] 24/7
statute [49] 6/4 6/13 6/20 7/17 7/21 7/25 8/21 8/21 9/7 9/13 9/13 10/18 11/6 11/13 11/23 12/9 13/3 13/5 14/5 15/10 15/19 16/6 20/22 21/21 27/20 28/13 29/7 29/12 30/16 30/18 31/18 32/23 35/11 37/4 42/22 42/23 43/2 44/11 45/10 48/9 48/24 49/2 49/14 49/16 50/8 51/20 51/21
statute, [1] 45/20
statute, right [1] 45/20
statutes [4] 19/19 43/24 48/18 49/6
statutory [6] 13/4 38/14 38/16 39/21 58/15 60/18
stenography [1] 2/17
step [1] 29/24
steps [1] 28/18
stick [1] 21/6
still [3] 13/10 14/23 19/2
stop [3] 5/14 22/15 60/25
stopping [1] 22/8
story [1] 53/11
straight [1] 50/10
Street [1] 2/3
stripped [1] 15/15
strips [1] 8/25
Stroman [11] 10/19 11/4 21/10 21/23 22/1 22/9 22/12 32/7 33/3 33/6 33/8
stronger [1] 22/23
strongly [1] 36/24
subject [14] 12/4 14/5 16/1 16/13 18/2 18/5 24/24 25/8 35/12 37/24 39/9 43/18 44/22 53/2
subjects [1] 9/1
submit [1] 61/6
submitted [1] 22/19
subpoena [16] 18/17 18/23 19/12 20/12 20/14 23/18 37/22 38/1 38/6 39/4 39/6 39/16 39/18 45/1 55/4 55/6
subsection [1] 50/8
substantial [2] 18/3 27/11
succeed [1] 36/22
success [1] 27/11
such [7] 12/11 23/25 43/2 45/24 46/6 46/22 46/25
sue [5] 5/18 5/18 12/20 49/7 60/20
sued [24] 5/21 6/9 7/3 7/6 7/7 7/12 7/12 8/1 8/8 8/9 9/15 12/20 15/2 15/13 29/14 31/12 31/16 42/10 45/6 48/2 48/6 48/23 48/25 60/23
sufferance [1] 20/19
suffering [1] 18/9
sufficient [2] 19/6 58/11
suggest [2] 9/4 40/13
suggested [2] 12/17 36/24
suggesting [1] 6/21
suggests [1] 10/16
suing [5] 9/4 10/7 10/7 42/16 60/11
suit [13] 7/5 11/10 11/11 16/1 16/13 17/5 17/6 18/2 18/6 23/17 30/15 31/14 39/2
suit here [1] 18/6
Suite [2] 1/14 2/4
suits [3] 12/9 12/12 15/25
Sullivan [1] 35/13
support [3] 21/3 22/19 40/7
suppose [2] 49/6 49/7
supposed [2] 5/25 60/12
sure [12] 10/20 26/12 30/8 31/3 31/9 32/20 34/11 35/15 37/10 40/14 49/9 50/23
surprised [1] 43/12
surreply [6] 6/5 13/24 27/23 29/21 30/21 31/15
sustained [1] 45/23
sworn [1] 40/2
synopsis [1] 6/21

T

take [5] 29/24 37/8 38/16 40/11 55/15
taken [2] 40/21 54/3
takes [2] 20/24 54/7
talk [2] 28/17 57/1
talked [3] 25/3 27/17 27/18
talking [3] 30/14 50/19 57/23
target [2] 41/10 57/17
targeted [1] 18/9
tell [8] 7/18 10/13 19/9 29/19 32/18 32/20 34/7 56/2
tells [1] 5/15
temporal [1] 60/10
terms [3] 18/21 19/4 21/15
Tesla [1] 57/19
test [3] 32/25 33/1 35/13
Texans [2] 34/16 34/20
Texas [62] 4/10 6/1 6/9 6/14 6/15 7/12 8/2 10/7 10/10 16/14 21/13 23/6 23/7 23/12 23/16 23/17 23/23 24/3 24/5 24/8 25/13 33/20 33/21 34/2 34/6 34/8 34/14 34/14 35/6 35/9 35/10 36/1 36/4 38/23 41/24 41/25 42/7 42/14 42/14 42/17 42/21 42/25 43/1 43/1 43/7 43/12 43/23 44/3 46/16 52/12 57/4 57/14 57/19 58/16 58/16 59/21 59/23 60/1 60/1 60/3 60/4 60/19
Texas's [1] 33/17
text [2] 7/24 50/7
than [12] 22/23 33/6 33/11 33/25 35/4 41/11 41/13 42/22 55/15 57/11 60/9 61/23
Thank [14] 27/5 28/20 28/21 47/4 47/5 47/7 50/24 55/10 55/11 55/22 61/5 61/6 61/9 62/4
Thank you [6] 27/5 28/21 47/4 55/10 55/22 61/6
Thank you very much [1] 47/5
thankfully [1] 30/23
that [410]
that's [50] 7/10 11/21 14/14 24/22 25/22 27/13 27/15 29/4 29/16 30/19 31/25 33/9 35/22 35/23 35/24 35/25 37/13 38/21 39/5 39/13 39/19 41/11 44/16 45/18 45/19 46/2 49/3 50/18 50/22 51/6 51/6 52/4 52/20 52/21 55/1 55/2 56/5 56/11 56/11 56/23 57/11 57/16 57/16 57/22 59/8 60/6 60/15 60/19 60/24 61/21
their [30] 4/1 4/4 4/7 7/6 8/25 9/1 9/15 9/24 12/10 13/22 16/12 17/19 22/16 22/16 22/18 25/10 27/24 34/20 40/17 40/17 47/23 48/23 53/24 53/25 56/5 56/19 56/21 58/3 58/17 59/7
them [13] 9/1 13/17 14/21 16/23 21/9 26/15 29/9 40/21 43/20 49/3 56/1 58/10 60/11
themselves [4] 5/8 16/21 25/1 56/20
then [21] 5/24 6/24 7/17 7/20 9/17 14/7 17/9 18/21 25/17 29/21 29/23 30/23 31/6 31/13 32/23 44/20 45/16 45/21 46/16 56/21 58/17
theory [1] 18/16
there [56] 5/7 7/1 7/9 7/14 9/24 10/11 10/15 10/17 10/22 11/3 12/13 13/7 13/11 14/14 19/6 20/19 20/23 20/25 21/18 24/4 24/4 24/5 25/13 26/15 26/16 30/9 33/11 33/19 33/21

AMERICAN OVERSIGHT

T

there... [27] 34/12 36/3 36/24 38/23 40/3 40/5 40/13 40/23 42/1 42/17 44/4 45/25 46/11 46/23 47/12 47/24 48/12 48/18 49/2 52/14 52/17 54/20 57/3 57/19 58/14 58/18 61/2
there's [16] 7/15 8/15 9/21 12/19 17/2 20/5 21/3 21/8 21/8 26/24 39/2 40/7 50/2 53/14 56/21 58/18
therefore [3] 41/15 47/17 58/19
these [5] 16/22 19/2 31/10 31/22 48/15
they [62] 5/6 5/12 5/18 9/24 9/25 16/11 16/11 16/12 16/25 17/5 17/18 17/19 17/23 17/24 24/24 27/24 35/20 38/11 40/3 40/3 40/5 40/5 41/8 41/9 41/21 42/12 43/15 44/8 44/10 45/12 47/15 47/21 47/22 47/23 47/23 49/7 49/19 50/6 51/7 53/10 53/11 53/11 53/13 53/21 53/22 53/25 56/4 56/4 56/8 56/10 57/2 57/3 57/16 58/4 58/5 58/7 58/22 58/25 59/2 60/8 60/19 60/22
they're [8] 9/23 9/23 16/1 21/2 34/2 38/11 52/6 56/10
they've [6] 9/9 9/10 58/9 59/5 60/17 60/23
thing [7] 15/11 49/11 56/5 56/7 57/1 57/24 58/21
things [3] 7/1 22/15 53/3
think [78]
thinking [1] 49/5
third [1] 38/1
this [122]
this Court [1] 39/10
thoroughly [1] 14/9
those [11] 12/12 21/11 21/13 38/8 43/11 43/13 44/22 51/18 53/18 55/13 60/2
thought [3] 17/23 32/15 61/20
threat [2] 53/8 54/25
threatened [1] 4/3
threshold [1] 13/20
through [5] 5/10 11/24 29/5 48/20 61/11
throughout [1] 5/1
time [7] 28/8 30/6 47/9 57/8 59/4 60/15 62/5
Times [1] 35/13
titled [1] 63/4
today [7] 25/22 25/23 28/3 34/5 36/14 37/3 38/17
token [1] 52/1
told [2] 10/23 32/16
tomorrow [3] 14/20 14/23 61/18
too [2] 47/25 56/3
took [1] 54/7
tort [8] 18/23 45/14 46/10 46/12 46/14 46/15 51/8 52/2
tortious [2] 18/10 18/22
touched [1] 26/25
Trade [3] 36/1 36/5 44/18
traditional [1] 18/2
transact [1] 51/1
transacted [1] 49/20
transacting [2] 18/16 43/5
transaction [1] 50/15
transcript [4] 1/9 2/17 37/8 63/3
transcription [1] 2/17
treat [5] 5/25 7/4 7/5 7/6 7/20
treated [2] 9/16 16/6
tremendous [1] 29/3
tried [1] 51/9
trio [1] 21/8
TRO [1] 55/1
true [5] 11/9 31/25 50/13 56/11 56/11
truth [1] 10/23
try [1] 61/22
trying [3] 22/12 33/8 35/15
turn [1] 51/17
Twitter [8] 24/1 36/8 36/10 53/5 57/25 58/1 58/3 58/7
Twitter case [1] 36/10
two [5] 7/15 38/15 43/9 54/22 60/13
TX [1] 2/10
type [3] 16/11 16/17 51/17
types [2] 12/12 52/10
typically [1] 7/6

U

U.S [1] 48/6
U.S. [1] 46/23
U.S. Mail [1] 46/23
Umm [1] 55/14
unable [1] 53/25
unconstitutional [1] 55/10
unconstitutionally [1] 6/10
under [42] 6/4 7/9 7/21 7/21 7/25 8/1 8/4 8/19 8/23 12/8 15/9 15/14 16/6 18/16 19/18 19/19 33/24 36/1 36/4 37/4 37/22 40/2 42/24 43/2 43/12 43/24 44/15 44/21 45/6 45/17 45/24 47/20 48/2 48/7 48/9 49/16 49/19 51/19 51/24 53/9 58/15 60/18
underscore [1] 54/25
understand [12] 5/16 6/25 17/13 18/14 25/19 31/1 33/21 34/4 38/25 39/1 50/1 61/24
understood [5] 28/16 30/24 56/13 56/17 59/11
unfair [1] 18/5
unflinching [1] 4/7
unfolded [1] 28/9
unique [1] 16/4
UNITED [3] 1/1 1/10 50/10
United States [1] 50/10
unlawful [1] 58/17
unlawfully [1] 6/10
unless [6] 5/15 46/18 47/3 49/1 52/18 53/6
unpublished [2] 50/3 50/6
unreasonable [2] 37/19 38/4
unrestrained [1] 4/15
Unsurprisingly [1] 5/3
until [5] 5/15 13/24 14/6 29/20 46/10
up [4] 12/18 30/22 36/21 38/9
upon [3] 6/13 26/25 59/1
upshot [1] 44/14
us [7] 26/8 26/16 41/2 44/12 55/5 56/2 56/3
use [2] 35/11 56/9
used [1] 11/2
uses [1] 11/25
using [1] 6/10

V

versus [6] 3/8 10/19 11/4 21/18 48/3 50/3
very [7] 12/5 14/21 23/22 24/18 27/22 41/11 47/5
vetted [1] 14/9
view [4] 4/17 21/17 23/15 51/23
viewpoints [1] 4/5
violated [5] 9/3 9/25 10/3 15/16 60/19
violates [1] 25/10
violation [2] 8/24 37/16
violations [1] 7/10
Virginia [3] 13/10 45/11 51/20
virtue [1] 52/2
Voters [4] 11/8 11/19 12/15 36/19
vs [1] 1/5

W

W-e-r-c-i-n-s-k-i [1] 10/20
waive [3] 23/11 23/11 52/14
waived [12] 13/25 14/12 14/16 29/19 30/1 30/3 30/6 31/2 47/16 47/24 56/12 56/14
waiver [1] 56/7
waiving [1] 30/12
Walden [5] 40/21 45/22 45/22 45/24 46/7
want [16] 6/24 6/25 10/12 13/19 18/13 28/5 29/5 32/4 32/12 32/22 38/9 41/1 57/1 61/10 61/11 61/20
wanted [8] 36/17 37/6 47/10 49/11 50/22 52/11 56/6 61/2
wants [3] 39/15 42/13 53/6
war [1] 4/6
Ward [2] 1/13 3/10
Ward-Packard [1] 1/13
warming [2] 57/6 57/7
WARREN [3] 1/6 3/8 45/12
was [65]
Washington [4] 1/5 1/15 2/4 2/15
wasn't [9] 14/6 14/9 23/1 29/21 30/21 30/21 51/2 57/8 60/9
way [9] 6/23 17/3 28/9 33/13 38/21 57/14 57/17 59/24 60/19
ways [3] 21/22 36/12 36/13
we [84]
we believe [1] 26/4
we will [1] 56/1
we'd [1] 46/5
We'll [2] 41/1 56/3
we're [11] 3/7 3/15 7/17 9/3 10/7 10/7 14/22 17/11 26/4 57/22 59/17
we've [7] 10/8 23/25 25/9 30/3 30/9 30/14 47/9
weaponized [1] 4/19
week [2] 47/11 61/18
weeks [2] 38/15 60/13
well [21] 8/22 9/8 14/15 19/13 21/23 23/14 27/9 28/17 30/5 31/4 33/18 34/12 36/1 39/20 42/9 43/8 45/9 47/24 51/6 58/14 59/21
went [3] 15/3 22/25 33/6
Wercinski [2] 10/19 11/4
were [14] 17/3 17/17 17/18 24/21 32/10 32/22 42/16 44/8 44/17 46/6 46/21 50/18 51/18 54/20
West [4] 8/12 8/13 29/9 29/12
West v [2] 29/9 29/12
Westlaw [1] 11/20
what [41] 4/18 6/21 7/17 8/11 8/20 9/2 10/22 12/17 14/2 16/10 16/19 18/14 18/22 22/24 23/15 23/19 26/20 30/7 35/14 37/16 37/18 38/11 41/21 42/19 42/20 43/6 46/5 50/1 50/5 51/6 53/22 56/2 57/16 57/22 58/17 59/8 59/17 60/3 60/6 60/15 61/13
What is [1] 23/15
what's [8] 11/17 24/7 24/22 33/9 33/16 38/21 45/19 48/13
when [17] 5/17 9/22 9/24 9/24 15/6 17/3 17/18 19/16 19/21 31/13 38/5 40/19 54/3 54/5 59/9 60/12 61/11
where [26] 5/17 6/25 7/11 8/18 10/2 11/9 16/17 18/7 18/8 18/8 25/24 29/6 37/23 37/25 43/8 45/12 45/24 50/14 51/12 51/12 54/4 55/5 57/12 59/12 60/10 60/24
whether [16] 13/25 17/19 18/1 19/6 20/5 23/20 25/5 25/25 26/2 31/21 33/11 34/8 35/6 37/12 38/23 59/22
which [33] 4/12 6/18 9/11 10/25 11/25 12/9 13/24 14/25 15/12 18/11 19/7 20/4 21/22 24/6 25/3 26/20 27/6 27/18 30/15 33/14 41/10 42/24 43/23 44/11 44/24 46/15 51/4 57/9 58/7 58/15 59/7 59/18 60/23
while [3] 35/14 50/12 53/25
whispering [1] 38/8
who [17] 4/4 6/10 7/6 15/21 19/14 21/25 22/25 22/25 23/1 38/8 48/6 49/21 51/7 53/17 57/17 59/22 59/25
who's [2] 9/15 48/8
wholly [1] 42/23
why [31] 3/19 8/20 9/21 16/4 16/5 24/6 28/14 29/16 29/19 29/25 31/1 31/5 32/9 32/16 32/18 32/20 33/24 34/4 34/8 38/4 38/4 39/13 39/19 44/7 44/10 44/25 45/8 46/2 55/1 55/2 60/19
wide [3] 4/20 10/13

AMERICAN OVERSIGHT

W

wide... [1] 22/14
wide-ranging [2] 4/20 22/14
wildly [1] 40/22
will [5] 5/14 9/10 32/20 53/8 56/1
William [4] 2/7 2/12 63/2 63/8
willing [2] 41/21 54/22
win [1] 14/22
Wisconsin [5] 11/8 11/19 12/15 12/15 36/19
wish [1] 26/24
within [8] 6/7 6/12 14/15 19/15 38/15 47/13 60/5 60/18
without [6] 4/3 8/10 15/4 28/14 50/17 53/3
witness [1] 38/19
won't [1] 55/15
word [1] 11/25
words [5] 9/15 41/6 51/25 59/1 59/6
work [5] 4/1 41/19 41/21 56/1 56/3
working [1] 5/4
worldwide [1] 34/3
worried [1] 37/11
worry [1] 37/9
would [83]
wouldn't [4] 42/4 44/7 46/23 58/19
write [1] 40/5
writers [1] 53/24
writing [1] 28/1
written [2] 5/11 40/4
wrong [2] 6/8 43/25
wrote [1] 50/5

X

Xinis [1] 17/23

Y

Yeah [3] 14/11 21/6 36/17
yes [14] 5/19 9/23 12/24 15/13 27/13 29/18 31/25 35/2 35/18 36/6 39/7 42/15 59/4 62/3
Yet [1] 4/18
York [3] 35/13 39/3 39/4
you [176]
you know [1] 38/19
you'd [2] 49/4 61/8
you'll [1] 32/11
you're [16] 6/21 7/13 10/11 10/21 18/15 23/10 31/14 39/1 42/12 43/25 44/11 46/3 50/1 50/23 58/1 59/12
you've [10] 9/12 12/20 13/25 18/22 23/5 38/10 41/2 44/1 44/13 56/16
Young [26] 6/20 7/9 7/13 7/21 8/5 8/5 8/18 8/23 9/6 9/10 9/21 10/17 11/5 11/16 12/14 15/14 16/4 17/10 27/19 28/13 29/7 29/11 29/13 29/24 30/17 31/21
your [101]
Your Honor [63] 3/6 3/21 5/23 6/2 8/22 8/22 9/5 9/20 11/7 11/21 12/12 12/24 13/13 14/11 14/24 15/11 17/17 18/4 18/20 24/12 24/21 26/4 26/5 27/1 27/3 27/13 27/21 28/5 28/16 28/25 29/7 31/10 34/13 34/19 37/8 39/11 43/22 47/10 47/17 48/1 48/3 48/11 49/1 49/10 49/18 50/24 51/9 52/4 53/6 55/3 55/8 55/12 55/18 55/22 55/23 56/8 56/17 59/5 59/11 60/12 61/5 61/9 62/3
Your Honor's [1] 6/7
yourself [2] 23/10 23/13

Z

Zaremba [3] 2/12 63/2 63/8
zero [1] 54/21

AMERICAN OVERSIGHT

To: Bagby, Karen[Karen.Bagby@ago.mo.gov]
From: Divine, Josh[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9D8C0996EBF3480DB5B4F2237D9F8DBD-DIVINE, JOSHUA]
Sent: Wed 6/5/2024 9:05:45 AM (UTC-05:00)
Subject: two binders before noon
49-1 (1) - Memo ISO TRO and PI.pdf
56 (1) - Bailey memorandum in opposition to TRO, PI.pdf
61 - Media Matters reply ISO TRO, PI.pdf
63 - Bailey Reply ISO MTD.pdf
39-3 - AG notice of pending investigation.pdf
39-5 - MO CID.pdf
39-8 - demand letter objecting to MO CID.pdf
39-11 - AGO letter to MM (2007).pdf
49-2 - Second Supp decl Hananoki.pdf
49-3 - Supp decl Padera.pdf
49-5 - Supp decl Dimiero.pdf
49-6 - Proposed TRO.pdf
56-1 - Steven Reed affidavit.pdf
57 - Bailey MTD.pdf
63-1 Ex A Amended CID Petition.pdf
63-2 Ex B Second Reed Decl.pdf
39-2 - supplemental complaint.pdf
1-5 - Texas CID into Media Matters.pdf
37 - Order granting PI.pdf
Oral argument transcript (Texas and MM).pdf

Karen, can you make me these two binders before noon? As usual, smallest binders possible. For the exhibits, please also include an index list like the one you made for me in the student loans case last week.

Brief binder

Exhibits binder (in ECF order. For some reason Microsoft keeps reordering things)

Josh Divine | Solicitor General
Missouri Attorney General's Office
207 West High St.
Jefferson City, MO 65101
(573) 751-8870
Josh.Divine@ago.mo.gov

AMERICAN OVERSIGHT

EXHIBIT 1

AMERICAN OVERSIGHT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

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*.	Case No. 3:22-cv-01213

PLAINTIFFS' PROPOSED FINDINGS OF FACT IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION

AMERICAN OVERSIGHT

speech that was censored, as well as speech that was left up, on social-media platforms so CDC could get "a full picture" and "adjust communication materials" to address people's actual concerns. *Id.*

595. The CDC "did searches in CrowdTangle, the same way we do searches in other social media and listening tools that we have to create, to understand what's being discussed in the environment, to update our communication material." *Id.* 148:11-15.

V. Dr. Fauci's Campaigns to Censor Disfavored Viewpoints on Social Media.

596. Dr. Fauci, cooperating frequently with NIH Director Dr. Francis Collins, engaged in a series of campaigns to discredit and procure the censorship of viewpoints he disfavored on social media, beginning at least in early 2020. Once he became Chief Medical Advisor in the Biden Administration in early 2021, his censorship efforts coordinated with and reinforced those of federal officials in the White House, the Office of the Surgeon General, the CDC, and elsewhere.

597. Until his recent retirement, Dr. Anthony S. Fauci was the director of the National Institute for Allergy and Infectious Diseases at the National Institutes of Health and the Chief Medical Advisor to President Biden. Fauci Dep. 10:8-16. At the time of his deposition, Dr. Fauci had been the director of NIAID for over 38 years. *Id.* at 10:25-11:1.

A. Dr. Fauci's Conspiracy and Campaign to Suppress the Lab-Leak Theory.

598. First, in early months of 2020, Dr. Fauci worked closely with Dr. Francis Collins and Jeremy Farrar to orchestrate a campaign to discredit and suppress the opinion that SARS-CoV-2, the virus that causes COVID-19, leaked from a laboratory at the Wuhan Institute of Virology—an opinion that has recently been confirmed as likely true. Early in the pandemic, Dr. Fauci was aware that NIAID, under his direction, had funded dangerous gain-of-function research on coronaviruses at that laboratory, and he sought to discredit and suppress the lab-leak theory to

AMERICAN OVERSIGHT

deflect the scandal and blame associated with potential responsibility for the deaths of millions in the ensuing pandemic. He engaged in a campaign of deception to discredit the theory, and as a result of his efforts, the lab-leak theory was heavily censored on social media.

599. On December 30, 2011, Dr. Fauci co-authored an op-ed with Dr. Francis S. Collins in the Washington Post entitled *A Flu Virus Risk Worth Taking*. Fauci Ex. 1, Fauci Dep. 13:13-20.

600. In this op-ed, Dr. Fauci and Dr. Collins advocated for creating potentially dangerous viruses in laboratories, writing that "important information and insights can come from generating a potentially dangerous virus in a laboratory." Fauci Ex. 1, at 1. According to Fauci and Collins, "[u]nderstanding the biology of … virus transmission has implications for outbreak prediction, prevention and treatment," and "[i]dentifying threatening viruses can also facilitate the early stages of manufacturing vaccines that protect against such a virus in advance of an outbreak." *Id.* at 2. They further argued that "identifying the molecular Achilles heel of these viruses can allow scientists to identify novel antiviral drug targets that could be used to prevent infection … or better treat those who become infected." *Id.*

601. Dr. Fauci and Dr. Collins acknowledged the significant risks associated with such research, writing that "[s]afeguarding against the potential accidental release or deliberate misuse of laboratory pathogens is imperative." *Id.* But they believed that those risks were contained, writing that "engineered viruses … are maintained in high-security laboratories." They further state that "scientists, journal editors, and funding agencies involved are working together to ensure that access to specific information that could be used to create dangerous pathogens is limited to those with an established and legitimate need to know." *Id.*

AMERICAN OVERSIGHT

602. Thus, long before the COVID-19 pandemic, Dr. Fauci and Dr. Collins were highly visible, public advocates for laboratory experiments that involve "generating a potentially dangerous virus in a laboratory." *Id.* at 1.

603. Such research of "generating a potentially dangerous virus in a laboratory" is commonly called "gain-of-function" research. Dr. Fauci testified that "[g]ain of function is a very potentially misleading terminology, and that was one of the reasons why several years ago outside groups, not the NIH … did away with the terminology 'gain of function' because it can often be very confusing and misleading." Fauci Dep. 16:3-10. But Dr. Fauci confirms that "the NIH" did not "d[o] away" with that terminology, *id.*, and Dr. Fauci's own internal email uses the phrase "SARS Gain of Function" to describe the research on bat coronaviruses that was conducted by Dr. Shi Zhengli and others at the Wuhan Institute of Virology, partly funded by Dr. Fauci's NIAID through the subgrants from the EcoHealth Alliance, discussed below, *see* Fauci Ex. 6, at 8.

604. On June 1, 2014, Dr. Fauci's NIAID funded a grant to the EcoHealth Alliance for the five-year period June 1, 2014, to May 31, 2019. Fauci Ex. 2, at 2. The title of the project was "Understanding the Risk of Bat Coronavirus Emergence." *Id.* at 1. The project's Abstract stated, "This project will examine the risk of future coronavirus (CoV) emergence from wildlife using in-depth field investigations across the human-wildlife interface in China, molecular characterization of novel CoVs and host receptor binding domain genes, mathematical models of transmission and evolution, and in vitro and in vivo laboratory studies of host range." *Id.*

605. The Abstract noted that one of the project's "three specific aims" would be to "[t]est predictions of CoV inter-species transmission" by engaging in two forms of research to enhance the bat coronaviruses' transmissibility to humans: "reverse genetics," *i.e.*, genetic manipulation of the viruses to render them more transmissible; and "virus infection experiments"

AMERICAN OVERSIGHT

using "humanized mice," *i.e.*, repeatedly infecting humanized mice with bat coronaviruses to provoke mutations that render them more infectious to human cells (a process known as "serial passage," *see* https://en.wikipedia.org/wiki/Serial_passage). *Id.* at 1. Specifically, the Abstract stated: "Predictive models of host range (i.e.[,] emergence potential) will be tested experimentally using *reverse genetics*, pseudovirus and receptor binding assays, and *virus infection experiments across a range of cell cultures* from different species and humanized mice." *Id.* (emphases added).

606. Dr. Fauci attempted to argue that "reverse genetics" is so vague that it might not refer to gain-of-function research. *See* Fauci Dep. 23:18-20 ("I'm not really quite sure what they're referring to. Reverse genetics can mean many things."). But Dr. Fauci admits that "reverse genetics" means "[m]anipulation of a virus, recombination, things like that." *Id.* at 23:19-21. In 2015, in an article reporting on research performed pursuant to this grant, Dr. Ralph Baric and Dr. Shi Zhengli wrote that they used "reverse genetics" to "generate[] and characterize[] a chimeric virus" that was more infectious and more virulent in humans. Fauci Ex. 4, at 1. Dr. Fauci's own internal email describes that article as addressing "SARS Gain of Function." Fauci Ex. 6, at 8.

607. Dr. Fauci admits that "EcoHealth has a subaward from their original grant that goes to Shi Zhengli at the Wuhan Institute of Virology." Fauci Dep. 36:4-6. He agrees that EcoHealth and Shi Zhengli of the Wuhan Institute of Virology "work together on research that's directly funded by NIAID." Fauci Dep. 36:7-13.

608. Dr. Fauci also attests that Dr. Peter Daszak likely has access to the genetic sequences of chimeric viruses that Shi Zhengli created during her research funded by EcoHealth using NIAID funds: "I don't know absolutely for sure, but I would imagine that if Peter Daszak is collaborating scientifically with Shi Zhengli, that it is likely, given the norms of scientific

AMERICAN OVERSIGHT

collaboration, that he would have access to data," and "they are collaborators, since he has a subaward to the Wuhan Institute that I believe goes to Dr. Shi." Fauci Dep. 37:1-13. Daszak, therefore, is likely in possession of genetic evidence demonstrating whether SARS-CoV-2 originated from NIAID-funded research at the Wuhan Institute of Virology.

609. Dr. Fauci claimed that he had never seen this grant award before his deposition, and that he was only "vaguely" aware of NIAID's funding of EcoHealth Alliance. *Id.* at 18:10-12 ("I'm vaguely familiar with the fact that EcoHealth Alliance has been doing research on trying to understand the bat coronavirus emergence."); *id.* at 19:7-8 ("I have no recollection of the initiation of this grant."). Dr. Fauci admits that "NIAID has funded EcoHealth Alliance," 20:5-6, but he contends that he is completely unfamiliar with this project. *Id.* at 20:8-9 ("[T]his is the first time that I have seen this piece of paper."). But this very grant project was flagged for Dr. Fauci in an email from his subordinate on January 27, 2020, at the beginning of the pandemic. Fauci Ex. 5. Given the public and Congressional scrutiny of this particular project and its relation to the origins of the COVID-19 pandemic, Dr. Fauci's testimony on these points is not credible.

610. Peter Daszak is listed as the "Contact PI/Project Leader" for the grant award "Understanding the Risk of Bat Coronavirus Emergence." Fauci Ex. 2, at 1. The "Awardee Organization" is the EcoHealth Alliance. *Id.*

611. Dr. Fauci claims that he is not acquainted with Peter Daszak and does not know how to pronounce Daszak's name, Fauci Dep. 20:13 ("I'm not sure"), and that he "do[es]n't even remember meeting him," *id.* at 21:1-2, but that he has seen a photo of himself with Daszak at a public event as the only evidence that they have met. *Id.* at 21:2-8.

612. In fact, Dr. Fauci has exchanged cordial emails with Daszak on a first-name basis, and he participated in a podcast with him on February 9, 2020, in which they both sought to

AMERICAN OVERSIGHT

discredit the lab-leak theory of COVID's origins. Fauci Ex. 15, 16, 30. Dr. Fauci's attempt to deny or downplay his acquaintance and familiarity with Daszak is not credible.

613. On October 17, 2014, the U.S. Government entered a "research funding pause" on gain-of-function research on coronaviruses, in a document entitled "U.S. Government Gain-of-Function Deliberative Process and Research Funding Pause on Selected Gain-of-Function Research Involving Influenza, MERS, and SARS Viruses." Fauci Ex. 3, at 1 (the "GoF Pause" or "Pause").

614. Contrary to Dr. Fauci's testimony that the "pause" was an occasion to jettison the term "gain-of-function," the Pause provided a simple and clear definition of "gain of function" research, defining "Gain-of-function studies" as "research that improves the ability of a pathogen to cause disease." Fauci Ex. 3, at 2. The research on bat coronaviruses described in Fauci Ex. 2 meets this simple definition.

615. The Pause applied to funding for all "research such as this until a new U.S. Government research policy could be adopted." Fauci Dep. 27:17-19; Fauci Ex. 3, at 2-3.

616. The Pause provided an exception in Footnote 1, which stated: "An exception from the research pause may be obtained if the head of the USG funding agency determines that the research is urgently necessary to protect the public health or national security." Fauci Ex. 3, at 2 n.1.

617. Dr. Fauci testified that he does not recall whether NIAID ever invoked that exception during the years that the Pause was in place (2014-2017). Fauci Dep. 28:22-29:3. He testified that authorization for funding under the exception would "not usually rise up to the office of the director, but is handled at the level of staff and deputy." *Id.* at 29:1-2. He testified that such approval for projects "urgently necessary to protect the public health or national security" could

AMERICAN OVERSIGHT

have come from "any of a number of people. It could have been people at the program level. It could have been my deputy. It could have been program managers and division directors." *Id.* at 30:16-19.

618. This testimony contradicts the plain language of the exception, which states that "*the head of the USG funding agency*" must "determine[] that the research is urgently necessary to protect the public health and national security" to allow continued funding for gain-of-function research on coronaviruses. Fauci Ex. 3, at 2 n.1. At all relevant times, Dr. Fauci was the "head of the USG funding agency," *i.e.*, the Director of NIAID, and he was responsible for authorizing funding for gain-of-function research on the ground that it was "urgently necessary to protect the public health or national security."

619. Dr. Fauci states that he does not recall whether NIAID ever authorized continued funding for Peter Daszak or EcoHealth Alliance pursuant to the exception to the Pause in footnote 1. Fauci Dep. 30:3-12.

620. In fact, Dr. Fauci testified that "I don't recall" or "I do not recall" 174 times in his deposition, and testified that he could not recall or remember using variations on that phrase 212 times. *See* Fauci Dep. 22:21-352:17-18. This contrasts sharply with his public statements about the very same issues that, during his deposition, he professed near-complete loss of memory. *See, e.g.,* Jones Decl., Ex. X, at 1 ("I remember it very well"). It also contrasts sharply with his clear, specific recollection of unrelated events from the same time frame. *See, e.g.,* Fauci Dep. 353:20-354:16. Dr. Fauci's repeated claims to not remember or not recall key events and people are not credible.

621. Dr. Fauci's chief deputy is Dr. Hugh Auchincloss, who is the Principal Deputy Director of NIAID. *Id.* at 30:20-25.

AMERICAN OVERSIGHT

622. In December 2015, during the research "Pause" on gain-of-function funding, Nature Medicine published an article entitled, "A SARS-like cluster of circulating bat coronaviruses shows potential for human emergence." Fauci Ex. 4, at 1. Dr. Ralph Baric of the University of North Carolina was listed as the corresponding author, and Dr. Shi Zhengli of the Wuhan Institute of Virology was listed as a co-author. *Id.* at 1 & n.8.

623. The 2015 Nature Medicine article clearly described gain-of-function research on bat coronaviruses. The Abstract states: "Here we examine the disease potential of a SARS-like virus, SHC014-CoV, which is currently circulating in Chinese horseshoe bat populations. Using the SARS-CoV reverse genetics system, we generated and characterized a chimeric virus expressing the spike of bat coronavirus SHC014 in a mouse-adapted SARS-CoV backbone." Fauci Ex. 4, at 1. Notably, the article uses the same phrase as the EcoHealth grant, "reverse genetics," to describe creating "a chimeric virus." *Id.*

624. The article reports that the "chimeric virus" created from a "SARS-like" bat coronavirus had become highly transmissible in human tissue: it could "replicate efficiently in primary human airway cells and achieve *in vitro* titers equivalent to epidemic strains of SARS-CoV." *Id.* It had also become more virulent: "Additionally, *in vivo* experiments demonstrate replication of the chimeric virus in mouse lung with notable pathogenesis." *Id.* There were no available treatments for this lab-created "chimeric" virus: "Evaluation of available SARS-based immune-therapeutic and prophylactic modalities revealed poor efficacy; both monoclonal antibody and vaccine approaches failed to neutralize and protect from infection with CoVs using the novel spike protein." *Id.*

625. The article noted that the authors had then "synthetically re-derived an infectious full-length SHC014 recombinant virus and demonstrate robust viral replication both in vitro and

AMERICAN OVERSIGHT

in vivo." *Id.* The article concluded that "[o]ur work suggests a potential risk of SARS-CoV re-emergence from viruses currently circulating in bat populations" – and this conclusion was based on creating a more transmissible (to humans) and more virulent (to humans) SARS-like coronavirus in a lab. *Id.*

626. The article acknowledged that NIAID was the principal funder of this research, and that it had received funding from the EcoHealth Alliance, Daszak's group: "Research in this manuscript was supported by grants from the National Institute of Allergy & Infectious Disease and the National Institute of Aging of the US National Institutes of Health (NIH) … and by USAID-EPT-PREDICT funding from EcoHealth Alliance." *Id.* at 5.

627. The article also noted that the NIH had reviewed and approved the research under the GoF Pause: "Experiments with the full-length and chimeric SHC014 recombinant viruses were initiated and performed before the GOF research funding pause and have since been reviewed and approved for continued study by the NIH." *Id.* "GOF" is short for "gain-of-function."

628. Dr. Fauci testified that he first became aware of this Nature Medicine article "likely … several months" after the outbreak of the COVID-19 pandemic, and that "it was brought to my attention in the context of questions that were raised by members of Congress about experiments that were funded by the NIAID." Fauci Dep. 31:17-20, 32:7-9. In fact, Dr. Fauci attached this article to a confidential midnight email to his principal deputy, Hugh Auchincloss, on January 31, 2020, and directed Auchincloss to read it immediately and take unspecified actions on it on a Saturday morning. Fauci Ex. 6, at 8. Dr. Fauci's testimony on this point is not credible.

629. Dr. Fauci testified that he does not believe he has ever met Dr. Ralph Baric, the corresponding author of the 2015 Nature Medicine article. Fauci Dep. 32:16-19 ("I know who he is, I doubt I've ever met him. I may have met him at one of the meetings where there are thousands

AMERICAN OVERSIGHT

of scientists saying hi to each other…"); *see also id.* at 33:25-34:1. In fact, Dr. Fauci's official calendar shows a one-on-one meeting with Dr. Ralph Baric on February 11, 2020, during the events described herein. Fauci Ex. 17, at 1. A contemporaneous Slack message on February 18, 2020 reports that Dr. Baric "sat in Fauci's office talking about the outbreak and chimeras," *i.e.*, lab-created chimeric viruses. Jones Decl., Ex. Y, at 1. And Dr. Fauci testified that Dr. Baric may be the source of the phrase "SARS Gain of Function" in the attachment to his midnight email to Hugh Auchincloss. Fauci Dep. 57:11-12. Dr. Fauci's testimony on this point is not credible.

630. Dr. Fauci professed to be ignorant of the identity of Dr. Shi Zhengli, the notorious "Bat Woman" of the Wuhan Institute of Virology. When asked if he knows who she is, he stated, "I'm not a hundred percent certain. I get sometimes confused with Asian names." *Id.* at 33:9-10, 18-19. Yet Dr. Shi Zhengli, the so-called "bat woman," is world-renowned as the researcher who may have caused the COVID-19 pandemic, and has been so since the beginning of the pandemic, *see, e.g.,* Jones Decl., Ex. Z, at 1, and the name "Shi" is included in the title of the article that Dr. Fauci forwarded to Dr. Hugh Auchincloss after midnight on February 1, 2020. Fauci Ex. 6, at 8. Dr. Fauci's testimony is not credible on this point.

631. Dr. Fauci testified that he first became aware of the outbreak of COVID-19 either December 31, 2019 or "the first couple days of 2022." Fauci Dep. 34:8-11.

632. Dr. Fauci recounts that he first became aware of concerns that the SARS-CoV-2 virus that causes COVID-19 "might have been genetically engineered or originated in a laboratory" when "[t]here was a phone call in late January of 2020, I believe, from Jeremy Farrar. There was one other person on the phone. I believe it was [K]ristian [Andersen], who piped me in on a three-way call, saying that they looked at the virus and there was some concern about the

AMERICAN OVERSIGHT

molecular configuration or makeup of the virus that made them think there was a possibility that there could have been a manipulation of the virus." *Id.* at 34:12-35:1.

633. Dr. Fauci states that he does not believe that anyone ever raised the concern to him before that late January call, and he specifically attests that he does not recall Dr. Robert Redfield, then-Director of the CDC, raising the concern to him in mid-January 2020. *Id.* at 35:2-15. Dr. Fauci's recollection conflicts with that of Dr. Redfield, who specifically recalls raising this issue to Dr. Fauci earlier in January 2020, and having his concerns fall on deaf ears: "Dr. Robert Redfield, a virologist and the director of the Centers for Disease Control and Prevention (CDC), had urged Fauci privately to vigorously investigate both the lab and natural hypotheses. He was then excluded from the ensuing discussions—learning only later that they'd even occurred. 'Their goal was to have a single narrative,' Redfield [said]." Jones Decl., Ex. AA, at 7.

634. "In mid-January of 2020, … Redfield expressed his concerns in separate phone conversations with three scientific leaders: Fauci; Jeremy Farrar, the director of the U.K.'s Wellcome Trust; and Tedros Adhanom Ghebreyesus, director general of the World Health Organization (WHO). Redfield's message, he says, was simple: 'We had to take the lab-leak hypothesis with extreme seriousness.'" *Id.* at 23. Dr. Fauci disputes this account and states that this conversation did not happen: "To my recollection, no." Fauci Dep. 35:9-12.

635. On January 27, 2020, Dr. Fauci and several other senior NIAID officials received an email from Greg Folkers, who is his "immediate chief of staff in my office group," *id.* at 38:2-4; the email provided "Talking Points for NIAID Director Dr. Fauci." Fauci Ex. 5. The email stated that "when talking about CoV … we have on our team (Vincent and folks we fund, Peter Daszak, Ralph Baric, Ian Lipkin, etc.) probably the world's experts on non-human coronaviruses. … EcoHealth group (Peter Daszak et al) has for years been among the biggest players in

AMERICAN OVERSIGHT

coronavirus work, also in collaboration Ralph Baric, Ian Lipkin, and others." *Id.* at 1. It also flagged the ongoing NIAID grant to Daszak and its work with Wuhan Institute of Virology: "NIAID has funded Peter's group for coronavirus work in China for the past five years through R01 1R01AI110964: 'Understanding the Risk of Bat Coronavirus Emergence.' That's now been renewed." *Id.* It noted that "[t]he results of the work to date include … Found SARS-related CoVs that can bind to human cells (published in *Nature*) and that cause SARS-like disease in humanized mouse models"—a clear reference to the 2015 *Nature Medicine* article. *Id.* Three days later, Dr. Fauci would attach that *Nature Medicine* article to a midnight email to Hugh Auchincloss. Fauci Ex. 6, at 8.

636. Like so many other things, Dr. Fauci testifies that he does not recall receiving this email. Fauci Dep. 40:5-6.

637. Dr. Fauci states that he first became aware of the concern that the virus might be bioengineered and lab-created in a call with Dr. Kristian Andersen of Scripps and Jeremy Farrar of the Wellcome Trust on January 31, 2020. Fauci Dep. 43:17-25. In that call, according to Dr. Fauci, "Jeremy and [K]ristian said they had looked at -- or at least [K]ristian did, possibly Jeremy -- and maybe one other scientist -- and said that it is possible that there may have been a manipulation because it was an unusual virus." Fauci Dep. 44:3-9. A phone call was arranged for the next day, Saturday, February 1, 2020, to discuss the possibility. *Id.* at 44:15-17.

638. According to contemporaneous emails, Eddie Holmes and Bob Garry were involved in this call with Dr. Fauci and Kristian Andersen as well. Fauci Ex. 7, at 2. Eddie Holmes, who was then raising serious concerns that the virus had leaked from a lab, would go on to be the lead drafter of a key article discrediting the lab-leak theory.

AMERICAN OVERSIGHT

639. After the January 31 call with Farrar and Andersen, in the evening of the same day, Dr. Fauci forwarded them an article that was skeptical of the lab-leak theory, stating that "it is of interest to the current discussion." Ex. 6, at 1. Andersen responded, stating that he was not convinced by the article because "one has to look really closely at all the sequences to see that some of the features look (potentially) engineered," and that "after discussion earlier today, Eddie [Holmes], Bob [Garry], Mike [Laribee], and myself *all find the genome inconsistent with expectations from evolutionary theory*." *Id.* (emphasis added); *see also* Fauci Dep. 51:3-8.

640. A few hours later, shortly after midnight, at 12:29 a.m. on February 1, 2020, Dr. Fauci sent an email to his principal deputy, Hugh Auchincloss. Fauci Ex. 6, at 8. The subject line of the email said "IMPORTANT." *Id.* The email stated: "Hugh: It is essential that we speak this AM. Keep your cell phone on. … Read this paper as well as the e-mail that I will forward to you now. You will have tasks today that must be done. Thanks, Tony." *Id.*

641. The "this paper" that was attached to the email was the 2015 *Nature Medicine* article entitled "A SARS-like cluster of circulating bat coronaviruses shows potential for human emergence," Fauci Ex. 4, co-authored by Dr. Ralph Baric and Dr. Shi Zhengli and funded by NIAID and the EcoHealth Alliance. Fauci Ex. 6, at 8; Fauci Dep. 55:23-56:25. As an attachment to Dr. Fauci's email, this article was called "Baric, Shi et al – Nature Medicine – SARS Gain of Function.pdf." Fauci Ex. 6, at 8.

642. Dr. Fauci claims that he can recall virtually nothing about sending this urgent, confidential email to his principal deputy in the middle of the night of the day when he found out that highly qualified researchers were concerned that SARS-CoV-2 might have leaked from a laboratory. *See* Fauci Dep. 55:15-63:21 ("I don't recall … I don't know for sure … I can't say that I recall that in particular … I don't recall. I'm not sure exactly why those words got in there

AMERICAN OVERSIGHT

… I don't recall … I don't recall … I don't precisely recall … I don't recall if I did … I might have, but I don't recall. … I don't recall. … I don't recall … I don't recall. … I don't recall … I really don't recall … I actually don't recall why I forwarded it to him … I don't recall why I did that … I don't remember … I don't recall speaking to him."). This contrasts starkly with Dr. Fauci's public claim to "remember … very well" key events of the same day. Jones Decl., Ex. X, at 1. Dr. Fauci's claim to an amazing loss of memory about this urgent clandestine email to his confidential deputy is not credible.

643. Dr. Fauci admits, however, that he wanted Auchincloss to find out what coronavirus research NIAID was funding in China before his call later that afternoon with scientists about the lab-leak concerns raised by Andersen and Farrar: "And at my recollection, I brought to Hugh's attention, saying, 'We have to speak in the morning, because I want to find out what the scope of what it is that we are funding so I'll know what we're talking about.'" Fauci Dep. 58:1-5. In particular, Dr. Fauci wanted to find out what EcoHealth Alliance was doing: "this was the first that I had heard about specifics of what EcoHealth and what other people were doing, and I wanted my staff to say get me up to date. So that's what I meant by you have work to do." *Id.* at 58:6-12.

644. Regarding the "tasks that must be done," Dr. Fauci admits that "I wanted to be briefed on the scope of what our collaborations were and the kind of work that we were funding in China. I wanted to know what the nature of that work was." *Id.* at 59:12-15.

645. The tone of the email and Dr. Fauci's own testimony strongly support the inference that Dr. Fauci sent the email to Auchincloss because he was concerned that NIAID, under his leadership, was funding research in China that might have led to the creation and leak of SARS-CoV-2, and he wanted to know the full extent of NIAID's exposure before his call later that day with scientists and funding authorities. *See also* Fauci Dep. 58:18-25. If it became public that

AMERICAN OVERSIGHT

NIAID had funded the creation of SARS-CoV-2, Dr. Fauci and his agency potentially faced an enormous crisis of public credibility and accountability.

646. Immediately after sending Auchincloss the 2015 *Nature Medicine* article, Dr. Fauci also forwarded Auchincloss another article about the possibility that SARS-CoV-2 had leaked from a lab—the Jon Cohen article that he had sent to Kristian Andersen and Jeremy Farrar earlier that evening. Fauci Ex. 6, at 9. This email confirms that Dr. Fauci was deeply concerned about the prospect that NIAID, under his watch, might have funded the creation of the virus causing the global pandemic.

647. Dr. Fauci denies that, when he sent this email to Auchincloss, he was then concerned that NIAID might have funded the creation of the virus that caused the COVID-19 pandemic. When asked, "Were you concerned at that time that the work that you had funded in China might have led to the creation of the coronavirus?" Dr. Fauci responded: "I wasn't concerned that it might have." Fauci Dep. 59:16-19. In light of the tone and content of his emails at the time, and Dr. Fauci's other testimony, this statement is plainly not credible.

648. According to Dr. Fauci, when he participated in the secret call with the scientists and funding authorities later that afternoon on Saturday, Feb. 1, 2020, he did not share with them that NIAID had been funding "SARS Gain of Function" research in China leading to the outbreak of COVID-19. Fauci Dep. 63:22 ("I don't believe I did.").

649. In fact, once again, Dr. Fauci claims that he does not recall what he said on the clandestine February 1, 2020 phone call. *Id.* at 64:17 ("I don't recall").

650. At 1:19 p.m. on Saturday, Feb. 1 – about forty minutes before the secret conference call to discuss the lab-leak concern – Dr. Fauci also forwarded the "Baric, Shi et al – Nature Medicine – SARS Gain of Function" article to Lawrence Tabak of the NIH, saying only "Here it

AMERICAN OVERSIGHT

is." Fauci Ex. 6, at 15. Lawrence Tabak was then "the deputy director of the National Institutes of Health," the principal deputy to then-NIH Director Dr. Francis Collins. Fauci Dep. 65:8-11.

651. Dr. Fauci testified that "I don't recall why" he sent the 2015 *Nature Medicine* article to Lawrence Tabak, but he admits that it was likely to get it into the hands of Dr. Francis Collins, who was about to participate in the 2:00 p.m. secret conference call with Dr. Fauci and the other scientists. *Id.* at 66:15-17. Dr. Fauci claims that this was "to make sure *everyone* was aware of what the discussions were," *id.* at 66:13-15, but that is not credible in light of his testimony that he did not alert any of the *other* scientists on the call to the concern that NIAID was funding "SARS Gain of Function" research in China. *Id.* at 63:22.

652. The more compelling inference is that Dr. Fauci wanted Dr. Collins to know that NIAID and NIH faced enormous exposure if the lab-leak theory turned out to be true or publicly accepted. Dr. Collins, along with Dr. Fauci, had publicly championed gain-of-function research since at least 2011, and NIH had jointly funded Dr. Shi Zhengli's work at the Wuhan Institute of Virology through NIAID and the National Institute of Aging. Fauci Ex. 4, at 5 (referring to "grants from the National Institute of Allergy & Infectious Disease and the National Institute of Aging of the US National Institutes of Health (NIH)").

653. On Saturday, Feb. 1, 2020, at 11:47 a.m., Hugh Auchincloss emailed Dr. Fauci in response to his 12:29 a.m. email. The subject line stated only "Continued." Auchincloss stated: "The paper you sent me [*i.e.*, the 2015 *Nature Medicine* article on 'SARS Gain of Function'] says the experiments were performed before the gain of function pause but have since been reviewed and approved by NIH. Not sure what this means since Emily is sure that no Coronavirus work has gone through the P3 framework. She will try to determine if we have any distant ties to this work abroad." Fauci Ex. 6, at 16. At 5:51 p.m., Dr. Fauci responded: "OK. Stay tuned." *Id.*

AMERICAN OVERSIGHT

654. "Emily" in Auchincloss's email "is Emily Erbelding, the Director of the Division of Microbiology and Infectious Diseases at NIAID," who "would have been the one who was closest to the ground in understanding what we were doing in funding China." Fauci Dep. 70:14-18. The "P3 framework" refers to the special approval process required for funding of gain-of-function research on coronaviruses that may cause pandemics, as "P3" stands for "potential pandemic pathogens." *See* National Institutes of Health, Office of Science Policy, *Gain of Function Research*, at https://osp.od.nih.gov/policies/national-science-advisory-board-for-biosecurity-nsabb/gain-of-function-research/ ("Certain gain-of-function studies with the potential to enhance the pathogenicity or transmissibility of potential pandemic pathogens (PPPs) have raised biosafety and biosecurity concerns…"). Thus, Auchincloss and Dr. Fauci had evidently discussed the concern that NIAID had funded the creation of "potential pandemic pathogens" at the Wuhan Institute of Virology, and Dr. Fauci was concerned about NIAID's "ties to this work abroad." Fauci Ex. 6, at 16.

655. Dr. Fauci admits that this email confirms that he "wanted to be briefed as to the extent of our involvement with funding in China," Fauci Dep. 71:2-4—in particular, NIAID's funding of the Wuhan Institute of Virology, as a global SARS-like pandemic emerged from Wuhan.

656. Dr. Fauci also admits that he may have raised the concern with Auchincloss that Dr. Baric's and Dr. Shi Zhengli's research reflected in the 2015 *Nature Medicine* article may have been illegally funded in violation of the GoF Pause in effect from 2014 to 2017. Fauci Dep. 71:14-20 ("Q: Did you raise a specific concern with Hugh that the research reflected in the Baric, Shi Nature Medicine paper may have been inconsistent with the pause on -- gain-of-function funding research? A. That is possible.").

AMERICAN OVERSIGHT

657. On Saturday, Feb. 1, 2020, Jeremy Farrar sent an email organizing a secret conference call at 2:00 pm EST to a group of scientists and science-funding authorities. Fauci Ex. 6, at 17-18. The first thing that Farrar noted in the email, in bold, was "**Information and discussion is shared in total confidence and not to be shared until agreement on next steps.**" *Id.* at 17 (bold in original).

658. Separately, Farrar sent just Dr. Fauci an email on the morning of Feb. 1 to ensure that he could join the call, stating "Could you join?" Fauci Ex. 7, at 12. In that email, Farrar listed the participants and stated, "My preference is to keep this a really tight group. … Obviously ask everyone to treat in total confidence." *Id.* He also stated that the purpose of the call was "To listen to the work of Eddie, Bob and Kristian have done. Question it. And think through next steps." *Id.*

659. Dr. Fauci described the call as an open debate about the lab-leak theory among "a larger group of evolutionary virologists," Fauci Dep. 58:19-20, but in fact the call included a heavy representation of international government and science-funding authorities—including Dr. Fauci, Director of NIAID; Dr. Francis Collins, Director of NIH; Jeremy Farrar, head of the Wellcome Trust, the United Kingdom's "predominant" science-funding authority; Paul Schreier, the Chief Operating Officer of the Wellcome Trust who is responsible for "research funding" there; and Sir Patrick Vallance, the chief medical advisor to the U.K. government. Fauci Ex. 6, at 18; *see also* Fauci Dep. 75:11-76:15. All these people had a strong vested interest in avoiding a major scandal about international science-funding practices—such as the concern that Western governments may have funded the creation of a deadly virus that escaped from a lab and infected millions of people. As funding authorities who control the distribution of massive amounts of research funding, they also had powerful influence over the research scientists on the call.

AMERICAN OVERSIGHT

660. Dr. Fauci took steps to ensure that Dr. Francis Collins would be included on the call "since he's the director of NIH." Fauci Dep. 75:4-6. Dr. Fauci evidently spoke with Dr. Collins before the call, as he emailed Farrar before the call stating, "Jeremy: Francis will be on the call. He is trying to phone you." Fauci Ex. 7, at 17. Farrar then emailed Dr. Collins stating, "Francis Call me on [redacted]." Fauci Ex. 7, at 19.

661. Like the 12:29 a.m. email to Auchincloss, Dr. Fauci repeatedly claimed that he could not recall virtually any details about the 2:00 p.m. secret conference call with scientists and funding authorities about the lab-leak theory. Fauci Dep. 63:19-67:11 ("I don't recall bringing this up … I don't recall … I don't recall … I don't recall when it was … I don't recall … I don't believe that Larry was, but he could have been … I don't recall"); Fauci Dep. 73:20-74:14 ("I don't recall a discussion about confidentiality or not … I may have. I don't recall."); Fauci Dep. 77:13-15 ("Do you remember anything that anybody said on the call? A: No."); Fauci Dep. 78:10-83:10 ("I don't recall whether that was discussed … I don't recall anything from that phone call that said that … I'm not sure if I discussed it … I have a vague recollection that there was a concern … It is certainly possible, but I don't specifically remember … I don't specifically recall.").

662. This testimony to near-complete lack of memory about the call stands in stark contrast to Dr. Fauci's public statements a year and a half after the call occurred, when FOIA releases of Dr. Fauci's emails finally revealed to the public that this secret call had occurred. Then, Dr. Fauci stated, "I remember it very well." Jones Decl., Ex. X, at 1. Dr. Fauci's testimony about lack of recall is not credible.

663. Notwithstanding his repeated testimony that he cannot recall specifically what was said on the call, Dr. Fauci provided a self-justifying and innocent account of the call, describing it as a good-faith discussion among scientists trying to get to the truth without any preconceived

AMERICAN OVERSIGHT

biases. *See, e.g.,* Fauci Dep. 77:16-18 ("[T]here was what appeared to me to be good faith discussion back and forth between people who knew each other"); Fauci Dep. 79:23-80:1 ("I think the general feeling among the participants on the call is that they wanted to get down to the truth and not wild speculation about things."); Fauci Dep. 80:9-10 ("I don't think there was any other concern than sticking with the truth and sticking with data").

664. Dr. Fauci thus seeks to have his cake and eat it too—he claims both to remember little or nothing of what was said on the call, and to clearly remember that the entire discussion was done in good faith and without any bias. In any event, subsequent communications and events make clear that Dr. Fauci's testimony on this point is not credible, as discussed in detail below, as an aggressive plot to discredit the lab-leak theory commenced immediately after the call.

665. Almost an hour into the 2:00 pm call, at 2:56 p.m., Jeremy Farrar sent a cryptic email to Fauci, Collins, Vallance (all science funders) and Mike Ferguson, stating, "Can I suggest we shut down the call and then redial in? Just for 5-10 mins?" Dr. Fauci responded, "Yes." Fauci Ex. 7, at 26. Dr. Fauci claims he cannot recall whether this occurred. Fauci Dep. 92:1-93:6.

666. Dr. Fauci testified that the call participants concluded that they needed more time to take a much closer look at the biology of the virus and genetic sequences before coming to a conclusion about the virus's origins, and they planned to take more time to continue their inquiry afterward. *See* Fauci Dep. 78:3-9 ("The ten[or] of it ended that we need more time … they said we need some time to more carefully look at this to see if we can come to a sound conclusion based on further examination of the sequences."); Fauci Dep. 80:24-25 ("The plan was to go and spend more time carefully looking at it."). In fact, Eddie Holmes and Kristian Andersen began drafting an article concluding that the lab-leak hypothesis was baseless and rooted in animus

AMERICAN OVERSIGHT

immediately after the call ended, and Dr. Fauci received an initial draft of this article by the next Tuesday morning. *See infra*. Dr. Fauci's testimony on this point is not credible.

667. Dr. Fauci testified that his next interaction with the call's participants was when Kristian Andersen sent him a preprint of that article attacking the lab-leak theory. Fauci Dep. 82:19-83:1. In fact, before the preprint, Holmes and Farrar had sent Dr. Fauci at least *four* drafts of the article to review. *See infra.* Dr. Fauci's testimony is not credible on this point.

668. Dr. Fauci states that he cannot remember if he had further discussions with Jeremy Farrar, Francis Collins, and Patrick Vallance surrounding this call on Feb. 1, 2020. Fauci Dep. 83:2-10; 85:8-23, 90:25-91:15, 92:1-21. In fact, Dr. Fauci sent Jeremy Farrar a lengthy email that is entirely redacted at 12:38 a.m. on Saturday, Feb. 1, 2020, Fauci Ex. 7, at 1; Farrar emailed Fauci on Jan. 30 stating "Tony Perfect timing – thank you. Great to catch up," and provided Sir Patrick Vallance's phone number, Fauci Ex. 7, at 4; Fauci emailed Farrar and Vallance on Jan. 30, stating "Thanks, Jeremy. Great chatting with you and Patrick. Will stay in close touch," Fauci Ex. 7, at 4; Jeremy Farrar sent Dr. Fauci an email on Friday, Jan. 31, stating "Tony Really would like to speak with you this evening It is 10pm now UK Can you phone me on [redacted]," Fauci Ex. 7, at 3; Farrar and Sir Patrick Vallance had a three-way call with Dr. Fauci on Jan. 30, 2020, Fauci Ex. 7, at 4; Farrar emailed Fauci and Collins after the call referring to "Conversations with you and Tony, and Patrick and others," Fauci Ex. 7, at 34; among others. Dr. Fauci had extensive discussions with Jeremy Farrar, Francis Collins, and Patrick Vallance surrounding the 2:00 p.m. February 1, 2020 secret conference call, and his testimony to the contrary is not credible.

669. After the call, Francis Collins emailed Farrar and stated, "Hi Jeremy, I can make myself available at any time 24/7 for the call with Tedros. Just let me know. Thanks for your leadership on this critical and sensitive issue." Fauci Ex. 7, at 34. Farrar responded, "We are

AMERICAN OVERSIGHT

altogether as you know!" Fauci then chimed it: "Thanks, Jeremy. We really appreciate what you are doing here." Fauci Ex. 7, at 34. "Tedros" refers to the director of the World Health Organization. Fauci Dep. 95:6-7.

670. After the call, Dr. Fauci described the scientists as engaging in a careful investigation of the virus: "[K]ristian and a few of the others carefully got together and looked at it and examined the pros and the cons and the ups and downs, and came to the conclusion that their initial concern about the molecular basis of the concern was unwarranted and that what they saw was quite compatible and, in fact, suggestive of a natural evolution." Fauci Dep. 81:8-15. In fact, Eddie Holmes and Kristian Andersen immediately began drafting an article attacking the lab-leak theory with no further investigation, which was sent to Dr. Fauci in less than three days. *See infra.* Dr. Fauci's testimony on this point is not credible.

671. Farrar emailed Dr. Tedros of the World Health Organization and two senior WHO officials, along with Dr. Fauci and Dr. Collins, indicating that he had just spoken to the senior WHO officials and "[f]ully agree with your summary." Fauci Ex. 8, at 1. Farrar emphasized the "urgency and importance" of the lab-leak question because of the "[g]athering interest evident in the scientific literature and in mainstream and social media to the question of the origin of this virus," and thus it was "[c]ritical" to "get ahead of the science and the narrative of this" instead of "reacting to reports which could be very damaging." Fauci Ex. 8, at 1. He also wrote, "I am sure I speak for Francis [Collins] and Tony [Fauci] when I say we are here and ready to play any constructive role in this," as they "[d]o think this is an urgent matter to address." *Id.*

672. Thus, Farrar, joined by Fauci and Collins, sent a message to the WHO that they wanted to "get ahead" of potentially damaging "narrative[s]" that might emerge "in mainstream and social media" about the origins of the virus. *Id.*

AMERICAN OVERSIGHT

673. Later that day, on Feb. 2, Farrar separately emailed Fauci and Collins, stating "Tedros and Bernhard have apparently gone into conclave…they need to decide today in my view. If they do prevaricate, I would appreciate a call with you later tonight or tomorrow to think how we might take forward." Fauci. Ex. 8, at 2. He also stated, "Meanwhile…." and linked to an online article speculating about the lab-leak origins of the virus—again indicating that Fauci, Farrar, and Collins were concerned about controlling online discourse about the lab-leak theory. *Id.*

674. The day after the conference all, Sunday, Feb. 2, Dr. Fauci, Jeremy Farrar, and Dr. Collins shared a series of emails (1) acknowledging that there were very serious arguments in favor of the lab-leak theory, and (2) repeatedly expressing concern about the lab-leak theory's involvement on "social media." The group, including Dr. Fauci, repeatedly expressed concern about postings about the lab-leak theory on social media. *See* Fauci Ex. 8.

675. First, after the Feb. 1 call, still on Feb. 1, Farrar sent an email to the group expressing concern that "[t]here will be media interest and there is already chat on Twitter/WeChat" about the lab-leak theory, and stating: "In order to stay ahead of the conspiracy theories and social media I do think there is an urgency for a body to convene" to address the lab-leak question. Fauci Ex. 8, at 9.

676. The next day, Feb. 2, Farrar then expressed concern that "these questions are being asked by politicians, starting in the scientific literature, [and] certainly on social and main stream media. If, and I stress if, this does spread further, pressure and tensions will rise. [I] fear these questions will get louder and more polarised and people will start to look to who to blame. … I am concerned if this is not done quite quickly it will be reacting to what may be lurid claims." Fauci Ex. 8, at 7.

AMERICAN OVERSIGHT

677. Another call participant then agreed that "this needs to be discussed urgently," in part "because of the lurid claims on Twitter." Fauci Ex. 8, at 6. He also noted that "if the evolutionary origins of the epidemic were to be discussed, I think the only people with sufficient information or access to samples to address it would be the teams working in Wuhan." *Id.*

678. The same day, Farrar acknowledged "this is a very complex issue," and again expressed concern about "social and main stream media": "As discussed on the phone this discussion is not limited to those on this email, it is happening wider in the scientific, social and main stream media." Fauci Ex. 8, at 5.

679. Dr. Collins then responded to Farrar and Dr. Fauci only, stating that "a confidence-inspiring framework … is needed, or the voices of conspiracy will quickly dominate, doing great potential harm to science and international harmony." Fauci Ex. 8, at 5.

680. Farrar then shared notes with Fauci, Collins and Tabak (Collins' deputy) from "Mike Farzan (discoverer of SARS receptor)," which stated that Farzan "is bothered by the furin cleavage site [a virus feature that looks bioengineered] and has a hard time explaining that as an event outside the lab," and that "acquisition of the furin site would be highly compatible with the idea of continued passage of virus in tissue culture," *i.e.*, serial passage. Fauci Ex. 8, at 4. Farzan suggested that "a likely explanation" of the virus was serial passage of SARS-like coronaviruses in human cell lines, and he stated that "I am 70:30 or 60:40" in favor of laboratory origins. Fauci Ex. 8, at 3-4.

681. Farrar also shared notes from "Bob" [Garry] that he had "aligned" the new virus "with the 96% bat CoV sequenced at WIV [Wuhan Institute of Virology]," and viewed the lab-origin theory as highly likely: "I really can't think of a plausible natural scenario … I just can't

AMERICAN OVERSIGHT

figure out how this gets accomplished in nature. Do the alignment of the spikes at the amino acid level – it's stunning." Fauci Ex. 8, at 4.

682. Having shared these notes, Farrar noted, "On a spectrum if 0 is nature and 100 is release – I am honestly at 50! My guess is that this will remain grey, unless there is access to the Wuhan lab – and I suspect that is unlikely!" Fauci Ex. 8, at 3. Both Farrar and Collins expressed concerns that the WHO might move too slowly for their liking. *Id.*

683. Then, still on February 2, 2020, Dr. Fauci wrote to Farrar, Collins, and Lawrence Tabak (Dr. Collins' principal deputy), stating: "Like all of us, I do not know how this evolved, but 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." Fauci Ex. 8, at 2 (emphasis added).

684. Dr. Fauci claimed that he is completely dissociated from social media, stating: "I don't do social media so I'm not familiar with them," Fauci Dep. 98:15-16; and "You know, I'm so dissociated from social media. I don't have a Twitter account. I don't do Facebook. I don't do any of that, so I'm not familiar with that," Fauci Dep. 99:5-8; *see also, e.g.,* Fauci Dep. 103:12-14; 210:3-8; 213:10-16; 241:6-9; 241:21-242:1; 301:10-11 ("I don't pay attention to things related to social media accounts."); *id.* at 312:7-9 ("I can repeat it for the hundredth time, I really don't get involved in social media issues."); *id.* at 356:15-16 ("I'm not a social media person.").

685. In fact, Dr. Fauci's daughter was then a software engineer at Twitter, Fauci Dep. 99:23-100:15; Dr. Fauci has done numerous podcasts and interviews on social media, including with Mark Zuckerberg, Fauci Dep. 99:16-19, 101:1-6; Dr. Fauci had specifically expressed concern about "the threat of further distortions on social media" about the lab-leak theory in his contemporaneous email, Fauci Ex. 8, at 2; and Dr. Fauci's communications staff had repeatedly

AMERICAN OVERSIGHT

emailed Twitter to try to remove postings critical of Dr. Fauci, *see infra*. Dr. Fauci's professed ignorance of social media is not credible. His communications and conduct make clear that he is keenly aware and deeply concerned about what he believes are "distortions on social media." Fauci Ex. 8, at 2.

686. Dr. Fauci also testified that "I don't recall anything about social media" in his discussions with Farrar about the origins of the virus. Fauci Dep. 102:17-18. In light of the contemporaneous emails repeatedly raising concerns about discussions of the lab-leak theory on social media, this claim is not credible.

687. Dr. Fauci admits that he was "concerned about … there being misinformation or disinformation that would interfere with our trying to save the lives of people throughout the world, which happens when people spread false claims." Fauci Dep. 103:18-22. He states that "misinformation and/or disinformation can lead to loss of life … and that troubles me." Fauci Dep. 104:15-17. This includes the spread of misinformation and disinformation on social media, because "that's part of the way information is disseminated." Fauci Dep. 104:22-23.

688. After Dr. Fauci's email about "the threat of further distortions on social media," Farrar emailed back indicating that the WHO might not move quickly to address the lab-leak theory, and stating to Fauci and Collins: "they need to decide today in my view. If they do prevaricate, I would appreciate a call with you later tonight or tomorrow to think how we might take forward." Fauci Ex. 8, at 2. He also stated: "Meanwhile…." and linked to an online posting expressing concerns about the lab-leak theory – indicating his dominant concern about online speech discussing the lab-leak theory. *Id.*

689. Soon thereafter, Farrar emailed Dr. Tedros of the WHO and two senior WHO officials, copying Fauci and Collins. Fauci Ex. 8, at 1. Farrar urged the WHO to quickly establish

AMERICAN OVERSIGHT

a working group to address the lab-leak theory, and reiterated that they should "[a]ppreciate the urgency and importance of this issue," given the "[g]athering interest evident in the science literature and in mainstream and social media to the question of the origin of this virus," and pressing them to "get ahead of … the narrative of this and not reacting to reports which could be very damaging." Fauci Ex. 8, at 1.

690. Fauci claims that he does not believe there was any further communication between him and Farrar about this issue, despite Farrar's urgent request for a follow-up call if the WHO did not act immediately. Fauci Ex. 8, at 2; Fauci Dep. 109:22-110:7. In light of their subsequent communications, this testimony is not credible.

691. By the early morning of February 4, 2020, Eddie Holmes had already sent a draft research paper attacking the lab-leak theory to Jeremy Farrar. Fauci Ex. 9, at 1. Holmes noted to Farrar that, in the draft, he "[d]id not mention [the virus's] other anomalies as this will make us look like loons." Fauci Ex. 9, at 1. To complete the draft between the afternoon of Saturday, Feb. 1, and the early morning of Tuesday, Feb. 4, Holmes must have started working on it almost immediately after the Feb. 1 conference call.

692. Farrar forwarded this draft to Fauci and Collins at 2:01 a.m. on Tuesday morning, February 4, 2020, in an attachment called "Summary." Fauci Ex. 10, at 3. He noted, "Please treat in confidence – a very rough first draft from Eddie and team – they will send on the edited, cleaner version later." *Id.*; *see also* Fauci Ex. 12, at 1.

693. Dr. Collins responded: "I note that Eddie is now arguing against the idea that this is the product of intentional human engineering," Fauci Ex. 10, at 3, a dramatic reversal of Holmes's position a few days earlier that Holmes and Andersen "find the genome inconsistent with expectations from evolutionary theory." Fauci Ex. 6, at 1. The paper's conclusion was also

AMERICAN OVERSIGHT

profoundly at odds with Holmes's statement, in the email sending the draft paper itself, that they would "look like loons" if the paper discussed the virus's other "anomalies" that strongly suggested a lab origin. Fauci Ex. 9, at 1.

694. Collins also noted that Holmes had not ruled out the possibility of a lab-created virus through serial passage. Fauci Ex. 10, at 3. Farrar responded, stating "Eddie would be 60:40 lab side. I remain 50:50." *Id.* Eddie, however, had already drafted a paper that *refuted* the lab-leak theory, even though he evidently still believed was the better explanation. *See id.*

695. Regarding the possibility of serial passage, Dr. Fauci noted that "Serial passage in ACE2-transgenic mice" was a possibility for the virus's origin, Fauci Ex. 10, at 2— notably, serial passage in humanized mice as was used in the 2015 *Nature Medicine* study. (Like so many other things, Dr. Fauci claims he does not recall this statement that he wrote. Fauci Dep. 115:22-116:12.) Collins responded, "Surely that wouldn't be done in a BSL-2 lab?" and Farrar answered, "Wild West…." Fauci Ex. 10, at 2. This exchange indicates that that Fauci, Farrar, and Collins were concerned that the coronavirus had been created in Wuhan by serial passage through humanized mice in a low-security [BSL-2] lab and then escaped from that low-security lab—*i.e.*, the precise concerns surrounding the NIAID-funded research at WIV. *Id.*; *see also, e.g.,* Jones Decl., Ex. BB< at 14 ("In the above exchange, the health officials [Fauci, Farrar, and Collins] seem to be contemplating the possibility that the repeated passage of a coronavirus through genetically modified mice in an insufficiently secure lab could have resulted in the accidental emergence and release of SARS-CoV-2.").

696. Later in the evening of the same day, Tuesday, Feb. 4, Farrar sent Fauci and Collins a second version of draft, entitled "Summary," with the note "Tidied up." Fauci Ex. 12, at 7. Dr. Fauci claims he does not remember receiving these drafts. Fauci Dep. 127:4-10.

AMERICAN OVERSIGHT

697. The next day, February 5, 2020, Farrar sent Fauci and Collins a third version of the draft, still entitled "Summary," with a note: "Tony and Francis The revised draft from Eddie, copied here." Fauci Ex. 12, at 8.

698. Two days later, on February 7, 2020, Farrar sent Fauci and Collins a fourth version of the same draft, entitled "Summary.Feb7.pdf," with the note in the subject line, "Revised draft." Fauci Ex. 11, at 2. This draft made clear that Holmes and his co-authors planned to aggressively discredit the lab-leak theory. It stated in bold in the beginning "Overview" section: "**Analysis of the virus genome sequences clearly demonstrates that the virus is not a laboratory construct or experimentally manipulated virus**." Fauci Ex. 11, at 3 (bold in original).

699. This was the *fourth* updated draft that Farrar sent to Fauci and Collins of the paper discrediting the lab-leak theory in the first week since the Feb. 1 secret conference call. The draft advocated that genetic evidence "clearly demonstrates" that the lab-leak theory is false. *Id.*

700. Dr. Fauci claims that he did not have any involvement in Farrar's efforts to push the WHO to assemble a working group to address the lab-leak theory. Fauci Dep. 110:4-7 ("So I really would doubt that there was any further communication between me and the WHO about this. This was fundamentally Jeremy's lane, if you want to call it that."); *id.* at 125:17-19 ("I didn't have any direct involvement with the WHO, not to my recollection."); *id.* at 131:14-15 ("This was mostly a Jeremy-led thing"). But in fact, Dr. Fauci sent multiple emails to Farrar urging for the inclusion of a long list of specific scientists in the WHO's working group. Fauci Ex. 13, at 1-2, 6.

701. On Feb. 5, 2020, Farrar emailed Fauci and Collins, stating that he believed that the WHO would assemble a working group to address the lab-leak theory, and urging Fauci and Collins to provide names of scientists to participate in the group. Fauci Ex. 13, at 7. Farrar stated that the WHO "have asked for names to sit on that Group – please do send any names." *Id.* He

AMERICAN OVERSIGHT

then stated, "We can have a call this week with a core group of that *to frame the work of the Group* including – if you could join?" *Id.* (emphasis added). And then he stated, "With names to be put forward into the Group from us and *pressure on this group from your and our teams* next week." *Id.* (emphasis added). Plainly, Farrar intended, with Fauci and Collins' assistance, to stack the WHO's group with their hand-picked scientists, have an advance call "to frame the work of the Group," and to put "pressure on this group from [Fauci's and Collins'] and our teams next week," *id.*—to influence and control the outcome of the WHO Group's deliberations.

702. Fauci and Collins did not dispute this plan. On the contrary, Fauci responded by providing Farrar with a detailed list of eight scientists to include in the WHO's group "in addition to the individuals who were on the call with us last Saturday." Fauci Ex. 13, at 2, 6. Fauci then followed up to his own email with an additional scientist, stating she is "an important name for the coronavirus evolution working group. Please include her." *Id.* at 1. Fauci's attempts to downplay his involvement with the plan to create and control a WHO working group on COVID-19's origins to discredit the lab-leak theory, therefore, are not credible.

703. Dr. Fauci testified that he, Farrar, and Collins "wanted to get them [the WHO] involved because we wanted to make sure that this was an open and transparent discussion," Fauci Dep. 126:9-12, is not credible in light of the contemporaneous email from Farrar to Fauci and Collins plotting to "frame the work of the Group" and put "pressure on this group from your and our teams next week." Fauci Ex. 13, at 3.

704. Dr. Fauci claims he does not recall any discussions about framing the work of the Group, or putting pressure on the Group. Fauci Dep. 137:1-21.

705. On February 9, 2020, Dr. Fauci participated in a joint podcast with Dr. Peter Daszak of the EcoHealth Alliance to discuss the outbreak of COVID-19. Fauci Ex. 15, at 1.

AMERICAN OVERSIGHT

706. Peter Daszak was then involved in organizing a statement for the Lancet seeking to discredit the lab-leak theory, similar to the article then being drafted by Eddie Holmes, of which Dr. Fauci had received four drafts the previous week. *See* Jones Decl., Ex. CC, at 1. Just a few days later, The Lancet would publish a statement of scientists organized and co-signed by Daszak and Jeremy Farrar, which stated: "We stand together to strongly condemn conspiracy theories suggesting that COVID-19 does not have a natural origin." *Id.* Thus, at that time, Daszak was working in parallel with Dr. Fauci, and together with Jeremy Farrar, to produce a published article discrediting the lab-leak theory. *Id.*

707. During the podcast, both Dr. Fauci and Daszak made comments seeking to discredit the lab-leak theory. Fauci Ex. 16, at 1. Fauci, when asked "Do you have any sense of where [the virus] probably came from?" answered, "Well I think ultimately we know that these things come from an animal reservoir. I heard these conspiracy theories and like all conspiracy theories … they [are] just conspiracy theories…. I think the things you are hearing are still in the realm of conspiracy theories without any scientific basis for it." *Id.* Daszak was asked, "Is it your sense that it's almost certain it came from an animal-to-human transmission?" and he responded: "All the evidence says that is what happened. … It looks to me and to most scientists like it's a bat virus that got into people either in the market or in rural China and just unfortunately has the capacity to spread." *Id.*

708. On February 11, 2020, Dr. Fauci had a meeting at NIAID with Dr. Ralph Baric, the corresponding author of the 2015 *Nature Medicine* article about NIAID-funded gain-of-function research in Wuhan that Dr. Fauci sent to Hugh Auchincloss after midnight on Feb. 1. Fauci Ex. 17, at 1 (Dr. Fauci's official calendar, Feb. 11, 2020, at 2:30 p.m. – "Meeting with Dr. Ralph Baric"). Dr. Fauci does not dispute that he met with Dr. Ralph Baric that day, but (like so many

AMERICAN OVERSIGHT

other things) he claims that he does not recall the meeting or what they discussed. Fauci Dep. 149:9-10, 149:21-23. As noted above, given that Dr. Fauci was deeply concerned about Baric's research at the time, Dr. Fauci's testimony on this point is not credible.

709. On Feb. 11, 2020, Ian Lipkin wrote an email referring to the draft paper about the origins of COVID-19 stating that, while the paper was "well-reasoned and provides a plausible argument against genetic engineering," it "does not eliminate the possibility of an inadvertent release following adaptation through selection in culture at the institute in Wuhan. Given the scale of the bat CoV research pursued there and the site emergence of the first human cases we have a nightmare of circumstantial evidence to assess." Fauci Ex. 18, at 1. Dr. Fauci states that he does not recall this email but that "it's entirely possible that Ian wrote this to me," because "Ian communicates with me." Fauci Dep. 153:15-17.

710. Dr. Fauci testified that it is "molecularly" impossible that SARS-CoV-2 originated from NIAID-funded research: "molecularly, that could not have happened." *Id.* at 157:21-22. But separately, he repeatedly testified that molecular virology is not his field, so his certainty on this one key point is not credible. *Id.* at 64:8-9 ("that's not my field, evolutionary virology"); *id.* at 117:19-20 ("I'm hesitant to go there because that's not my area of expertise"); *id.* at 127:12-13 ("it was an area that was not my area of expertise"); *id.* at 160:7-9 ("Did I fully understand the molecular virology of it? Unlikely, because I'm not an evolutionary virologist.").

711. On February 17, 2020, the preprint version of the paper drafted by Eddie Holmes attacking the lab-leak theory was released. Fauci Ex. 19. The paper was entitled, "The Proximal Origins of SARS-CoV-2." *Id.* at 12. Its listed authors were Kristian Andersen, Andrew Rambaut, Ian Lipkin, Edward Holmes, and Robert Garry. *Id.* All these authors, except possibly Ian Lipkin,

AMERICAN OVERSIGHT

had been participants in the secret phone conference at 2:00 p.m. on Saturday, Feb. 1, 2020. Fauci Dep. 161:7-10.

712. These authors had a financial interest in supporting NIH's preferred narrative. "Garry and Andersen have both been recipients of large grants from NIH in recent years, as has another 'Proximal Origin' author, W. Ian Lipkin of Columbia University." Jones Decl., Ex. BB.

713. These authors were stunningly recent converts to the theory of natural origin. On February 11, Ian Lipkin had sent an email about the same paper stating that "we have a nightmare of circumstantial evidence to assess." Fauci Ex. 18, at 1. On February 4, Holmes had written to Farrar that he avoided discussing the virus's "other anomalies as this will make us look like loons." Fauci Ex. 9, at 1.

714. On February 2, Bob Garry had written to Farrar, "I really can't think of a plausible natural scenario … I just can't figure out how this gets accomplished in nature. Do the alignment of the spikes at the amino acid level – it's stunning." Fauci Ex. 8, at 4. On January 31, Andersen had written to Dr. Fauci that the virus's "features (potentially) look engineered," and that "after discussion earlier today, Eddie [Holmes], Bob [Garry], … and myself all find the genome inconsistent with expectations from evolutionary theory." Fauci Ex. 6, at 1.

715. The preprint version of "The Proximal Origin of SARS-CoV-2" asserted a very different conclusion. It stated that "this analysis provides evidence that SARS-CoV-2 is not a laboratory construct nor a purposefully manipulated virus." Fauci Ex. 19, at 2. It stated that "genomic evidence does not support the idea that SARS-CoV-2 is a laboratory construct." *Id.* at 6.

716. Dr. Fauci does not dispute that this preprint was sent to him. Fauci Dep. 160:3-4 ("It is likely that this was sent to me"). Dr. Fauci admits that he reviewed the preprint when it was

AMERICAN OVERSIGHT

sent to him. *Id.* at 160:7 ("Did I look through it? Yes."). And Dr. Fauci admits that he was aware of what their conclusion was about the lab-leak theory. *Id.* at 162:13-15 ("I am certain that having looked at it, I was aware of what their conclusion was.").

717. This was the *fifth* version of the paper that was sent to Dr. Fauci to review, after four drafts sent to him on Feb. 4, 5, and 7. *Id.* at 160:13-16.

718. On March 6, 2020, Kristian Andersen emailed Dr. Fauci, Dr. Collins, and Jeremy Farrar, stating, "Dear Jeremy, Tony, and Francis, Thanks again for your advice and leadership as we have been working through the SARS-CoV-2 'origins' paper. We are happy to say that the paper was just accepted by Nature Medicine and should be published shortly …. To keep you in the loop, I just wanted to share the accepted version with you, as well as a draft press release. We're still waiting for proofs, so please let me know if you have any comments, suggestions, or questions about the paper or the press release." Fauci Ex. 22, at 1. He also wrote: "Tony, thank you for your straight talk on CNN last night – it's being noticed." *Id.*

719. Thus, Andersen thanked Dr. Fauci, Collins, and Farrar for their "advice and leadership" about the paper, sent them the final draft, and asked for their input both on the draft and on their public messaging about the draft. *Id.*

720. This was the *sixth* version of the paper that was forwarded to Dr. Fauci for review and input. *Id.*

721. Dr. Fauci responded: "Kristian: Thanks for your note. Nice job on the paper. Tony." *Id.*

722. Dr. Fauci denies that he provided "advice and leadership" in the preparation of the paper. Fauci Dep. 171:11-13. In light of the extensive meetings and correspondence detailed above, that testimony is not credible.

AMERICAN OVERSIGHT

723. On March 17, 2020, *Nature Medicine* published the online version of *The Proximal Origin of COVID-19*. Fauci Ex. 24, at 3. The print version appeared in the April 2020 volume of the journal. *Id.*

724. The final, published version of the article makes even stronger claims attacking the lab-leak theory than the preprint version. In its opening, the article states: "Our analyses *clearly show* that SARS-CoV-2 is not a laboratory construct or a purposefully manipulated virus." Fauci Ex 24, at 1 (emphasis added). Similarly strong language, leaving no room for doubt, occurs throughout the article: "the genetic data *irrefutably show* that SARS-CoV-2 is not derived from any previously used viral backbone," *id.* at 1 (emphasis added). "This *clearly shows* that the SARS-CoV-2 spike protein optimized for binding to human-like ACE2 is the result of natural selection," *id.* at 2 (emphasis added). "[T]he evidence shows that SARS-CoV-2 is not a purposefully manipulated virus," *id.* at 3. "[W]e do not believe that any type of laboratory-based scenario is plausible." *Id.* at 3. "SARS-CoV-2 originated via natural selection." *Id.* at 3.

725. Thus, between the preprint version and final version of the article, the article substantially beefed up its conclusion that the lab-leak theory is implausible and should be discredited. Dr. Fauci claims he does not "recall specific conversations" about that conclusion with the authors, but he admits that he is "sure" that he discussed that conclusion with them: "we read the preprint and, therefore, we knew what the conclusion was, and I'm sure that that conclusion was discussed. So I would not be surprised at all following the initial preprint that I discussed the conclusion of these authors that this is not a laboratory construct or a purposely manipulated virus." Fauci Dep. 181:3-10; *see also id.* at 181:18-22. Based on all these circumstances, it is likely that Dr. Fauci encouraged the authors to express a stronger and more unequivocal conclusion against the lab-leak theory than reflected in the preprint.

AMERICAN OVERSIGHT

726. Once the article "The Proximal Origin of SARS-CoV-2" was released, both Dr. Fauci and Dr. Collins took steps to push it into prominence. First, on March 26, 2020, Dr. Collins published a blog post on the article on the "NIH Director's Blog" entitled "Genomic Study Points to Natural Origin of COVID-19." Fauci Ex. 25, at 1.

727. Dr. Collins used strong language relying on the study to attack and discredit the lab-leak theory as "outrageous" and "debunk[ed]": "Some folks are even making outrageous claims that the new coronavirus causing the pandemic was engineered in a lab and deliberately released to make people sick. A new study debunks such claims by providing scientific evidence that this novel coronavirus arose naturally." Fauci Ex. 25, at 2. Dr. Collins stated that the study shows that "the coronavirus that causes COVID-19 almost certainly originated in nature," and that "this study leaves little room to refute a natural origin for COVID-19." Fauci Ex. 25, at 3.

728. In his blog post, Dr. Collins did not disclose that he and Dr. Fauci had been part of the group that organized the study, nor that he and Dr. Fauci had reviewed six versions of the study before it was published. Fauci Ex. 25.

729. As was evidently intended, Dr. Collins's blog post immediately fueled media coverage attacking the lab-leak theory as a "conspiracy theory." For example, the next day, March 27, 2020, ABC News ran a story entitled, "Sorry, conspiracy theorists. Study concludes COVID-19 'is not a laboratory construct.'" Fauci Ex. 26. The article quoted Bob Garry—who on January 31 had found "the genome inconsistent with the expectations of evolutionary theory," Fauci Ex. 6, at 1, and on February 1 had told Farrar that "I just can't figure out how this gets accomplished in nature … it's stunning," Fauci Ex. 8, at 4—as stating that "[t]his study leaves little room to refute a natural origin for COVID-19." Fauci Ex. 26, at 3-4.

AMERICAN OVERSIGHT

730. Dr. Fauci testified that he could not remember any contact from Dr. Collins about "The Proximal Origin of SARS-CoV-2" after Dr. Collins' blog post on March 26, 2020. Fauci Dep. 186:19-187:6. In light of their subsequent communications and Dr. Fauci's actions, this testimony is not credible.

731. In fact, Dr. Collins emailed Dr. Fauci about the article on Thursday, April 16, 2020. Fauci Ex. 27. The email linked to a Fox News piece by Bret Baier alleging that sources were "increasingly confident" that SARS-CoV-2 originated in a lab, and it stated: "Wondering if there is something NIH can do to help put down this very destructive conspiracy, with what seems to be growing momentum." Fauci Ex. 27, at 1. Dr. Collins stated, "I hoped the Nature Medicine article on the genomic sequence of SARS-CoV-2 [*i.e.*, "The Proximal Origin of COVID-19] would settle this. … Anything more we can do?" Fauci Ex. 27, at 1.

732. Dr. Fauci responded to Dr. Collins at 2:45 a.m. the next day, Friday, April 17, stating only: "Francis: I would not do anything about this right now. It is a shiny object that will go away in times. Best, Tony." Fauci Ex. 27, at 2.

733. Dr. Fauci testified that he did not take "any steps to increase the visibility of the article after this" email exchange with Dr. Collins. 191:21-22; *see also* 195:10-17. That testimony is incorrect and not credible.

734. In fact, that same day, Dr. Fauci took matters into his own hands to make the lab-leak theory "go away." At the joint press conference on April 17, 2020, with President Trump, Vice President Pence, and Dr. Fauci, a reporter asked, "Mr. President, I wanted to ask Dr. Fauci: Could you address the suggestions or concerns that this virus was somehow manmade, possibly came out of a laboratory in China?" Fauci Ex. 28, at 2. Dr. Fauci responded: "There was a study recently that we can make available to you, where a group of highly qualified evolutionary

AMERICAN OVERSIGHT

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 [pause for emphasis] *totally consistent* with a jump of a species from an animal to a human." *Id.*; *see also id.* 199:18-25 (Dr. Fauci conceding that, "when you said that sentence about totally consistent, you pause and use that phrase, 'totally consistent' with emphasis" – "Right."); *see also* Video of April 17, 2020 White House Coronavirus Task Force Briefing, *at* https://www.youtube.com/watch?v=brbArpX8t6I (exchange starting at 1:38:32 of video).

735. Dr. Fauci then feigned ignorance and unfamiliarity with the authors of the study: "the paper will be available – I don't have the authors right now, but we can make that available to you." Fauci Ex. 28, at 2. Presenting himself as unconnected with the paper, Dr. Fauci did not reveal (1) that he was part of a group that had launched the paper in a clandestine phone call on Saturday, Feb. 1; (2) that he had extensively corresponded with Jeremy Farrar about the paper and its conclusions; (3) that the authors of the paper had sent six versions to him, Jeremy Farrar, and Dr. Collins to review; (4) that he had likely urged the authors to beef up their conclusion attacking the lab-leak theory between the preprint and published versions of the paper; (5) that the authors had personally thanked him for his "advice and leadership" in drafting the paper; or (6) that Dr. Collins had emailed him the day before to ask him to push the paper publicly or take other steps to discredit the lab-leak theory.

736. Dr. Fauci does not dispute that he was referring to "The Proximal Origin of SARS-CoV-2" in his public remarks at the April 17, 2020, White House press briefing. Fauci Dep. 201:2-6 ("I assume it was the Nature Medicine paper…. I think it was.").

737. Dr. Fauci testified that he did not make that paper available to any reporters after the press conference. *Id.* at 201:7-9 ("Not to my knowledge."). That testimony is not credible.

AMERICAN OVERSIGHT

738. In fact, over the weekend following the press conference, Dr. Fauci personally responded to an inquiry from a reporter specifically asking for the study he had referred to at the April 17, 2020 press conference, and provided a link to "The Proximal Origin of SARS-CoV-2." Fauci Ex. 29, at 1. On Sunday, April 19, a reporter emailed the White House press office asking, "Dr. Fauci said on Friday he would share a scientific paper with the press on the origin of the coronavirus. Can you please help me get a copy of that paper?" *Id.*

739. Dr. Fauci personally responded to this reporter, stating, "Bill: Here are the links to the scientific papers and a commentary about the scientific basis of the origins of SARS-CoV-2." Fauci Ex. 29, at 1. He then provided three links. The first was a link to the online version of "The Proximal Origin of SARS-CoV-2." The second and third were links to a paper and an online statement by Eddie Holmes, whom Dr. Fauci knew had begun secretly drafting the paper that became "The Proximal Origin of SARS-CoV-2" immediately after the clandestine Feb. 1 conference call with Dr. Fauci, Jeremy Farrar, and others. Fauci Ex. 29, at 1. The second link to a paper authored by Holmes was "a commentary on [The Proximal Origin of SARS-CoV-2] in the journal *Cell*." Fauci Dep. 202:25-203:1; *see also id.* at 203:2-16.

740. On April 18 and 19, 2020, Dr. Fauci exchange cordial emails with Peter Daszak of the EcoHealth Alliance, who steers NIAID funds to finance bat coronavirus research with Dr. Shi Zhengli at the Wuhan Institute of Virology. On Saturday, April 18, Daszak emailed Dr. Fauci, calling him "Tony," and stating: "As the PI of the R01 grant publicly targeted by Fox News reporters at the Presidential press briefing last night, I just wanted to say a personal thank you … for standing up and stating that the scientific evidence supports a natural origin for COVID-19 … not a lab release from the Wuhan Institute of Virology." Fauci Ex. 30, at 1. Daszak also wrote: "Once this pandemic's over I look forward to thanking you in person and let you know how

AMERICAN OVERSIGHT

important your comments are to us all." *Id.* Dr. Fauci responded on April 19: "Peter: Many thanks for your kind note." *Id.*

741. Dr. Fauci's and Dr. Collins's efforts to orchestrate and publicize "The Proximal Origin of SARS-CoV-2" as a method of discrediting the lab-leak theory were highly effective. "The Proximal Origin of SARS-CoV-2" became one of the most widely read and most publicized scientific papers in history, with pervasive media coverage using it to discredit the lab-leak theory. "The paper has been accessed online more than 5.7 million times and has been cited by more than 2,000 media outlets. … It became one of the best-read papers in the history of science." Jones Decl., Ex. BB, at 3.

742. As a direct result of these efforts, speech and speakers advocating for the lab-leak theory of COVID-19's origins were extensively censored on social media platforms.

743. Twitter took aggressive censorship action against such speech and speakers. For example, on September 16, 2020, Twitter suspended the account of a Chinese virologist who claimed coronavirus was made in a lab. Fauci Ex. 31, at 1. "Twitter has suspended the account of a Chinese scientist who suggested that the novel coronavirus was created in a lab … despite inconclusive evidence." Fauci Ex. 31 at 2.

744. Facebook, likewise, took aggressive steps to censor the lab-leak theory on social media, even going so far as to formalize this policy as part of its official content-moderation policy. Fauci Ex. 32, at 3 (Facebook announcing that "we are expanding the list of false claims we will remove to include additional debunked claims about the coronavirus and vaccines," including "COVID-19 is man-made or manufactured"). Facebook noted that "we already prohibit these claims in ads," and promised "to take aggressive action against misinformation about COVID-19 and vaccines." *Id.* Facebook promised to "begin enforcing this policy immediately, with a

AMERICAN OVERSIGHT

particular focus on Pages, groups or accounts that violate these rules …. Groups, Pages, and accounts on Facebook that repeatedly share these debunked claims may be removed altogether." *Id.*

745. Like Twitter, Facebook censored even high-profile speakers who raised questions about the origins of COVID-19 or advanced the lab-leak hypothesis. For example, Facebook censored an article by award-winning British journalist Ian Birrell who raised "the question of the origins of the Covid-19 virus within Wuhan" and criticized the natural-origin theory of the virus. Fauci Ex. 33, at 1.

746. Dr. Fauci claims that he is not aware of any suppression of speech about the lab-leak theory on social media: "I'm not aware of suppression of speech on social media to my knowledge…. I don't recall being aware of suppression of anything." Fauci Dep. 208:10-14. He claims that this ignorance is because he does not pay any attention to anything said on social media: "This is not something that would be catching my attention because, you know, the social media and Twitter, I told you, I don't have a Twitter account. I don't tweet. I don't do Facebook. I don't do anything. So social media stuff, I don't really pay that much attention to." *Id.* at 210:3-8. As noted above, Dr. Fauci's emails and actions reflect extensive concern about what is said on social media, and his attempt to cast himself as someone with no knowledge of social media is not credible.

747. Further, Dr. Fauci's emails and interrogatory responses show a close relationship with the CEO and founder of Meta (Facebook/Instagram), Mark Zuckerberg.

748. On February 27, 2020, Mark Zuckerberg emailed Dr. Fauci directly to inquire about the development of the COVID-19 vaccine and offer the assistance of the Chan-Zuckerberg foundation. Fauci Ex. 23, 1. Zuckerberg already had Dr. Fauci's email, called Dr. Fauci by his

AMERICAN OVERSIGHT

first name "Tony," and wrote as if he had a preexisting acquaintance with Dr. Fauci. *Id.* Dr. Fauci, likewise, responded to Zuckerberg on a first-name basis and with the familiar tone of an acquaintance. Fauci Ex. 23, at 2.

749. Dr. Fauci claims that he does not recall whether he had already met Mark Zuckerberg. Fauci Dep. 173:17-174:5 ("I meet thousands of people. I'm not sure I ever met him in person."). But in fact, Dr. Fauci still refers to Mark Zuckerberg by his first name. *Id.* at 289:9-16.

750. On March 15, 2020, Mark Zuckerberg sent Dr. Fauci a lengthy email to offer close coordination between Dr. Fauci and Facebook on COVID-19 messaging. In the email, Zuckerberg thanked Dr. Fauci for his leadership, and "share[d] a few ideas of ways to help you get your message out." Fauci Ex. 23, at 3. Zuckerberg made three proposals: (1) Facebook was about to launch a "Coronavirus Information Hub" visible at the top of the page to all Facebook users to "get authoritative information from reliable sources," and Zuckerberg offered to include "a video from you" as a "central part of the hub," *id.*; (2) Zuckerberg was "doing a series of livestreamed Q&As from health experts" for his 100 million followers and wanted Dr. Fauci to do one of these videos, *id.*; and (3) Zuckerberg advised Dr. Fauci that Facebook had "allocated technical resources and millions of dollars of ad credits for the US government to use for PSAs to get its message out over the platform," and he wanted Dr. Fauci to recommend "a point person for the government response," *id.*

751. Dr. Fauci responded the next day, telling "Mark" that "[y]our idea and proposal sound terrific," that he "would be happy to do a video for your hub," and that "your idea about PSAs is very exciting." Fauci Ex. 23, at 4. He copied his Special Assistant to put Zuckerberg in

AMERICAN OVERSIGHT

touch with the right point person for the government to arrange specially subsidized government messaging about COVID-19 on Facebook. *Id.*

752. Zuckerberg replied the same day, stating "[w]e'd love to move quickly to help the effort and support getting these messages out." Fauci Ex. 23, at 6.

753. Dr. Fauci claims that the U.S. Government did not accept Facebook's offer of free ad credits to support the Government's COVID-19 messaging. Fauci Dep. 177:22-178:4 ("I don't believe that there was any money that was given from the Zuckerberg to the United States government to do PSAs. It's possible, but it certainly didn't happen to my knowledge. I don't recall money being given for PSAs."). But at the time, Dr. Fauci described the proposal as "very exciting" and immediately followed up on Zuckerberg's offer. Fauci Ex. 23, at 4. Separate emails from Facebook to the White House corroborate these ad credits. *See, e.g.,* Doc. 174-1, at 46. Dr. Fauci's testimony on this point is not credible.

754. Dr. Fauci and Zuckerberg have "interacted on Facebook Zoom-type podcasts." Fauci Dep. 175:17-18. Dr. Fauci did "[t]hree live stream Facebook-type Q and As" about COVID-19 with Zuckerberg. Fauci Dep. 177:2-4.

755. Dr. Fauci's interrogatory responses reveal extensive direct communications between Dr. Fauci and Zuckerberg. *See* Scully Ex. 12, at 33, 53-54 (identifying 13 communications between Dr. Fauci and Zuckerberg, including emails, phone calls, virtual meetings, and live broadcasts, over a nine-month period in 2020).

756. Reviewing the foregoing facts about Dr. Fauci's communications with Farrar, Eddie Holmes, and others, former Director of the CDC Robert Redfield "had a dawning realization. He concluded there'd been a concerted effort not just to suppress the lab-leak theory but to manufacture the appearance of a scientific consensus in favor of a natural origin. 'They

AMERICAN OVERSIGHT

made a decision, almost a P.R. decision, that they were going to push one point of view only' and suppress rigorous debate, said Redfield. 'They argued they did it in defense of science, but it was antithetical to science.'" Jones Decl., Ex. AA.

B. Dr. Fauci's Efforts to Suppress Speech on Hydroxychloroquine.

757. 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 multinational registry analysis." Fauci Ex. 35, at 1. The article purported to analyze 96,032 patients to compare cohorts who did and did not receive hydroxychloroquine or chloroquine to treat COVID-19. *Id.* The study concluded that hydroxychloroquine and chloroquine were "associated with decreased in-hospital survival and an increased frequency of ventricular arrhythmias when used for COVID-19." *Id.*

758. On May 27, 2020, Dr. Fauci publicly cited this study to claim that hydroxychloroquine is "not effective against coronavirus." Fauci Ex. 34, at 1. Dr. Fauci "became the first Trump administration official to say definitively that hydroxychloroquine is not an effective treatment for the coronavirus." *Id.* at 2. "'The scientific data is really quite evident now about the lack of efficacy,' Fauci … said on CNN." *Id.*

759. Dr. Fauci's comments were based on the May 22 Lancet study. *Id.* at 3 ("Fauci's comments come days after the Lancet published a 96,000-patient observational study that concluded that hydroxychloroquine had no effect on Covid-19 and may even have caused some harm.").

760. The Lancet article was an observational study, not a randomized trial. At the time, "[t]here [wa]s no data yet from randomized, controlled clinical trials of hydroxychloroquine – the

AMERICAN OVERSIGHT

gold standard for evaluating potential treatments." Fauci Ex. 34, at 4. "But Fauci was unequivocal on [May 27, 2022], saying that 'the data are clear right now.'" *Id.*

761. Just a few days later, The Lancet retracted the May 22, 2022 study. Fauci Ex. 35, at 1. An article reporting on the retraction noted that the study's authors "were unable to confirm that the data set was accurate," that "several concerns were raised with respect to the veracity of the data," the study may have "include[ed] more cases than possible," and that "[a] first-year statistics major could tell you about major flaws in the design of the analysis." Jones Decl., Ex. DD, at 2-3.

762. Thus, Dr. Fauci's initial dismissal of hydroxychloroquine was based on a purely *observational* study – not a randomized, controlled trial – and one that was retracted for glaring errors just days later.

763. Dr. Fauci testified that he did not recall that The Lancet study he cited to discredit the efficacy of hydroxychloroquine had been retracted. Fauci Dep. 223:7 ("I don't recall it being retracted.").

764. Dr. Fauci stepped up his public campaign to discredit hydroxychloroquine by insisting that its effectiveness could only be judged by undergoing rigorous, randomized, double-blind, placebo-based studies, notwithstanding his previous reliance on the less-than-rigorous observational study in The Lancet that was subsequently retracted. On July 31, 2020, Dr. Fauci testified before the House Select Subcommittee on Coronavirus Crisis, during which he stated: "The point that I think is important, because we all want to keep an open mind, any and all of the randomized placebo-controlled trials, which is the gold standard of determining if something is effective, none of them had shown any efficacy by hydroxychloroquine. Having said that, I will state, when I do see a randomized placebo-controlled trial that looks at any aspect of

AMERICAN OVERSIGHT

hydroxychloroquine, either early study, middle study, or late, if that randomized placebo-controlled trial shows efficacy, I would be the first one to admit it and to promote it. But I have not seen yet a randomized placebo-controlled trial that's done that. And in fact, every randomized placebo-controlled trial that has looked at it, has shown no efficacy. So, I just have to go with the data. I don't have any horse in the game one way or the other, I just look at the data." *See* https://www.youtube.com/watch?v=RkNC5OQD2UE.

765. Despite his insistence before a congressional committee that randomized, placebo-controlled trials were the determining factor for his opinion regarding the effectiveness of hydroxychloroquine in the treatment of COVID-19, Dr. Fauci quietly admitted that such rigorous studies are not actually required to determine the efficacy of a therapeutic drug. Dr. Fauci was asked, "Do you recall saying in connection with the discussion of hydroxychloroquine that a randomized double blind placebo based study is the gold standard?" Fauci Dep. 244:8-11. He replied, "That is the gold standard for everything. *It isn't always needed*, but for the most part, it's the gold standard." *Id.* at 244:12-14 (emphasis added).

766. Dr. Fauci's sudden reversal concerning the critical standards for scientific studies to determine the effectiveness of hydroxychloroquine demonstrated a lack of candor to the House Select Subcommittee on Coronavirus Crisis. Indeed, Dr. Fauci misled the Committee when he failed to disclose that randomized, double-blind, placebo-based studies are not always needed and that he previously relied on the *observational,* i.e., non-randomized, non-double-blind, non-placebo-based study in The Lancet to form an opinion about that drug's efficacy in the first place. Dr. Fauci lacks credibility on this point.

767. Despite mounting evidence against his position, Dr. Fauci testified that his opinion against hydroxychloroquine was based on other studies as well as the retracted article in The

AMERICAN OVERSIGHT

Lancet, but he could not identify any of those studies. Fauci Dep. 223:12-18 ("I don't recall specifically what those studies are now.").

768. Dr. Fauci did not retreat from his hard public stance against hydroxychloroquine. On July 26, 2020, a group called "America's Frontline Doctors" held a press conference at the U.S. Capitol criticizing the government's response to the COVID-19 pandemic and touting the benefits of hydroxychloroquine in treating the coronavirus. Fauci Ex. 38, at 5.

769. Dr. Fauci responded to this event with highly visible public statements condemning the use of hydroxychloroquine. For example, he stated on "Good Morning America," that "[t]he overwhelming prevailing clinical trials that have looked at the efficacy of hydroxychloroquine have indicated that it is not effective in coronavirus disease." Fauci Ex. 36, at 5. Dr. Fauci made these comments in direct response to the public claims of America's Frontline Doctors. Fauci Dep. 227:7-228:13. He also stated on MSNBC's "Andrea Mitchell Reports" that the video of the press conference by America's Frontline Doctors constituted "a video out there from a bunch of people spouting something that isn't true." Fauci Ex. 37, at 3.

770. Dr. Fauci also stated that "the cumulative data on trials, clinical trials that were valid, namely clinical trials that were randomized and controlled in a proper way, … showed consistently that Hydroxychloroquine is not effective in the treatment of coronavirus disease or COVID-19." Fauci Ex. 37, at 3. But two months earlier, he had said "the data are clear right now" when no such studies existed. Fauci Ex. 34, at 4.

771. Social-media platforms reacted by aggressively censoring the video of America's Frontline Doctors. Facebook removed the video when it was "the top-performing Facebook post in the world," and "had accumulated over 17 million views by the time of its censorship by Facebook." Fauci Ex. 38, at 3, 4. Further, "Facebook's decision to censor the livestream was

AMERICAN OVERSIGHT

quickly followed by YouTube, the Google-owned video-sharing platform." *Id.* at 6. "The video had 80,000 views on YouTube prior to its removal." *Id.* "Following Facebook and YouTube's removal of the video, Twitter followed suit…." *Id.*; *see also* Fauci Ex. 36, at 3 (noting that "Twitter … removed the video, saying it was 'in violation of our COVID-19 misinformation policy'").

772. Dr. Fauci professed to be unaware of whether 17 million views of a video on Facebook are a large number of views: "I don't know what 17 million views means. What's the denominator? Is 17 million a large amount? Is it a small amount? I don't go on social media, so I don't know what 17 million views means." Fauci Dep. 236:7-11. It is common sense that 17 million views are a large number of views. Dr. Fauci's testimony on this point is not credible.

773. Dr. Fauci does not deny that he or his staff at NIAID may have communicated with Facebook regarding the censorship of the America's Frontline Doctors video. Instead, he claims that he does not recall whether they communicated with Facebook about it, and that it is possible that they did so. Fauci Dep. 238:2-5 ("I don't recall anybody communicating with them about that. Could have been, but I don't recall anybody -- I don't recall anybody communicating with the social media people."); *see also id.* at 238:6-10. He also does not deny that other federal officials may do so, but he claims that "I don't recall any of that" and "it just doesn't ring a bell to me right now." *Id.* at 238:21-239:7. He claims he doesn't "pay attention" to whether his staff or other federal officials communicate with social-media platforms about censorship because "I have a really important day job that I work at." *Id.* at 238:19-20.

774. Nevertheless, regarding the decision by YouTube and Twitter to follow Facebook in censoring the video, Dr. Fauci admits that "Yes, I knew of that." *Id.* at 239:8-13.

AMERICAN OVERSIGHT

775. A few days later, on August 1, 2020, the web host provider for America's Frontline Doctors shut down their website. *Id.* at 242:14-243:8; Fauci Ex. 39. Dr. Fauci testifies that he does not recall this occurrence. Fauci Dep. 243:13-18.

776. On November 18, 2022, a meta-analysis of 449 studies on the efficacy of hydroxychloroquine considered "449 HCQ COVID-19 studies, 351 peer reviewed, 371 comparing treatment and control groups." Fauci Ex. 40, at 1. The meta-analysis concluded that "[l]ate treatment and high dosages may be harmful, while early treatment consistently shows positive results." *Id.* It also noted that "[n]egative evaluations" of hydroxychloroquine "typically ignore treatment delay." *Id.* And it noted that "HCQ/CQ was adopted for early treatment in all or part of 41 countries." *Id.*

C. Dr. Fauci's "Devastating Takedown" of the Great Barrington Declaration.

777. Dr. Fauci recommended Dr. Clifford Lane of NIAID to participate in a WHO mission to China in February 2020. Fauci Dep. 139:15.

778. On April 3, 2020, the NIH Record wrote a report on Lane's trip entitled "NIAID's Lane Discusses WHO COVID-19 Mission to China. Fauci Ex. 20, at 1. Lane praised China's response to the pandemic, especially their reliance on lockdowns and "extreme … social distancing": "The Chinese were managing this in a very structured, organized way,' he explained. 'When we got there, the outbreak was already coming under control in China. The measures they put in place appeared to be working…. It demonstrated their successful response…. From what I saw in China, we may have to go to as extreme a degree of social distancing to help bring our outbreak under control." *Id.* at 5-6.

779. Dr. Fauci discussed this conclusion with Lane when he returned from China: "Dr. Lane was very impressed about how from a clinical public health standpoint, the Chinese were

AMERICAN OVERSIGHT

handling the isolation, the contact tracing, the building of facilities to take care of people, and that's what I believed he meant when he said were managing this in a very structured, organized way." Fauci Dep. 165:4-11.

780. Dr. Fauci admits that Lane "did discuss with me that the Chinese had a very organized way of trying to contain the spread in Wuhan and elsewhere. … he mentioned that they had a very organized, well-regimented way of handling the outbreak." *Id.* at 166:1-7.

781. Dr. Fauci came to agree with Dr. Lane's rosy assessment of China's draconian response to the outbreak: "Dr. Lane is a very astute clinician, and I have every reason to believe that his evaluation of the situation was accurate and correct." *Id.* at 166:24-167:1.

782. On Feb. 22, 2020, Dr. Lane sent an email stating, "China has demonstrated that this infection can be controlled, albeit at great cost." Fauci Ex. 21, at 1.

783. On October 4, 2020, Plaintiffs Dr. Jay Bhattacharya of Stanford and Dr. Martin Kulldorff of Harvard, along with Dr. Sunetra Gupta of Oxford, published online the "Great Barrington Declaration," which was one-page treatise opposing reliance on lockdowns and advocating for an approach to COVID-19 called "focused protection." Fauci Ex. 41.

784. The Great Barrington Declaration criticized the social-distancing and lockdown approaches to the pandemic endorsed by government experts such as Dr. Fauci and Cliff Lane: "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.* It was very critical of such government policies: "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 –

AMERICAN OVERSIGHT

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. Keeping these measures in place until a vaccine is available will cause irreparable damage, with the underprivileged disproportionately harmed." *Id.* It called for an end to lockdowns: "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.*

785. The Declaration called for an end of government-imposed lockdowns and an immediate return to normal life for those who are low-risk: "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. People 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.*

786. The Declaration was thus highly critical of the lockdown policies defended by Dr. Fauci and Dr. Cliff Lane of NIAID since Dr. Lane's trip to China at the beginning of the pandemic. The Declaration was "going against the global political consensus, which holds that lockdowns are key to minimising mortality to Covid-19." Fauci Ex. 48, at 3. After it was posted online, it rapidly gathered signatures from doctors and scientists, as well as members of the public.

AMERICAN OVERSIGHT

787. Four days later, on October 4, 2020, Dr. Francis Collins emailed Dr. Fauci and Cliff Lane, citing the Great Barrington Declaration. Fauci Ex. 42, at 1. Dr. Collins 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 on line yet – is it underway? Francis." *Id.*

788. This email seeking Dr. Fauci's assistance in a "quick and devastating … take down" of the Great Barrington Declaration" is strikingly similar to Dr. Collins' email to Dr. Fauci on April 16, 2020, asking Dr. Fauci's "help [to] put down this very destructive conspiracy," *i.e.*, the lab-leak hypothesis. Fauci Ex. 27, at 1. In both cases, Dr. Collins sought Dr. Fauci's aid in discrediting and silencing an online narrative that federal officials disfavored, and in both cases, Dr. Fauci promptly and effectively complied.

789. Dr. Collins' question to Dr. Fauci in the email, "Is it underway?" implies that Dr. Collins expected Dr. Fauci to be already working on a "quick and devastating … take down" of the Declaration, or to be aware of others working on one. Fauci Ex. 42, at 1. Dr. Fauci denies that Dr. Collins had any reason to think that Dr. Fauci might be working on a refutation of the Great Barrington Declaration, because "[t]his is not something I would be involved in," because "I have a very important day job that is running a $6.4 billion institute." Fauci Dep. 260:11-20. Given Dr. Fauci's immediately subsequent attempts to refute and discredit the Great Barrington Declaration, this testimony is not credible.

790. The same day as Dr. Collins' email, October 8, 2020, Dr. Fauci wrote back to Dr. Collins, stating "Francis: I am pasting in below a piece from *Wired* that debunks this theory. Best, Tony." Fauci Ex. 43, at 1. Dr. Fauci followed up the same day with an email to Dr. Collins linking

AMERICAN OVERSIGHT

to an article by Gregg Gonsalves which Dr. Fauci called "[a]nother refutation of the herd immunity approach." Fauci Ex. 44, at 1.

791. Dr. Fauci has known Gregg Gonsalves for decades, since the 1980s. Fauci Dep. 265:16-19. Dr. Fauci does not deny that he may have contacted Gregg Gonsalves before Gonsalves wrote this piece attacking the Great Barrington Declaration, but claims he does not recall. *Id.* at 268:8-19 ("I don't recall. I might have.").

792. Dr. Fauci and Dr. Collins followed up with a series of public media statements attacking the Great Barrington Declaration. On October 14, 2020, the Washington Post ran a story entitled, "Proposal to hasten herd immunity to the coronavirus grabs White House attention but appalls top scientists." Fauci Ex. 45, at 1. In the article, Dr. Collins described the Great Barrington Declaration and its authors as "fringe" and "dangerous": "This is a fringe component of epidemiology. This is not mainstream science. It's dangerous." *Id.* at 3.

793. Dr. Fauci consulted with Dr. Collins before he told the Washington Post that the Great Barrington Declaration represented a "fringe" and "dangerous" idea. Fauci Dep. 272:4-7.

794. Dr. Fauci endorsed these comments in an email to Dr. Collins on October 13, 2020, stating, "[w]hat you said was entirely correct." Fauci Ex. 46, at 1.

795. Dr. Fauci admits that Dr. Collins could have been concerned about the spread of the ideas in the Declaration on social media when he called it "fringe" and "dangerous." Fauci Dep. 274:19-20.

796. The next day, October 15, 2020, Dr. Fauci echoed Dr. Collins' comments, calling the Declaration "nonsense" and "dangerous." Fauci Ex. 47, at 1. Describing the proposal as "letting infections rip as it were," Dr. Fauci stated: "Quite frankly that is nonsense, and anybody

AMERICAN OVERSIGHT

who knows anything about epidemiology will tell that that is nonsense and very dangerous." *Id.* at 3.

797. Dr. Fauci testified that "it's possible that" he coordinated with Dr. Collins on their public statements attacking the Great Barrington Declaration. Fauci Dep. 279:23-24.

798. Dr. Fauci also testified of himself and Dr. Collins that "that's not our style to be coordinating things." *Id.* at 279:22-23. In light of the extensive coordination with Dr. Collins about the lab-leak theory, and the coordination about the Great Barrington Declaration, that testimony is not credible.

799. Shortly after Dr. Collins' email to Dr. Fauci seeking a "quick and devastating … take down" of the Great Barrington Declaration, the Declaration and its authors, Drs. Bhattacharya and Kulldorff, experienced extensive censorship on social media. *See infra.* In October 2020, Google deboosted the search results for the Declaration, so that "most users in English-speaking countries, when they google 'Great Barrington Declaration,' will not be directed to the declaration itself but to articles that are critical of the declaration." Fauci Ex. 48, at 4.

800. In the same time, "[c]ensorship of the declaration … also spread to Reddit. The two most popular subreddits for discussion of the coronavirus – r/COVID-19 and r/coronavirus – have both removed links to the Great Barrington Declaration. The moderators of r/coronavirus, a forum with 2.3million members, have declared it to be 'spam'." Fauci Ex. 48, at 4-5.

801. In October 2020, YouTube updated its terms of service regarding medical "misinformation," reporting "COVID-19 medical misinformation policy updated to prohibit content about vaccines contradicting consensus from health authorities." Fauci Ex. 49, at 3. "Health authorities" include federal officials like Dr. Fauci and Dr. Collins. *See id.* This October 2020 update specifically stated that claims which are "not allowed on YouTube" include "[c]laims

AMERICAN OVERSIGHT

that achieving herd immunity through natural infection is safer than vaccinating the population," which is listed on the same footing as "[c]laims that COVID-19 vaccines contain a microchip or tracking device." Fauci Ex. 50, at 3-4.

802. Pursuant to this censorship policy of YouTube, the authors of the Great Barrington Declaration had content removed from YouTube, including a video of a roundtable discussion with Governor Ron DeSantis of Florida. *See infra.*

803. Facebook, likewise, adopted censorship policies against the Great Barrington Declaration. Meta's policy on "Misinformation about vaccines" states that: "We remove misinformation primarily about vaccines when *public health authorities* conclude that the information is false and likely to directly contribute to imminent vaccine refusals." Fauci Ex. 51, at 4 (emphasis added).

804. Facebook/Meta views Dr. Fauci as a "public health authority" who may dictate what people may post about COVID-19 on its platforms (Facebook and Instagram, among others), because Mark Zuckerberg and Dr. Fauci were collaborating on multiple public appearances and videos for Facebook. *See supra*; Scully Ex. 12, at 33, 53-54 (identifying 13 communications between Dr. Fauci and Zuckerberg, including emails, phone calls, virtual meetings, and live broadcasts, over a nine-month period in 2020). Indeed, in his March 15, 2020 email to Dr. Fauci, Mark Zuckerberg described Dr. Fauci as an "expert[]," a "health expert[]" and "reliable source[]" for "authoritative information" about fighting COVID-19. Fauci Ex. 23, at 3.

805. Dr. Fauci claims that he would not have paid any attention to the Great Barrington Declaration because he is too busy and important to pay attention to such matters: "this is not something that I would have been paying a lot of attention to. I was knee deep in trying to do things like develop a vaccine that wound up saving the lives of millions of people. That's what I

AMERICAN OVERSIGHT

was doing at the time." Fauci Dep. 256:13-17. Given Dr. Fauci's direct involvement in publicly attacking the Great Barrington Declaration and collecting sources for Dr. Collins to "take [it] down," this statement is not credible. In fact, on November 1, 2020, Greg Folkers, Dr. Fauci's staffer at NIAID, sent Dr. Fauci a list of articles attacking the Great Barrington Declaration—including one co-authored by Gregg Gonsalves—with the statement "As discussed. I have highlighted the three I found the most useful." Fauci Ex. 52, at 1. The list of articles were all harshly critical of the Declaration—using phrases like "dangerous," "false promise," "ethical nightmare," and "could kill millions." *Id.* Thus, four weeks after the Declaration was published, Dr. Fauci and his staffers were still "discuss[ing]" and looking up articles on ways to attack it. *Id.*

806. Dr. Kulldorff points out that, regardless of disagreements over the policy, describing the Declaration as "fringe" and "nonsense" is fundamentally dishonest, as the Declaration reflects principles of pandemic preparedness that were widely accepted before COVID-19: "the Great Barrington Declaration is merely a restatement of the principles of public health. Lockdown … is a 'terrible experiment' that throws those principles 'out of the window' by focusing solely on one disease at the expense of all other health problems. 'Most countries in Europe had a pandemic-preparedness plan that did not recommend lockdowns, but instead proposed a risk-based strategy to protect those at high risk, which is actually the same as the focused protection we put forward in the Great Barrington Declaration. What we are proposing is, therefore, nothing revolutionary', [Kulldorff] said." Fauci Ex. 48, at 6.

807. Regarding the censorship of the Great Barrington Declaration on social media, Dr. Fauci repeatedly testified that he was oblivious to it: "I don't pay much attention to what goes on in social media … it is highly unlikely that … I paid any attention to this thing of Google censoring the Great Barrington Declaration … I would not have paid much attention to it." Fauci Dep.

AMERICAN OVERSIGHT

281:15-282:2, 283:7-10. In light of his contemporaneous statements and emails, this statement is not credible.

808. Like so many other topics, Dr. Fauci repeatedly testified that he could not recall virtually anything about his involvement in seeking to squelch the Great Barrington Declaration. He testified at least 33 times that he could not recall his involvement in this matter. *See* Fauci Dep. 251:11, 252:20, 255:6, 255:9, 256:3, 257:5, 258:12, 263:1, 263:15, 263:21, 264:17, 264:20, 264:22, 265:2, 265:6, 268:10, 268:18, 270:24, 282:19-20, 284:22-23, 290:13, 290:21, 291:13, 291:16, 292:15, 292:24, 293:15, 293:24, 295:9, 295:25, 296:21, 297:2-3, 297:14. For the reasons discussed above, these claims to almost total loss of memory are not credible.

D. NIAID Flags Social-Media Accounts for Censorship Under Dr. Fauci.

809. As noted above, Dr. Fauci testified that he is not aware of any NIAID or NIH staff contacting social media platforms to ask them to remove content. In fact, NIAID and NIH staff—including staffers in Dr. Fauci's senior circle—sent several messages to social-media platforms asking them to remove content lampooning or criticizing Dr. Fauci. Dr. Fauci's testimony to the contrary is not credible.

810. On March 14, 2020, a Twitter employee reached out to CDC officials, including Carol Crawford, and asked if a particular account associated with Dr. Fauci is "real or not." Fauci Ex. 53, at 2. Scott Prince of NIH responded, "Fake/Impostor handle. PLEASE REMOVE!!!" *Id.* Twitter responded that it would take action promptly and "circle back ASAP." *Id.* An HHS official then asked if Twitter could pre-block similar parody accounts: "Is there anything else that you can also do to block other variations of [Dr. Fauci's] name from impersonation so we don't have this happen again?" *Id.* at 1. Twitter replied: "We'll freeze this @handle and some other variations so no one can hop on them." *Id.*

AMERICAN OVERSIGHT

811. Likewise, on April 21, 2020, Judith Lavelle of NIAID emailed Facebook, copying Scott Prince of NIH and Jennifer Routh of Dr. Fauci's communications team, and stated: "We wanted to flag a few more fake Dr. Fauci accounts on FB and IG for you. I have also reported them from @niaid and my personal FB account." Fauci Ex. 55, at 3. She listed eight accounts that she considered fake. One of these was called "Dr.FauciTheHero," and she stated, "I think this one may be fine as a fan page but could use a reminder to be a bit more clear," *id.* at 4—thus noting that she was seeking the censorship only of speech about Dr. Fauci that the government disfavors, while "a fan page" was fine.

812. Both Jennifer Routh and Judith Lavelle are members of Dr. Fauci's communications staff. Fauci Dep. 308:14-21.

813. The fact that Lavelle stated they were flagging "a few *more*" accounts indicates that NIAID's flagging social-media accounts for censorship was not an isolated incident but an ongoing practice. Fauci Ex. 55, at 3.

814. Lavell then followed up flagging yet another account, saying "Apologies one more," and adding Greg Folkers of Dr. Fauci's personal staff to the email chain reporting these accounts to Facebook for censorship. Fauci Ex. 55, at 3.

815. The same day, Facebook responded, "Flagged this for the fake accounts team and they have confirmed that all but two accounts were removed for impersonation of Dr. Fauci. I guess two of the accounts are fan accounts." Fauci Ex. 55, at 3.

816. The Facebook employee then added, "Also want to intro you all to [two more Facebook employees] who have been working hard to manage any fake accounts for NIH across the board. She can work with you directly if anything like this comes up." Fauci Ex. 55, at 2. Lavelle responded that "our team will be sure to reach out if we identify any more impersonations,"

AMERICAN OVERSIGHT

id., and Facebook answered that Lavelle of NIAID should "feel [free] to flag to us the various imposter accounts," Fauci Ex. 55, at 1. Again, this response indicates an ongoing and widespread practice of NIH reporting supposedly "fake" accounts for censorship. *Id.*

817. Dr. Fauci testifies that he does not remember for certain, but he "likely" asked his communications staff to do something about these impersonation or parody accounts. Fauci Dep. 302:6-10 ("I vaguely remember somebody mentioning something about an imposter account. … And I likely would have said, 'Well, how can they do that?'"). He also agrees that his communications staff would do so on their own. *Id.* at 301:1-4 ("I have a communication staff that I'm sure, if they found out it was a false and misleading account, that they would want it to be removed."); *see also id.* at 301:23-25; 304:19-21.

818. Dr. Fauci believes it is "totally appropriate" for his communications staff to contact social-media platforms and seek the removal of such accounts. *Id.* at 312:19-21; *see also id.* at 310:14-16.

819. He thinks so because "impersonating me is a bad thing." *Id.* at 303:20; *see also id.* at 304:11-13; 309:23-310:1 ("fake accounts are bad things, I believe"); 311:20-21. Dr. Fauci specifically believes that removing accounts associated with him is "a good thing" because "those accounts are bad." *Id.* at 329:12-16.

820. Dr. Fauci does not know whether some of the so-called "fake accounts," which he calls "bad things," that his staff flagged for censorship may actually be parody accounts. *Id.* at 311:7-9.

821. Moreover, it was not just NIAID staff, but also White House staff, who flagged content about Dr. Fauci for removal from social-media platforms. As noted above on Tuesday, July 20, 2021, Clarke Humphrey of the White House communications office emailed Facebook

AMERICAN OVERSIGHT

asking for the removal of an Instagram account associated with Dr. Fauci, saying it "is not actually one of ours." Fauci Ex. 57, at 1-2. Facebook responded one minute later, stating, "Yep, on it!" Fauci Ex. 57, at 1. Courtney Billet, Dr. Fauci's communications director at NIAID, then weighed in, asking Facebook to disclose whether "there's a federal email address attached to whomever set this account up," so that she could ascertain whether the account was set up by "some federal employee outside our official comms offices." Fauci Ex. 57, at 1. The next day, Facebook responded, stating, "This account has been removed. Thank you for flagging!" Fauci Ex. 57, at 1.

822. NIAID's communications with social-media platforms were not limited to flagging impostor or parody accounts. On October 30, 2020, for example, a NIAID staffer wrote an email connecting Google/YouTube with Jennifer Routh of NIAID's "Office of Communications and Government Relations," so that NIAID and the "Google team" could "connect on vaccine communications – specifically misinformation…." Fauci Ex. 56, at 2. Routh then added Courtney Billet ("director of the Office of Communications and Government Relations at NIAID") and two other senior NIAID officials to the communications chain with YouTube. Fauci Ex. 56, at 1.

823. Likewise, in response to a third-party subpoena, Twitter has disclosed that Dina Perry, a Public Affairs Specialist for NIAID, communicates or has communicated with Twitter about misinformation and censorship. Jones Decl., Ex. F, at 1.

824. NIAID did not disclose Dina Perry in response to interrogatories seeking the identities of NIAID officials who communicate with social-media platforms about misinformation, disinformation, and censorship. Scully Ex. 12, at 17-18.

825. Dr. Fauci testified that he has never "contacted a social media company and asked them to remove misinformation from one of their platforms." Fauci Dep. 151:21-24 ("No, I have

AMERICAN OVERSIGHT

not."). He also testified that no one on his staff at NIAID has "ever reached out to a social media platform to ask them to take content down or to block content in any way. *Id.* at 152:7-15 ("To my knowledge, no."). In light of the repeated attempts of Dr. Fauci's staff to have content related to Dr. Fauci removed from social media, Dr. Fauci's testimony on this point is not credible.

E. CDC and NIH Procure the Censorship of Speech on Ivermectin.

826. On September 13, 2021, Facebook emailed Carol Crawford of the CDC to ask the CDC to identify 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," which were the qualifications for censoring that claim on Facebook's platforms. Fauci Ex. 58, at 2. Facebook noted that it was currently rating this claim as "*not false*," *i.e.*, Facebook was *not* censoring the claim that Ivermectin is effective in treating COVID-19, because there was "no consensus" of its efficacy for treatment. *Id.* at 3.

827. The next day, the CDC responded, advising Facebook that the claim that "Ivermectin is effective in treating COVID" is "***NOT ACCURATE***" (bold and italics in original) and thus should be censored on Facebook's platforms. Fauci Ex. 58, at 1. To support this claim, the CDC cited NIH's "Ivermectin | COVID-19 Treatment Guidelines." *Id.* Thus, the CDC cited the NIH's treatment guidelines for Ivermectin as authority to urge Facebook to censor claims about using Ivermectin to treat COVID-19. *Id.* CDC also cited NIH to call for the censorship of two related claims about Ivermectin, and noted that "[t]hese responses are based on the independent advice of … NIH," which had "opined that there are not data that indicate ivermectin is effective in the ways described above." *Id.*

F. Dr. Fauci's Double Standard on Acceptable Speech: Mask Mandates.

AMERICAN OVERSIGHT

828. "Sylvia Burwell is the former Secretary of the Department of Health and Human Services [under President Obama] and the current president of American University." Fauci Dep. 313:9-11. "Sylvia has, over the past couple of years, asked [Dr. Fauci] advice about personal safety during the COVID-19 pandemic." *Id.* at 313:17-19.

829. On February 4, 2020, Sylvia Burwell wrote Dr. Fauci an email stating that she was traveling and wondering if she should wear a mask in the airport. Fauci Dep. 313:21-314:5; *see also* Jones Decl., Ex. EE, at 1. Dr. Fauci responded, stating: "Masks are really for infected people to prevent them from spreading infection to people who are not infected, rather than protecting uninfected people from acquiring infection. The typical mask you buy in the drugstore is not really effective in keeping out virus, which is small enough to pass through material. … I do not recommend that you wear a mask…." Fauci Dep. 314:9-19; *see also* Jones Decl., Ex. EE, at 1.

830. Dr. Fauci agrees that he "made several statements that are similar to that at that time frame." Fauci Dep. 315:12-14.

831. He states that, at that time, there were "no studies" on the efficacy of masking to stop the spread of COVID-19. *Id.* at 316:8-13.

832. In fact, on March 31, 2020, Dr. Fauci forwarded studies showing that masking is ineffective. Fauci Dep. 318:24-319:7.

833. Dr. Fauci's position on masking dramatically changed by April 3, 2020, when he became an advocate for universal mask mandates. *Id.* at 317:14-20.

834. Dr. Fauci states that his position on masking changed in part because "[e]vidence began accumulating that masks actually work in preventing acquisition and transmission." Fauci Dep. 317:5-6.

AMERICAN OVERSIGHT

835. Dr. Fauci was asked to identify any studies that were done between February 2020 and April 3, 2020, that supported his change of position on the efficacy of masking, and he could not identify any. *Id.* at 318:8-10.

836. Dr. Fauci was asked if there were any "placebo-based, double-blind, randomized studies of the efficacy of masking that were done between February and April 2020," and he could not identify any. *Id.* at 322:1-5. In fact, it is obvious that there were none.

837. Dr. Fauci's position on masking, therefore, directly contradicts his insistence on randomized, double-blind, placebo-based clinical trials for alternative COVID-19 treatments like hydroxychloroquine and ivermectin. At best, Dr. Fauci's dramatic change in position on masking was based on observational studies—the same kind of studies that he dismissed, in the very same time frame, as inadequate to support the use of hydroxychloroquine to treat COVID-19. At worst, it was based on no evidence at all—and Dr. Fauci identified none.

838. Dr. Fauci believes it can be dangerous to give ordinary people access to scientific information: "If information is clearly inadequate and statistically not sound, there can be a danger in people who don't have the ability or the experience of being able to understand that it's a flawed study." *Id.* at 323:5-9.

839. Dr. Fauci believes that it is "disturbing" when "unwitting" people believe what he thinks is misinformation: "I think honest debate is important, but when it goes beyond debate and leads people who are unwitting about these things to do things that are clearly detrimental to their life and their safety, I find that disturbing." *Id.* at 358:13-17.

G. Dr. Fauci and the White House Cause the Censorship of Alex Berenson.

840. Alex Berenson is a former New York Times science reporter and prominent critic of government messaging about COVID-19 vaccines who was deplatformed from Twitter on

AMERICAN OVERSIGHT

August 28, 2021, after months of pressure from White House and federal officials. Fauci Ex. 59, at 4.

841. As Berenson notes: "On July 16, 2021, President Biden complained publicly that social media companies were 'killing people' by encouraging vaccine hesitancy. A few hours after Biden's comment, Twitter suspended by account for the first time." Fauci Ex. 59, at 4.

842. Dr. Fauci, who was then Chief Medical Advisor to President Biden, played a key role in procuring the censorship of Alex Berenson. Shortly before President Biden's comments, Dr. Fauci engaged in public attacks on Alex Berenson in attempt to discredit him and silence his government-skeptical opinions.

843. On July 11, 2021, appearing on CNN's "State of the Union," Dr. Fauci described Alex Berenson's comments on vaccine skepticism as "horrifying." Fauci Ex. 60, at 1. Responding to applause for a speech given by Berenson at a conference, Dr. Fauci stated: "It's horrifying. I mean, they are cheering about someone saying that it's a good thing for people not to try and save their lives." *Id.* In response to Berenson's views, Dr. Fauci stated, "it's almost frightening to say, … we don't want you to do something to save your life." *Id.* Dr. Fauci also stated, "I don't think that anybody who is thinking clearly can get that." *Id.*

844. Dr. Fauci's public comments as the President's Chief Medical Advisor specifically criticizing Alex Berenson were made at a time when other White House officials like Andrew Slavitt were *privately* pressuring Twitter to deplatform Berenson since April 21, 2020. *See, e.g.,* Fauci Ex, 58, at 7 (internal Twitter communications on April 22, 2020, indicating that White House officials "had one really tough question about why Alex Berenson hasn't been kicked off from the platform," and "yes, they really wanted to know about Alex Berenson. Andy Slavitt suggested

AMERICAN OVERSIGHT

they had seen data vis that had showed he was the epicenter of disinfo that radiated outwards to the persuadable public.").

845. Dr. Fauci does not deny that he may have discussed Alex Berenson with other White House or federal officials, but claims he does not recall whether he did so. Fauci Dep. 343:16-23.

846. Dr. Fauci believes that misinformation and disinformation "contribute to the deaths" of people: "misinformation and disinformation, particularly that encourages people to avoid lifesaving interventions, can certainly result in the unnecessary death of people whose lives would have been saved. So when misinformation and disinformation leads people to avoid a lifesaving intervention, that is equivalent to contributing to the death of that person." *Id.* at 345:8-15. "I do feel strongly that misinformation and disinformation, when it leads to people avoiding lifesaving interventions, can be deadly. *Id.* at 346:1-3.

847. Dr. Fauci also believes that misinformation and disinformation on social media are "contrary to public health" and "the enemy of public health": "If social media is propagating disinformation that leads to the death of people by encouraging them to avoid lifesaving interventions, I believe that's contrary to public health." *Id.* at 346:5-7, 346:10-13.

848. Dr. Fauci admits that it is "certainly possible" that he discussed the view that "disinformation or misinformation on social media platforms are killing people" with others in the federal government, but claims he cannot remember whether he did so. *Id.* at 345:3-25.

849. Dr. Fauci testified that the first time he heard of Alex Berenson was when Berenson publicly claimed that the White House demanded that Twitter deplatform him in 2022: "it's the person who says that the White House demanded Twitter ban me months before the company did so. I had never heard of who Alex Berenson was before this … I don't even know who he is." *Id.*

AMERICAN OVERSIGHT

at 335:1-7. In light of Dr. Fauci's public attacks on Alex Berenson in 2021, this testimony is not credible.

850. Former FDA Commissioner Scott Gottlieb also emailed Twitter to pressure them to remove Alex Berenson's content, invoking Dr. Fauci in his email. Sending Twitter a link to a post by Berenson entitled "The Arrogance of Dr. Fauci," Gottlieb wrote: "This is why Tony needs a security detail," Fauci Ex. 62, at 1—thus implying that Berenson's criticism of Dr. Fauci was endangering Dr. Fauci's life.

851. Dr. Fauci does not deny that he may have discussed this issue with Gottlieb before Gottlieb sent this email to Twitter, but he claims he does not recall whether he did so. Fauci Dep. 349:7-19, 352:12-18.

852. After testifying over 200 times during his deposition that he could not remember or could not recall events related to the case, Dr. Fauci was shown an email chain between him and Dr. Ezekial Emanuel from May 2, 2020 that had no direct connection to issues in the case. Fauci Ex 63. Unlike his convenient lack of memory as to case-related communications, Dr. Fauci was immediately able to provide a detailed, specific account of the context and communications with Dr. Emanuel relating to that email chain. Fauci Dep. 353:20-354:16.

VI. The FBI's Censorship Campaign of Pressure and Deception.

853. In parallel with the censorship of health "misinformation" and related issues achieved by the White House, the CDC, Surgeon General Murthy, Dr. Fauci, and others, *see supra* Parts I-V, federal national-security and law-enforcement agencies flex their considerable muscle to pressure and induce social-media platforms to censor disfavored speech and viewpoints about elections and other topics. The FBI's Foreign Influence Task Force (FITF) and the Cybersecurity and Infrastructure Security Agency's (CISA) "Mis, Dis, and Malinformation Team" play key roles

AMERICAN OVERSIGHT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

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 AND 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;

No. 3:22-cv-01213-TAD-KDM

AMERICAN OVERSIGHT

'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,

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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).

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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*

AMERICAN OVERSIGHT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

STATE OF MISSOURI, ET AL.	**CASE NO. 3:22-CV-01213**
VERSUS	**JUDGE TERRY A. DOUGHTY**
JOSEPH R. BIDEN JR., ET AL.	**MAG. JUDGE KAYLA D. MCCLUSKY**

MEMORANDUM RULING ON REQUEST FOR PRELIMINARY INJUNCTION

At issue before the Court is a Motion for Preliminary Injunction [Doc. No. 10] filed by Plaintiffs.[1] The Defendants[2] oppose the Motion [Doc. No. 266]. Plaintiffs 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,[3] the Buckeye Institute,[4] and Children's Health Defense.[5]

---

[1] 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").

[2] 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. 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").

[3] [Doc. No. 252]

[4] [Doc. No. 256]

[5] [Doc. No. 262]

AMERICAN OVERSIGHT

response, Twitter stated that at least some of the examples had been "reviewed and actioned."[295] Crawford understood that she was flagging posts for Twitter for possible censorship.[296]

Twitter additionally offered to enroll CDC officials in its "Partner Support Portal" to provide expedited review of content flagged for censorship.[297] 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.[298] Census Bureau contractor Christopher Lewitzke ("Lewitzke") also requested to enroll in the Partner Support Portal.[299]

Crawford also sent Twitter a BOLO for the alleged misinterpretation of a CDC lab report.[300]

(18) Crawford testified in her deposition that the CDC has a strong interest in tracking what its constituents are saying on social media.[301] Crawford also expressed concern that if content were censored and removed from social-media platforms, government communicators would not know what the citizen's "true concerns" were.[302]

D. NIAID Defendants[303]

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.[304]

---

[295] [Id.]
[296] [Doc. No. 205-1 at 211]
[297] [Id. at 211–12]
[298] [Id. at 211–18]
[299] [Doc. No. 201-34 at 2]
[300] [Doc. No. 201-35]
[301] [Doc. No. 201-1 at 57–58]
[302] [Id. at 75]
[303] The NIAD Defendants consist of the National Institute of Allergy and Infectious Disease and Dr. Hugh Auchincloss ("Dr. Auchincloss").
[304] [Doc. No. 206]

AMERICAN OVERSIGHT

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.[305] Dr. Fauci retired December 31, 2022.

1. Lab-Leak Theory

Plaintiffs set forth arguments that because NIAID had funded "gain-of-function"[306] 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.[307]

(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 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.[308] 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."[309] 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

[305] [Doc. No. 206-1 at 10 (Deposition of Dr. Anthony S. Fauci)]
[306] "Gain-of-function" research involves creating a potentially dangerous virus in a laboratory.
[307] [Doc. No. 212-3 at 151–85]
[308] [Id. at 165]
[309] [Doc. No. 206-9 at 2]

AMERICAN OVERSIGHT

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."[310] 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.[311]

(2) On February 9, 2020, in a joint podcast with Dr. Peter Daszak of the Eco Health Alliance,[312] both Drs. Fauci and Daszak discredited the lab-leak theory, calling it a "conspiracy theory."[313]

(3) Three authors of "The Proximal Origins of SARS-CoV2," Robert Garry, Kristian Anderson, and Ian Lipkin, received grants from NIH in recent years.[314]

(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."[315]

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

---

[310] [Doc. No. 206-9 at 1]
[311] [Doc. No. 206-13 at 1, 7-8; 206-11 at 2–3; and 206–20]
[312] [Doc. No. 206-16 at 1]
[313] [Doc. No. 206-16 at 1; 206-17 at 1]
[314] [Doc. No. 214-30]
[315] [Doc. No. 206-27 at 3–4]

AMERICAN OVERSIGHT

with jump of a species from animal to a human."[316] "The Proximal Origin of SARS-CoV2" has since become one of the most widely read papers in the history of science.[317]

(5) Twitter and Facebook censored the lab-leak theory of COVID-19.[318] 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.[319]

(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."[320]

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.[321]

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."[322] The article purported to analyze 96,032 patients to compare persons who did and did not receive this treatment. The study concluded that hydroxychloroquine

---

[316] (Video of April 17, 2020, White House Coronavirus Task Force Briefing, at https://www.youtube.com/watch?v=brbArPX8=6I)
[317] [Doc. No. 214-30]
[318] [Doc. No. 206-32 at 1–2; Doc. No. 206-33 at 3]
[319] [Doc. No. 206-1 at 210]
[320] [Doc. No. 206-24 at 3]
[321] [Doc. No. 201-1 at 177]
[322] [Doc. No. 206-36 at 1]

AMERICAN OVERSIGHT

and chloroquine were associated with decreased in-hospital survival and an increased frequency of ventricular arrhythmias when used for treatment of COVID-19.[323]

Dr. Fauci publicly cited this study to claim that "hydroxychloroquine is not effective against coronavirus."[324] 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.[325]

(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,[326] Dr. Fauci made statements on Good Morning America[327] and on Andrea Mitchell Reports[328] 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.[329] Dr. Fauci does not deny that he or his staff at NIAID may have communicated with social-media platforms, but he does not specifically recall it.[330]

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

---

[323] [Id.]
[324] [Doc. No. 206-35 at 1]
[325] https://www.youtube.com/watch?v=RUNCSOQD2UE
[326] [Doc. No. 207-2 at 5]
[327] [Doc. No. 207-1 at 2]
[328] [Doc. No. 207-1 at 2–3]
[329] [Doc. No. 207-2 at 6]
[330] [Doc. No. 206-1 at 238]

AMERICAN OVERSIGHT

Oxford. The GBD is a one-page treatise opposing reliance on lockdowns and advocating for an approach to COVID-19 called "focused protection."[331] 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.[332]

(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.[333]

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."[334]

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."[335] Dr. Fauci consulted with Dr. Collins before he talked to the Washington Post.[336] Dr. Fauci also endorsed these comments in an email to Dr. Collins, stating "what you said was entirely correct."[337]

On October 15, 2020, Dr. Fauci called the GBD "nonsense" and "dangerous."[338] Dr. Fauci specifically stated, "Quite frankly that is nonsense, and anybody who knows anything about

---

[331] [Doc. No. 207-5 at 3]
[332] [Id.]
[333] [Doc. No. 207-6]
[334] [Doc. No. 207-7]
[335] [Doc. No. 207-9]
[336] [Doc. No. 206-1 at 272]
[337] [Doc. No. 207-10]
[338] [Doc. No. 207-11 at 1]

AMERICAN OVERSIGHT

epidemiology will tell you that is nonsense and very dangerous."[339] Dr. Fauci testified "it's possible that" he coordinated with Dr. Collins on his public statements attacking the GBD.[340]

(3) Social-media platforms began censoring the GBD shortly thereafter. In October 2020, Google de-boosted 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.[341] Reddit removed links to the GBD.[342] YouTube updated its terms of service regarding medical "misinformation," to prohibit content about vaccines that contradicted consensus from health authorities.[343] 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.[344] Dr. Fauci testified that he could not recall anything about his involvement in seeking to squelch the GBD.[345]

(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,"[346] Scott Prince of NIH responded, "Fake/Imposter handle. PLEASE REMOVE!!!"[347] 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

[339] [Id. at 3]
[340] [Doc. No. 206-1 at 279]
[341] [Doc. No. 207-12 at 4]
[342] [Id. at 4–5]
[343] [Doc. No. 207-13 at 4–5]
[344] [Doc. No. 207-15]
[345] [Doc. No. 206-1 at 251–52, 255–58]
[346] [Doc. No. 207-17 at 2]
[347] [Id.]

AMERICAN OVERSIGHT

occur again?"[348] Twitter replied, "We'll freeze this @handle and some other variations so no one can hop on them."[349]

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."[350] Both Lavelle and Routh are members of Dr. Fauci's communications staff.[351] Six of the eight accounts listed were removed by Facebook on the same day.[352]

(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.'"[353] 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.[354] Twitter disclosed that Dina Perry ("Perry"), a Public Affairs Specialist for NIAID, communicates or has communicated with Twitter about misinformation and censorship.[355]

(6) Dr. Fauci testified that he has never contacted a social-media company and asked them to remove misinformation from one of their platforms.[356]

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

---

[348] [Id. at 1]
[349] [Id.]
[350] [Doc. No. 207-19 at 3]
[351] [Doc. No. 206-1 at 308]
[352] [Doc. No. 207-19 at 3]
[353] [Doc. No. 207-20 at 1]
[354] [Id.]
[355] [Doc. No. 214-8 at 1]
[356] [Doc. No. 206-1 at 151]

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001625

contribute to people refusing the vaccine or self-medicating."[357] The CDC responded the next day and advised Facebook that the claim that Ivermectin is effective in treating COVID is "NOT ACCURATE."[358] The CDC cited the NIH's treatment guidelines for authority that the claims were not accurate.[359]

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."[360] Dr. Fauci stated that, at that time, there were "no studies" on the efficacy of masking to stop the spread.[361] On March 31, 2020, Dr. Fauci forwarded studies showing that masking is ineffective.[362]

Plaintiffs allege that Dr. Fauci's position on masking changed dramatically on April 3, 2020, when he became an advocate for universal mask mandates.[363] Dr. Fauci testified his position changed in part because "evidence began accumulating that masks actually work in preventing acquisition and transmission,"[364] although Dr. Fauci could not identify those studies.[365]

---

[357] [Doc. No. 207-22 at 2]
[358] [Id. at 1]
[359] [Id.]
[360] [Doc. No. 206-1 at 314]
[361] [Id. at 316]
[362] [Id. at 318]
[363] [Id. at 317]
[364] [Id.]
[365] [Id. at 318]

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001626

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.[366]

Dr. Fauci had previously sought to discredit Berenson publicly during an interview with CNN.[367] 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.[368]

E. FBI Defendants[369]

(1) The deposition of Elvis Chan ("Chan") was taken on November 29, 2021.[370] Chan is the Assistant Special Agent in charge of the Cyber Branch for the San Francisco Division of the FBI.[371] 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 squads, along with the FBI's private sector engagement squad, who relay information to social-media platforms.[372]

Chan graduated from the Naval Postgraduate School in 2020 with a M.A. in Homeland Security Studies.[373] 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."[374] His thesis focuses on information sharing between the FBI, Facebook,

---

[366] [Doc. No. 207-23 at 4]
[367] [Doc. No. 207-24 at 1–2]
[368] [Doc. No. 206-1 at 341–43]
[369] FBI Defendants include Elvis Chan ("Chan"), the Federal Bureau of Investigation ("FBI"), Lauren Dehmlow ("Dehmlow"), and the U.S. Department of Justice ("DOJ").
[370] [Doc. No. 204-1]
[371] [Id. at 8]
[372] [Id. at 105]
[373] [Id. at 10]
[374] [Doc. No. 204-2 at 1]

AMERICAN OVERSIGHT

EXHIBIT 1

AMERICAN OVERSIGHT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

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*.	Case No. 3:22-cv-01213

PLAINTIFFS' PROPOSED FINDINGS OF FACT IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION

AMERICAN OVERSIGHT

PLAINTIFFS' PROPOSED FINDINGS OF FACT

Plaintiffs respectfully submit the following Proposed Findings of Fact as Exhibit 1 to their supplemental brief in support of a preliminary injunction. Plaintiffs incorporate by reference the evidence, documents, and exhibits previously filed in this case; where cited herein, they are cited by docket number (e.g. "Doc. 174-1, at 31" is page 31 of ECF No. 174-1). The deposition transcripts and exhibits to depositions are filed separately; they are cited herein as "[Witness Last Name] Dep. Page:Line," *e.g.*, "Fauci Dep. 1:3-5" is lines 3-5 of page 1 of Dr. Fauci's deposition, and "Scully Dep. 10:22-11:5" is page 10, line 22 through page 11, line 5 of Brian Scully's deposition. Plaintiffs are also filing the video recordings of the depositions with the Court so that the Court may view the testimony of the Government's witnesses and assess the witnesses' credibility for itself. The Declaration of Jasimiel Jones, submitting supplemental exhibits in addition to the deposition and transcript and attached as Exhibit 2, is cited herein as "Jones Decl. Ex. __, at __" *e.g.*, pages 1-3 of Exhibit A to the Jones Declaration is "Jones Decl. Ex. A, at 1-3." Plaintiffs' previously filed exhibits attached to the Declaration of Tammy Glenn, Doc. 10-1, are cited as "Glenn Decl. Ex. __, at __; Doc. 10-1, at __." In addition, these Findings regularly refer to the company formerly known as Facebook, now known as Meta, which owns Facebook, Instagram, WhatsApp, and other platforms, as "Facebook," consistent with common usage in documents.

I. The Campaign Of Public Threats Against Social-Media Platforms To Pressure Them To Censor More Speech on Social Media.

1. Federal officials, including Defendants, have made a long series of public statements since at least 2018 demanding that social-media platforms increase their censorship of speech and speakers disfavored by these officials, and threatening adverse consequences – such as repeal or

AMERICAN OVERSIGHT

reform of Section 230 immunity under the Communications Decency Act, antitrust scrutiny or enforcement, increased regulation, and other measures – if the platforms do not increase censorship. The private communications between government officials and social-media platforms addressing disinformation, misinformation, and censorship set forth herein were made against the backdrop of these public threats.

2. The immunity provided by Section 230 of the Communications Decency Act is extremely valuable for social-media platforms, so threatening to amend or repeal that immunity is highly motivating to them. One commentator has aptly described Section 230 immunity as "a hidden subsidy worth billions of dollars," stating: "Digital platforms enjoy a hidden subsidy worth billions of dollars by being exempted from any liability for most of the speech on their platforms (Section 230)." Glenn Decl. Ex. 11, Doc. 10-1 at 140. Another commentator has observed, "imperiling Section 230 is a fearsome cudgel against ever untouchable companies." Glenn Decl. Ex. 13, Doc. 10-1 at 206.

3. The threat of antitrust scrutiny or enforcement is also a major motivator to social-media platforms. For example, Facebook CEO Mark Zuckerberg has stated that the threat of antitrust enforcement is "an 'existential' threat" to his platform. Glenn Decl. Ex. 12, Doc. 10-1 at 202.

A. Threats From Federal Elected Officials Pressuring Platforms to Censor Speech.

4. Then-Speaker of the House Nancy Pelosi stated on 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." Glenn Decl. Ex. 13, Doc. 10-1, at 205 ("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

AMERICAN OVERSIGHT

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.'").

5. Senator Richard Blumenthal stated on 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." Glenn Decl. Ex. 16, at 1; Doc. 10-1, at 225.

6. Senator Mazie Hirono tweeted on 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." Glenn Decl. Ex. 55, at 1; Doc. 10-1, at 723.

7. 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, 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.

8. The March 25, 2021 Joint Hearing of the Communications and Technology Subcommittee with the Subcommittee on Consumer Protection and Commerce, the Joint Statement of Democratic Committee Chairs stated: "This hearing will continue the Committee's work of holding online

AMERICAN OVERSIGHT

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." Glenn Decl. Ex. 17, at 1-2; Doc. 10-1, at 228-29.

9. At the same hearing, entitled "Disinformation Nation: Social Media's Role in Promoting Extremism and Misinformation," Representative Schakowsky stated: "[S]elf-regulation has come to the end of its road…. [Congress] is preparing to move forward with regulation and legislation. The regulation we seek … must hold platforms accountable when they are used to … spread misinformation…. All three of the companies that are here today run platforms that are hotbeds of misinformation and disinformation." Jones Decl., Ex. A, at 1, 5. She also stated: "Self-regulation has not worked. They must be held accountable for allowing misinformation and disinformation to spread." *Id.* at 7.

10. At the same hearing, Representative Doyle stated: "despite repeated promises to tackle this crisis, Facebook, Google, and Twitter instead routinely make minor changes in response to the public relations crisis of the day. … It is now painfully clear that neither the market nor public pressure will force these social media companies to take the aggressive action they need to take to eliminate disinformation and extremism from their platforms. And therefore, it is time for Congress and this committee to legislate and realign these companies' incentives. … I question whether existing liability protections [*i.e.*, Section 230] should apply … That is why you are here today, Mr. Zuckerberg, Mr. Pichai, and Mr. Dorsey…. Your business model itself has become the problem." *Id.* at 10-11.

AMERICAN OVERSIGHT

11. At the same hearing, Representative Rush accused the platforms of allowing "[m]isinformation, outlandish conspiracy theories, and incendiary content" to spread, and stated to the three CEOs of Google, Facebook, and Twitter: "There is only one comparison that remotely approaches the avarice and moral discrepancy of your companies, and that is the slavetocracy burden of our Nation's shameful and inhumane and most difficult dark days in the past." *Id.* at 13. He also stated to Jack Dorsey, "I can't wait until we come up with legislation that will deal with you and your cohorts in a very, very effective way." *Id.* at 14.

12. At the same hearing, Representative Upton stated: "we are going to see some changes in Section 230." *Id.* at 15.

13. At the same hearing, Representative Eshoo demanded of Jack Dorsey, "why haven't you banned the 12 accounts that are spewing its deadly COVID misinformation?" *Id.* at 17.

14. At a hearing of the Antitrust subcommittee of the House Judiciary Committee on July 29, 2020, Representative Cicilline said to Mark Zuckerberg: "Mr. Zuckerberg. When a television station runs a false political advertisement, they're held liable for that. Why should Facebook or any other platform be different? … It's hard to understand why Facebook shouldn't be responsible for those business decisions. … Facebook gets away with it because you're the only game in town. There's no competition forcing you to police your own platform. Allowing this misinformation to spread can lead to violence. And frankly, I believe it strikes at the very heart of American democracy. … American democracy has always been at war against monopoly power. … These companies, as exist today, have monopoly power. Some need to be broken up, all need to be properly regulated and held accountable. … The names have changed, but the story is the same. Today, the men are named Zuckerberg, Pichai, Cook, and Bezos." Jones Decl., Ex. B, at 9-11.

AMERICAN OVERSIGHT

15. On November 17, 2020, at a hearing of the Senate Judiciary Committee, Senator Blumenthal stated: "Now, Mr. Zuckerberg and Mr. Dorsey, you have built terrifying tools of persuasion and manipulation with power far exceeding the robber barons of the last Gilded Age. You have profited hugely by … promoting hate speech and voter suppression. … The destructive incendiary misinformation is still a scourge on both your platforms and on others. … [W]hat appears on your platform … is voter suppression and incendiary malicious misinformation. … [A] series of hearings on big tech is long overdue on antitrust issues … and Section 230. I have urged, in fact, a breakup of the tech giants because they've misused their bigness and power. Breaking off, for example, WhatsApp and Instagram [both Meta platforms]…. And indeed Section 230 reform, meaningful reform, including even possible repeal in large part because their immunity is way too broad…. [F]oreign disinformation campaigns intended to interfere in our democracy…. What we've seen here are fighting words and hate speech that certainly deserve no free expression protection. … Change is going to come, no question. Change is on the way and I intend to bring aggressive and targeted reform to Section 230." Jones Decl., Ex. C, at 2-3. Soon thereafter, he demanded that Mark Zuckerberg (who was testifying before the committee) "commit to … robust contend modification playbook in this coming election, including fact-checking, labelling, reducting the spread of misinformation" to "tak[e] action against dangerous disinformation" and "malign tactics." *Id.* at 4; *see also, e.g., id.* at 9 (Senator Coons demanding that Jack Dorsey explain why "you don't have a standalone climate change misinformation policy")

16. On March 11, 2022, Representative Ro Khanna, the Chairman of the House Oversight and Reform Committee who is leading "an investigation of oil industry 'misinformation' and held two days of hearings on the oil industry, tweeted: "Facebook is preventing us from taking action on climate change by allowing climate misinformation to spread. Congress must step up and hold

AMERICAN OVERSIGHT

them accountable." Jones Decl., Ex. D. He also tweeted: "Misinformation being spread on social media is undermining our efforts to tackle climate change. As chair of the House Oversight Environment Subcommittee, I will be holding a hearing to hold social media companies accountable." *Id.*

17. 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" and threatening Congressional action if Facebook did not do so. 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." Glenn Decl. Ex. 18; Doc. 10-1, at 244-46.

18. Comments from two Members of the House of Representatives 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.'" Glenn Decl. Ex. 14, at 2-3; Doc. 10-1, at 218-19.

B. Public Threats from President Biden and His Aides Pressuring Platforms to Censor.

AMERICAN OVERSIGHT

19. 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.

20. 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, "And it should be revoked. 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." Glenn Decl. Ex. 19, at 27; Doc. 10-1, at 275.

21. 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.

AMERICAN OVERSIGHT

22. 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." Glenn Decl. Ex. 20, at 1; Doc. 10-1, at 284.

23. 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 misinformation 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." Glenn Decl. Ex. 23, at 1; Doc. 10-1, at 299.

24. 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

AMERICAN OVERSIGHT

everyone—even the President [Trump]." Glenn Decl. Ex. 24, at 2; Doc. 10-1, at 304. The petition complained that Facebook "continues to amplify misinformation and lets candidates pay to target and confuse voters with lies." *Id.* at 304. 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." *Id.* at 305.

25. 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. Glenn Decl. Ex. 25, at 3; Doc. 10-1, at 312. 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.*

26. 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." Glenn Decl. Ex. 26, at 1; Doc. 10-1, at 314-15. This comment specifically referred to the amendment or repeal of Section 230 of the Communications Decency Act. *See id.* He also wrote: "Washington would be better off throwing out Section 230 and starting over." *Id.*

27. On July 16, 2021, President Biden stated that social-media companies are "killing people" by not censoring enough misinformation. Waldo Ex. 14, at 1.

28. On January 3, 2022, an audio clip of President Biden played on Alyssa Milano's podcast stated: "The unvaccinated are responsible for their own choices, but those choices had been shulled [sic] by dangerous misinformation on cable TV and social media. You know, these companies …

AMERICAN OVERSIGHT

are making money by ped[dling] lies and allowing misinformation that can kill their own customers and their own supporters. It's wrong. It's immoral. I call on the purveyors of these lies and misinformation to stop it. Stop it now." Waldo Ex. 39, at 5 (Audio Tr. 4).

29. In September of 2022, the White House convened the "United We Stand" summit at which the President put social media companies on notice that Section 230 protections were at risk. "Tech platforms currently have special legal protections under Section 230 of the Communications Decency Act that broadly shield them from liability. This immunity extends beyond what the First Amendment requires and what newspapers and other media receive. It also effectively permits hate-fueled content mobilizing users to violence to be amplified on large tech platforms. President Biden has long urged fundamental reforms to Section 230, and …he reiterates his call for Congress to fundamentally reform Section 230." Jones Decl., Ex. E, at 9.

30. President Biden also stated in the same document: "Americans deserve to know how the algorithms that drive large tech platforms may amplify divisions and contribute to hate-fueled violence, among other critical harms. Consistent with those same principles for accountability, President Biden supports *requiring* platform transparency sufficient to allow the public and researchers to understand how and why such decisions are made, their potential effects on users, and the very real dangers these decisions may pose." *Id.* (emphasis added).

II. The White House's Public and Private Pressure Campaign on Platforms.

31. Many White House officials are involved in communicating with social-media platforms about misinformation, disinformation, and censorship. In response to a third-party subpoena, Facebook/Meta identified at least the following White House officials as engaged in such communications: Special Assistant to the President Laura Rosenberger, White House Partnerships Manager Aisha Shah, White House Counsel Dana Remus, and White House officials

AMERICAN OVERSIGHT

Andy Slavitt, Rob Flaherty, and Clarke Humphrey. Doc. 84, ¶ 379. Defendants' discovery reveals many others. *See infra.*

32. In response to a third-party subpoena, YouTube identified White House officials Benjamin Wakana and Rob Flaherty as engaged in such communications, and Defendants' discovery reveals others. Doc. 84, ¶ 380. Defendants' discovery reveals others. *See infra.*

33. In response to a third-party subpoena, Twitter has disclosed the following White House officials as engaged in such communications: Deputy Assistant to the President and Director of Digital Strategy Rob Flaherty, White House Senior Advisor Andrew Slavitt, NSC staffer Katy E. Colas, Deputy Assistant to the President Joshua Geltzer, White House Digital Director Clarke Humphrey, Deputy Director of the Office of Digital Strategy Tericka Lambert, Press Secretary for the First Lady Michael LaRosa, NSC Director of Counterterrorism John Picarelli, Chief of Staff for the Office of Digital Strategy Hoor Qureshi, Director of Strategic Communications and Engagement Courtney Rowe, White House Associate Counsel Michael Posada, Associate Director for Communications Marissa Sanchez-Velasco, Deputy Director of Digital Strategy Christian Tom, and Strategic Director of Digital Communications Benjamin Wakana. Jones Decl., Ex. F, at 1. Defendants' discovery has revealed others. *See infra.*

A. Pressure in Private from Rob Flaherty, Andy Slavitt, and White House Officials.

34. The Biden White House's demands for censorship began almost immediately upon taking office. On January 23, 2021, three days after Inauguration Day, at 1:04 a.m., Clarke Humphrey of the White House emailed Twitter, copying Rob Flaherty, with the subject line: "Flagging Hank Aaron misinfo." Doc. 174-1, at 1. The email stated: "Hey folks – Wanted to flag the below tweet and am wondering if we can get moving on the process for having it removed ASAP." *Id.* Humphrey then linked to a Tweet by anti-vaccine activist Robert F. Kennedy Jr., who

AMERICAN OVERSIGHT

is also a principal target of the Virality Project and a member of the so-called "Disinformation Dozen." *Id.* Humphrey added: "And then if we can keep an eye out for tweets that fall in this same ~genre that would be great." *Id.*

35. "Flagging Hank Aaron misinfo" refers to the claim by anti-vaccine speakers that COVID-19 vaccines may have contributed to baseball legend Hank Aaron's death. *See, e.g.,* https://www.usatoday.com/story/news/factcheck/2021/01/26/fact-check-hank-aaron-death-unlikely-result-covid-19-vaccine/6699577002/.

36. Twitter responded to Humphrey within 4 minutes, at 1:08 a.m. on January 23, 2021, stating: "Thanks. We recently escalated this." Doc. 174-1, at 2.

37. The White House's demands for censorship continued relentlessly, and their tone was arrogant, demanding, and peremptory. On Saturday night, February 6, 2021, at 9:45 p.m., Rob Flaherty emailed Twitter to demand the immediate removal of a parody or impostor account linked to Finnegan Biden, Hunter Biden's adult daughter. Doc. 174-1, at 4. He stated: "Please remove this account immediately." *Id.* He also stated: "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 [to] prove that I am an authorized representative of Finnegan Biden." *Id.*

38. Two minutes later, at 9:47 p.m., Twitter responded, "Thanks for sending this over. We'll escalate for further review from here." *Id.* Flaherty shot back, the same minute, "Cannot stress the degree to which this needs to be resolved immediately." *Id.* Forty-five minutes later, at 10:32 p.m., Twitter responded, "Update for you – account is now suspended." *Id.* at 3-4.

39. The next day, Sunday, Feb. 7, 2021, Twitter emailed Flaherty and described steps he could take to "streamline the process" for the White House's demands for Twitter censorship. *Id.* at 3. Twitter offered to enroll White House officials in Twitter's Partner Support Portal for

AMERICAN OVERSIGHT

expedited review of flagging content for censorship, recommending that Flaherty "**Designate a list of authorized White House staff for Twitter's Partner Support Portal**." *Id.* (bold in original). Twitter stated: "We sent over instructions about this on January 28th and also discussed this with Christian [Tom] 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." *Id.* at 3 (italics added; underlines omitted).

40. Twitter noted that it had been recently bombarded with such requests for censorship from the White House: "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." *Id.* at 3.

41. The next day, Monday, February 8, 2021, Facebook emailed Rob Flaherty, Courtney Rowe, and Clarke Humphrey of the White House to explain how it had recently expanded its COVID-19 censorship policies. Doc. 174-1, at 7-8. Facebook stated: "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." *Id.*

AMERICAN OVERSIGHT

42. Under the heading "**Combating Vaccine Misinformation**," Facebook provided a detailed list of expanded censorship policies: "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 [*i.e.* during the Biden transition], we've removed false claims about COVID-19 vaccines that have been debunked by public health experts. … [W]e are expanding the list of false claims we will remove to include additional debunked claims about the coronavirus and vaccines. … 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. …. 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…." *Id.* at 7-8 (bold in original).

43. This was not nearly enough for the White House. Within 19 minutes of receiving this email, Flaherty responded, pressing Facebook for more information about how strict the new policies are. *Id.* at 7. Quoting Facebook's email in italics, he wrote: "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?" *Id.* at 7. He also asked for specific data on the application of the censorship 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 (downranking, etc) that sit before removal? How are you handling things that are dubious, but not provably false?" *Id.*

AMERICAN OVERSIGHT

44. The next day, February 9, 2021, Flaherty followed up with Facebook with a demand for more information and an accusation (to be repeated) that Facebook's failure to censor speech on its platforms causes "political violence": "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?" *Id.* at 6. Flaherty suggested an oral meeting to discuss: "Happy to put time on the calendar to discuss further." *Id.*

45. Facebook responded on February 9, 2021, with a detailed answer to each of Flaherty's questions about the enforcement of its new policies. *Id.* at 5-6. Facebook also noted that "We are happy to discuss these and additional questions as per your recent note." *Id.* at 5. Among other things, Facebook reported that it would "suspend the entire Page, Group, or account" in case of repeat violations; that it "will begin enforcing this policy immediately," *id.* at 5; that for vaccine-skeptical content that does not violate Facebook's policies, Facebook will "reduce its distribution and add strong warning labels with more context, so fewer people see the post," *id.* at 6; and that Facebook was working to censor content that does not violate its policies in other ways by "prevent[ing] posts discouraging vaccines from going viral on our platforms; address[ing] 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[ing] recommendations for Groups, Pages, and Instagram accounts that repeatedly push content discouraging vaccines," *id.* at 6.

46. Facebook advised Flaherty that it was relying on advice of "public health authorities" to determine its censorship policies: "In consultation with leading health

AMERICAN OVERSIGHT

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." *Id.* at 6 (emphasis added).

47. Facebook also promised Flaherty that it would aggressively enforce the new censorship policies: "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." *Id.* at 5.

48. Facebook then followed 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." *Id.* at 5.

49. This email makes clear that Flaherty, as part of the Biden transition team, had already engaged in "previous meetings" and "discussions/questions" with Facebook about censorship of COVID-19 misinformation on its platforms during the Presidential transition period from November 2020 to January 2021. *Id.*

50. On February 24, 2021, Facebook emailed Rob Flaherty with the subject "Misinfo Themes," stating: "Following up on your request for COVID-19 misinfo themes we are seeing. All the below claims violate our updated Covid and vaccine misinformation policies that we announced earlier this month, and we are removing these claims from our platforms," and she identified "Vaccine Toxicity," "False Claims About Side Effects of Vaccines," "Comparing the Covid Vaccine to the Flu Vaccine," and "Downplaying Severity of COVID-19." Jones Decl. Ex. G, at 1-2. Flaherty responded by inquiring for details about Facebook's actual enforcement practices and for a report on misinformation that was not censored: "Can you give us a sense of

AMERICAN OVERSIGHT

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? Goes without saying, just because it's on your list for removal hasn't historically meant that it was removed, so I want to get a sense of the state of play here!" *Id.* at 1. Facebook promised to discuss this at an upcoming oral meeting: "Hope to cover a lot of that on Monday … Can definitely go into detail on content that doesn't violate like below but could contribute to vaccine hesitancy." *Id.*

51. On March 1, 2021, White House officials Rob Flaherty and Clarke Humphrey, along with Joshua Peck of HHS, participated in a meeting with Twitter about misinformation. Jones Decl., Ex. H, at 1. The same day, after the meeting, Twitter emailed these officials and assured the White House that it would increase censorship of "misleading information" on Twitter: "Thanks 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 …. We have also introduced a strike system that determines when further enforcement is necessary. … As we said, we are committed to working with stakeholders in the public, private and non-profit sectors to address the reliability of covid information online and look forward to continued dialogue about joint efforts." *Id.* at 1.

52. From at least May 28, 2021 to July 10, 2021, 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. Doc. 71-4. Among other things, the Meta executive insisted that "We've expanded penalties for individual Facebook accounts that share misinformation." *Id.* at 9.

AMERICAN OVERSIGHT

53. On March 12, 2021, referring to previous oral communications with the White House and HHS, Facebook emailed Flaherty "[f]ollowing up on our commitment to share our survey data on vaccine uptake." Doc. 174-1, at 9. Facebook provided the White House with a detailed report and summary on the topic, and noted that the information had evidently been requested by or on behalf of "White House / HHS" officials: "Hopefully, this format works for the various teams and audiences within the White House / HHS that may find this data valuable." *Id.*

54. On March 15, 2021, at 3:20 a.m., Flaherty sent an email to Facebook acknowledging, "[g]ood insights here," but then immediately pivoted to demand more and different data, linking a recent Washington Post article accusing Facebook of allowing the spread of information about vaccine hesitancy and QAnon, stating: "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." *Id.* at 9. This would become a standard tactic of the White House – linking to articles critical of Facebook in the press, and then demanding more information or actions based on those articles.

55. The day before, Sunday, March 14, 2021, at 11:13 p.m., Flaherty had emailed a link to the same article to Facebook ("https://www.washingtonpost.com/technology/2021/03/14/facebook-vaccine-hesistancy-qanon"), copying White House COVID-19 official Andrew Slavitt, with no more text in the email and the subject line: "You are hiding the ball." *Id.* at 12.

56. The next morning, Facebook responded by stating, "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." *Id.* at 11-12.

AMERICAN OVERSIGHT

57. Flaherty responded in accusatory fashion, referring to a series of at least three previous oral conversations in which the White House had demanded more information from Facebook about its censorship policies. *Id.* at 11. Flaherty made clear that the White House was seeking more aggressive action on "borderline" content—*i.e.*, content that *does not clearly violate Facebook's own censorship policies* but the White House demands action against anyway. Flaherty wrote: "I don't think this is a misunderstanding … 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." *Id.* at 11. Flaherty also referred to a series of meetings, including one-on-one meetings with Facebook ("1:1"): "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." *Id.*

58. Flaherty followed with a series of accusations that Facebook was deceiving and prevaricating with the White House about its "borderline" (*i.e. not* violative) content: "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." *Id.* He accused Facebook of being the "top driver[] of vaccine hesitancy," demanded action against "borderline" content, and stated that the White House wanted to be directly involved in those efforts: "I am not trying to play 'gotcha' with you. We are gravely

AMERICAN OVERSIGHT

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." *Id.*

59. Facebook responded on March 15, respectfully disputing the Washington Post's reporting, but then saying to Flaherty: "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." *Id.* at 10-11.

60. The same day, March 15, 2021, Andrew Slavitt (who was copied on these exchanges between Facebook and Flaherty) weighed in, once again accusing Facebook of dishonesty in a series of oral meetings: "It would [be] 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." *Id.* at 10.

61. Slavitt then made an ominous statement threatening unspecified Executive action against Facebook in retaliation for Facebook's perceived lack of cooperation with the White House's demands on censorship of "borderline" (*non-violative*) content: "*Internally we have been considering our options on what to do about it.*" *Id.* at 10 (emphasis added).

AMERICAN OVERSIGHT

62. On March 16, 2021, Facebook responded to Slavitt, again disputing the Washington Post's reporting and respectfully explaining its position, but also promising to share information about vaccine hesitancy in "real time": "We are absolutely invested in getting you the specific information needed to successfully manage the vaccine roll out." *Id.* Facebook promised to increase information-sharing and proposed a detailed oral meeting on the topic: "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." *Id.* Facebook also offered to speak to Slavitt by phone at any time. *Id.*

63. On March 19, 2021, Facebook had an oral meeting with White House officials, including Flaherty and Slavitt. Doc. 174-1, at 15. On Sunday, Facebook sent a follow-up summary of the meeting to Andrew Slavitt ("Thanks for taking the time to connect on Friday"), which noted that the White House (1) demanded a "Consistent Product Team [Point of Contact]" at Facebook, (2) demanded "Sharing Additional Data" from Facebook, (3) had asked about "Levers for Tackling Vaccine Hesitancy Content," and (4) asked about censorship policies for the Meta platform WhatsApp. *Id.*.

64. In the follow-up email, Facebook noted that, in direct response to White House demands, it was censoring, removing, and reducing the spread of content that did not violate its policies: "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

AMERICAN OVERSIGHT

discouraging vaccines *that does not contain actionable misinformation*. This is *often-true content* … 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*." *Id.* at 15 (emphases added).

65. Facebook also provided the White House with a detailed report on its censorship policies on 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%." *Id.*

66. On March 22, 2021, Flaherty responded to Facebook, demanding much more detailed information and action about "sensationalized" content on its platforms. *Id.* at 14. Flaherty noted that White House officials were demanding a plan from Facebook to censor non-violative content, *i.e.*, "looking out for your game plan on tackling vaccine hesitancy spread on your platform." *Id.*

67. In this email, Flaherty badgered Facebook with a series of detailed requests for information about this issue of censoring vaccine-skeptical content that does not violate Facebook's content-moderation policies, such as truthful but "sensational" content: "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.

AMERICAN OVERSIGHT

… [T]he problem does not sit in 'microchips'-land, and … it seems plausible that the things that drive the most actual hesitancy sit in 'sensational' and 'skeptical.'" *Id.*. Flaherty demanded more information and greater censorship of such non-violative "sensational" and "skeptical" content: "If you're down ranking 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?' … [W]hat 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. … As I've said: this is not to play gotcha. It is to get a sense of what you are doing to manage this." *Id.* (italics in original).

68. Flaherty also badgered Facebook for more information on Meta's censorship policies on the WhatsApp platform, pushing for greater censorship there: "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 cross platform campaign work to try to reduce people's exposure on whatsapp?" *Id.* at 14.

69. Flaherty concluded with an accusation of past dishonesty against Facebook and proposed frequent oral meetings to address the White House's issues: "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 [Slavitt] is willing to get on

AMERICAN OVERSIGHT

the phone with [a Facebook official] a couple of times per week if its necessary to get all of this." *Id.*

70. Flaherty's statement that the White House is "hoping we can be partners here, even if it hasn't worked so far," reinforced Slavitt's previous implied threat that the White House would take some unspecified action against Facebook if it did not cooperate with the White House's demands on censorship of vaccine-hesitant content, especially *non-violative* content, on Facebook's platforms. *Id.*

71. Facebook then agreed with Flaherty and Slavitt to schedule a meeting that Wednesday at 4:00 pm to discuss these issues. *Id.* at 13.

72. On April 9, 2021, Facebook sent Flaherty an email to respond to a long series of detailed questions from Flaherty about how the Meta platform WhatsApp was censoring COVID-19 misinformation. Doc. 174-1, at 17-21. All Flaherty's questions were designed to probe and pressure Facebook toward more aggressive censorship. *See id.* Facebook began by "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." *Id.* at 18. Flaherty responded to this: "Very aware. [Smiley face]." In other words, the White House was demanding information about speech on a *private* messaging app used for one-to-one private communication, and demanding greater censorship of speech on that app—and it was "very aware" that it was doing so. *Id.*

73. Facebook noted that "WhatsApp seeks to control the spread of misinformation and inform users through deliberate, content-agnostic product interventions -- things like labeling and

AMERICAN OVERSIGHT

limiting message forwards." *Id.* at 18. Facebook noted that the message-forwarding limits are "intended" to censor COVID misinformation, and that they actually reduced such speech by 70 percent, and Facebook admitted that these are "somewhat blunt tools" that prevent its users from sending many other forms of speech as well: "The forward limits … 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." *Id.*

74. After presenting Facebook with a series of questions (presented in bold and in red type in the email, *see id.* at 18-20), Flaherty summed up by demanding insight into Facebook's internal information: "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?" *Id.* at 20.

75. Facebook responded by emphasizing that it was "reducing viral activity on our platform" through message-forward limits and other speech-blocking techniques as well: "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." *Id.* at 20.

AMERICAN OVERSIGHT

76. Facebook also offered to meet with the White House "Monday or anytime next week" to discuss its censorship efforts, to which Flaherty responded, "Hoor should be trying to land a time." *Id.* at 17.

77. Flaherty responded to Facebook's long, detailed account of its censorship efforts on WhatsApp by expressing dissatisfaction with the response and demanding ever-more detailed information, stating that he "couldn't care less" about Facebook's "product safari": "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.'" *Id.* at 17 (emphasis added).

78. Flaherty then accused Facebook of being responsible for the riot at the Capitol on January 6, 2021, by not censoring enough speech online, and suggested that Facebook would be similarly responsible for COVID-related deaths if it did not engage in more online censorship here: "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*

AMERICAN OVERSIGHT

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*." *Id.* (emphases added).

79. Facebook responded by promising ever-more-detailed information to the White House's demands: "Understood. I thought we were doing a better job [of] 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 [a Facebook official] told Andy [Slavitt] 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." *Id.* at 17.

80. The meeting that Facebook offered with the White House on Monday, April 12 or thereafter occurred on Wednesday, April 14, because Flaherty emailed Facebook that day stating: "Since we've been on the phone…" *Id.* at 22.

81. In this Wednesday, April 14, 2021 email, with the subject line "tucker," Flaherty noted that the White House was tracking COVID-related content in real time, and he demanded the censorship of currently-trending posts of content from two prominent Fox News hosts, Tucker Carlson and Tomi Lahren: "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 [*sic*] 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!" *Id.* at 22. Facebook responded: "Thanks—I saw the same thing when we hung up. Running this down now." *Id.* In a separate email chain to Flaherty and Courtney Rowe the same day, Facebook also assured the White House, "running down the question on Tucker and working on getting you report by end of week." *Id.* at 23.

AMERICAN OVERSIGHT

82. Tucker Carlson has 1.2 million followers on his personal Facebook account and 3.8 million followers on his show's account, Jones Decl., Ex. I, at 1-2, so censoring Carlson's content would affect the free-speech rights of millions of people in a single stroke.

83. In the meantime, Facebook was offering to cooperate closely with the White House to "amplify" its preferred messages. On April 13, 2021, Facebook emailed Andy Slavitt about the temporary halt of the Johnson & Johnson vaccine, stating: "Re the J+J [*i.e.*, Johnson & Johnson] 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." Doc. 174-1, at 31-32. Facebook then forwarded the same offer to Courtney Rowe and Rob Flaherty of the White House digital communications team. *Id.* at 31.

84. Flaherty responded the same day, April 13, with a series of detailed requests about how Facebook could amplify the White House's preferred messages, including: "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)"; "CDC is working through an FAQ that we'd love to have amplified in whatever way possible – maybe through the COVID info panel"; and "[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." *Id.* at 30-31. Flaherty also block-quoted a White-House-approved message on the vaccine pause for Facebook to amplify. *Id.* at 31.

AMERICAN OVERSIGHT

85. Flaherty then concluded by demanding that Facebook monitor any "misinformation" relating to the Johnson & Johnson vaccine pause, and asking Facebook to provide a detailed report to the White House within 24 hours of how it was doing so: "More broadly: we share [Facebook's] 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*." *Id.* at 31 (emphasis added).

86. The same day, April 13, 2021, Facebook responded with a detailed report on misinformation on its platforms about this issue. Doc. 174-1, at 24-30. Facebook noted that there was an oral meeting about misinformation with the White House scheduled the next day: "I'm looking forward to the meeting tomorrow [*i.e.*, Wednesday, April 14] 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." *Id.* at 24.

87. Facebook also noted that it had recently had a telephone call with Courtney Rowe about how it was censoring misinformation, and had agreed to provide a detailed report on its relevant censorship enforcement policies: "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." *Id.* at 24. Facebook then provided a six-page report on censorship with explanations and screen shots of sample posts of content that it censors and does not censor. *Id.* at 24-30.

AMERICAN OVERSIGHT

88. First, Facebook responded to Flaherty's request for government-message-amplification by agreeing to cooperate with the White House on those demands. *Id.* at 24. Regarding Flaherty's demand that Facebook monitor and report on "misinformation" related to the Johnson & Johnson vaccine pause, Facebook agreed to both monitor and report to the White House: "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. [A Facebook official] is joining [the call] 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." *Id.* at 24-25.

89. Facebook then provided a detailed report to Courtney Rowe's request for specific examples of posts that are censored on its platforms. First, as to "VACCINE HESITANCY" content, Facebook explained that this content does not violate Facebook's content-moderation policies, but Facebook assured the White House that Facebook still censors such non-violative content by suppressing it in news feeds and algorithms. *Id.* at 25. Facebook admitted that such content is often "true" and sometimes involves core political speech or advocacy (*e.g.*, "discussing choice to vaccinate in terms of personal and civil liberties"): "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." *Id.* at 25 (emphases added).

AMERICAN OVERSIGHT

90. Facebook assured the White House that it censors such true, political, non-violative content through "a spectrum of levers" that includes concealing the content from other users, deboosting the content, and preventing sharing through "friction": "We utilize a spectrum of levers for this kind of content…. 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." *Id.* Facebook then provided the White House with a series of sample posts, all of which content originated from Children's Health Defense, the anti-vaccine organization headed by Robert F. Kennedy Jr. (who would soon be identified as one of the so-called "Disinformation Dozen"). *Id.* at 25-27.

91. Next, under the heading "Examples of Content Removed for Violating our Misinformation & Harm Policy," Facebook provided the White House with "examples of posts we have removed for violation of our Misinformation & Harm Policy." *Id.* at 27. Facebook then provided a list of screen shots of posts it had removed from the platform entirely, again all of which originated from Children's Health Defense, Robert F. Kennedy Jr.'s group. *Id.* at 28-30.

92. As noted below, Facebook's explanation that it was removing violative posts by Children's Health Defense and censoring even its posts that did not violate Facebook's policies turned out to be not nearly enough to satisfy the White House.

93. Separately from Flaherty's demands about Tucker Carlson, on April 14, 2021, Andy Slavitt also emailed a high-level Facebook executive—Facebook's President of Global Affairs, former Deputy Prime Minister of the United Kingdom Nick Clegg—with a sarcastic message expressing the White House's displeasure both with Facebook's failure to censor Tucker Carlson and with Facebook's perceived failure to allow the White House to micromanage its censorship policies: "Number one of Facebook. Sigh. Big reveal call with FB and WH today. No

AMERICAN OVERSIGHT

progress since we spoke. Sigh." Doc. 174-1, at 35. Clegg promptly responded to Slavitt with an apology and promise to immediately address the censorship of Tucker Carlson: "OK – sorry to hear about call today, will dig in now." *Id.* The subject line of Slavitt's email, reproduced in the "Re:" line of later messages, was "Tucker Carlson anti-vax message." *Id.* at 34.

94. Late evening of the same day, April 14, 2021, at 10:51 p.m., Nick Clegg provided Slavitt with a detailed report about the Tucker Carlson post, explaining that Tucker Carlson's content did not violate Facebook policies (due to the federal government's own information about its accuracy) but assuring the White House that Facebook would censor it anyway. *Id.* at 34. Clegg denied that Carlson's content was the top post on Facebook, but then stated, "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…. 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." *Id.* at 34.

95. Clegg also stated that Facebook was "v[ery] keen" to provide a more detailed report on its censorship practices in response to White House demands: "I'm v keen that we follow up as we'd agreed, and I can assure you the teams here are on it." *Id.*

96. Brian Rice of Facebook then forwarded the same report on the Tucker Carlson post to Rob Flaherty. *Id.* ("Making sure you receive--").

97. Less than twenty minutes later, at 11:29 p.m. on April 14, 2021, Flaherty responded to Rice with a sarcastic response badgering Facebook for a more detailed explanation of why it had not removed Tucker Carlson's content outright, demanding greater censorship, and accusing Facebook of causing an "insurrection" by not censoring enough speech on its platforms: "I guess this is a good example of your rules in practice then – and a chance to dive in on questions as

AMERICAN OVERSIGHT

they're applied. How was this [*i.e.* Tucker Carlson' post] 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?" Doc. 174-1, at 33. Flaherty concluded ominously by reiterating his accusation that Facebook had caused the January 6 riot by not censoring enough speech on its platforms: "Not for nothing but last time we did this dance, it ended in an insurrection." *Id.* at 34.

98. Six minutes later, at 11:35 p.m. on April 14, Flaherty followed up with another email accusing Facebook of providing incorrect information through CrowdTangle and demanding an explanation: "And sorry – if this was not one of the most popular posts about the vaccine on Facebook today, then what good is crowdtangle? [A Facebook official] said that Tomis [*i.e.*, Tomi Lahren's] video was the most popular yesterday based on your data, which reflected what CT [*i.e.*, CrowdTangle] was showing. Tuckers video was top on CT today. What is different about this video, then?" *Id.* at 33.

99. On Friday, April 16, Flaherty then sent an email expressing his displeasure with the timing of Facebook's response and demanding immediate answers, snapping at Rice: "These questions weren't rhetorical." *Id.* at 33. Facebook apologized and promised an immediate response: "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

AMERICAN OVERSIGHT

get you something tonight ahead of the weekend." *Id.* Facebook then proposed another oral meeting: "schedule a call to discuss. Would that work?" *Id.*

100. On Tuesday, April 21, 2021, Facebook sent an additional response to the same email chain, indicating that there had been a phone call with Flaherty ("thanks for catching up earlier") and providing another, more detailed report on its censorship of Tucker Carlson in response to each of Flaherty's queries question-by-question. *Id.* at 36. Facebook again reported that Tucker Carlson's content had not violated its policies, stating that "we reviewed this content in detail and it does not violate those policies," but reported that Facebook had been censoring it anyway and would continue to censor it even though no fact-check had reported it false: "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*." *Id.* (emphasis added). These circumstances raise a compelling inference that Facebook continued to demote Tucker Carlson' content, in violation of its own policies and practices, due to the White House's pressure.

101. In the same time frame, the White House was exerting similar pressure on other major social-media platforms. It had meetings with YouTube and Twitter about misinformation on April 21, 2021 as well.

102. On April 21, Rob Flaherty, Andy Slavitt, and Kelsey Fitzpatrick of the White House, along with an official at HHS, participated in a meeting with several Twitter officials. Doc. 71-7, at 86. The meeting's subject was "Twitter Vaccine Misinfo Briefing." *Id.* The meeting invite noted: "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*

AMERICAN OVERSIGHT

changes, and ways the White House (and our COVID experts) can *partner* in product work." *Id.* (emphases added).

103. The next day, April 22, Twitter employees noted in internal communications that the White House officials, during this meeting, had posed "one really tough question about why Alex Berenson hasn't been kicked off the platform." Jones Decl., Ex. J, at 2-3. The Twitter employee noted that the White House's questions were "pointed" and "mercifully we had answers." *Id.* Another internal Twitter communication noted that the White House "really wanted to know about Alex Berenson. Andy Slavitt suggested they had seen data viz that had showed he was the epicenter of disinfo that radiated outwards to the persuadable public." *Id.*

104. Later, on July 16, 2021, Twitter suspended Alex Berenson for the first time. *Id.* On August 28, 2021, Twitter permanently deplatformed Berenson. *Id.*

105. On April 21, 2021, Flaherty, Andy Slavitt, Kelsey Fitzpatrick of the White House, and Jessica Scruggs of HHS had a similar meeting with YouTube, to which at least six YouTube officials were invited. Jones Decl., Ex. K, at 1. The calendar invite stated that the purpose of the meeting was: "White House staff to get briefed by YouTube on general trends seen around vaccine misinformation. As well as, the empirical effects of YouTube's efforts to combat misinfo, what interventions YouTube is currently trying, and ways the White House (and or COVID experts) can partner in product work." *Id.*

106. Just after midnight on April 22, 2021, Rob Flaherty emailed a list of Google officials about YouTube, copying Andy Slavitt, Clarke Humphrey, and Kelsey Fitzpatrick of the White House. Doc. 174-1, at 39. He began by referring to the oral meeting with Google/YouTube officials on April 21: "Thanks again for the conversation today." *Id.* Flaherty also referred to an earlier, "first conversation," indicating that there had been multiple meetings with YouTube. *Id.*

AMERICAN OVERSIGHT

107. Flaherty then noted that the White House had asked YouTube (like Facebook) to monitor and report on the speech on its platforms, stating that the White House expected a report from them: "We'll look out for the top trends that you've seen in terms of misinformation around the vaccine." *Id.*

108. Flaherty then provided a "recap" of their oral conversation, stating that concern about misinformation on YouTube was "shared at the highest (and I mean highest) levels of the [White House]": "To recap: … we remain concerned that Youtube is 'funneling' people into hesitance and intensifying people's hesitancy…. 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." *Id.* (emphasis added).

109. Citing an article "highlighting the Youtube misinformation that is spreading through the Vietnamese community," Flaherty stated: "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." *Id.*

110. Flaherty then stated, "A couple of other things it would be good to have from you all," and provided a five-bullet list of detailed demands for YouTube's internal data about the spread of misinformation on its platform, including: "the top trends that you're seeing in terms of misinformation/hesitance inducing content," and "[a] deeper dive on reduction and its effectiveness," among others. *Id.*

111. Flaherty indicated that the White House was coordinating with the Stanford Internet Observatory, which was then operating the Virality Project, discussed in detail below, noting in

AMERICAN OVERSIGHT

the first bullet point: "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." *Id.* This reference raises the inference that the White House's "COVID experts" ("our COVID experts") mentioned in the calendar invite for the meeting, Jones Decl., Ex. K, at 1, are, in fact, "Stanford" personnel associated with the Virality Project, and that the White House was working with "Stanford" to "partner with" platforms "on product work."

112. As with Facebook, many of Flaherty's demands related to so-called "borderline" content, *i.e.*, often-truthful content that does not violate platform policies but that the White House disfavors. *See* Doc. 174-1, at 39. Among other things, he praised YouTube for reducing distribution of such content: "I believe you said you reduced watch time by 70% on 'borderline' content, which is impressive." *Id.* But then, again, he followed up with a long series of demands for more information: "How does that track with vaccine-related content specifically…? 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?... 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? … [H]ow 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 the general vectors by which people see the 'borderline' content – or really just vaccine-skeptical content? Is it largely through recommendations? Search?" *Id.* Notably, Flaherty's "most critical[]" question implied that YouTube should be censoring more content from disfavored *speakers*, *i.e.*, those who have been given a "strike" for previous anti-vaccine content. *Id.*

AMERICAN OVERSIGHT

113. Flaherty emphasized that the White House wanted to make sure YouTube's "work extends to the broader problem" of people viewing vaccine-hesitant content. *Id.* at 39-40. And he proposed regular meetings to push YouTube to disclose its "internal data" to the White House: "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." *Id.* at 40.

114. On April 23, 2021, Flaherty sent Facebook an email that included a document entitled "Facebook COVID-19 Vaccine Misinformation Brief" prepared by an unidentified third party. Jones Decl., Ex. L, at 1. The "Brief" had two major headings with several bullet points under each: "Facebook plays a major role in the spread of COVID vaccine misinformation," and "Facebook's policy and enforcement gaps enable misinformation's spread." *Id.* The "Brief" recommended much more aggressive censorship of Facebook's platforms, calling for "progressively severe penalties … and comprehensive enforcement for pages, accounts, and groups that repeatedly post COVID vaccine misinformation," and stating that "[b]ans for COVID-19 misinformation should be cross-platform and enforced at the entity-level, not the account level." *Id.* It called for Facebook to stop distributing even non-violative anti-vaccine content "in News Feed or in group recommendations" to "significantly reduce the reach of low-quality domains," and it stated that "[v]accine misinformation monitoring and enforcement must adjust as disinformers evade enforcement…." *Id.* at 1-2. And it called for specific censorship of disfavored speakers: "Warning screens before linking to domains known to promote vaccine misinformation would dissuade users from following links to of-platform misinformation and hurt the vaccine-misinformation business model Facebook enables." *Id.* at 2.

AMERICAN OVERSIGHT

115. Reproducing this pro-censorship "Brief" in the text of his email to Facebook, Flaherty wrote: "Here's the crux of their recs. Don't read this as White House endorsement of these suggestions (or, also, as the upper bound of what our thoughts may be). But – spirit of transparency – this is circulating around the building and informing thinking." *Id.* at 1.

116. On May 1, 2021, Nick Clegg of Facebook sent an email to Andy Slavitt indicating that the White House had recently met with Facebook to "share research work" and make more demands, stating: "Thanks to your team for sharing the research work with us…." *Id.* at 41. At the beginning of the email, Clegg apologized to the White House for not catching and censoring three pieces of vaccine content that went viral, even though the content did not violate Facebook's policies, and promising to censor such non-violative 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." *Id.* at 42.

117. Clegg then promised to be more vigilant and censor such non-violative content to prevent it from going viral in the future, and offered to report back to the White House in detail about its efforts to do so: "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." *Id.*

AMERICAN OVERSIGHT

118. Clegg then listed in bold the demands that the White House had made in its recent meeting, with a detailed response to each. *Id.* at 42. First, the White House had demanded that Facebook address "**Non-English mis/disinformation circulating without moderation**," and Facebook promised to take steps to do so. *Id.* (bold in original).

119. Second, the White House had commanded Facebook: "**Do not distribute or amplify vaccine hesitancy, and Facebook should end group recommendations for groups with a history of COVID-19 or vaccine misinformation**." *Id.* (bold in original). Facebook assured the White House that it was taking strong steps to censor such content, and promised to increase its efforts to do so in the future: "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 hash tags we know are shared to promote vaccine hesitancy content and are working to improve our automated systems here." *Id.*

120. Third, the White House had demanded that Facebook "**Monitor[] events that host anti-vaccine and COVID disinformation**." *Id.* (bold in original). Facebook promised to monitor social-media "events" on its platforms more closely and take more aggressive action to censor them: "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." *Id.*

AMERICAN OVERSIGHT

121. Fourth, the White House had demanded censorship of the so-called "Disinformation Dozen" in the private meeting with Facebook, raising the concern that "**12 accounts are responsible for 73% of vaccine misinformation**." *Id.* (bold in original). Facebook responded that it was scrutinizing those speakers and censoring them whenever it could, but that most if their content did not violate Facebook's policies: "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." *Id.*

122. Clegg then noted that he realized the White House would not be satisfied with these answers and was demanding greater censorship: "I realise that our position on this continues to be a particular concern for you." *Id.* Clegg then suggested that too much censorship might be counterproductive and might 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." *Id.* Brian Rice also forwarded Nick Clegg's email to Rob Flaherty. *Id.* at 41.

B. Public Pressure and Threats From Press Secretary Jennifer Psaki.

123. The White House was evidently quite unhappy with this response and the results of its pressure campaign behind closed doors. A few days later, the White House took its pressure campaign public. On May 5, 2021, Jen Psaki publicly reminded Facebook and the other platforms of the threat of legal consequences hanging over its head if it did not censor misinformation more

AMERICAN OVERSIGHT

aggressively. At the May 5, 2021 White House Press Briefing, Jen Psaki stated about social-media censorship: "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, especially related to COVID-19, vaccinations, and elections. And we've seen that over the past several months, broadly speaking." Glenn Decl. Ex. 29, at 15, Doc. 10-1, at 353.

124. Psaki also stated that President Biden "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, sometimes life-threatening information is not going out to the American public." *Id.* She thus linked the threat of a "robust anti-trust program" to the White House's demand that "more … needs to be done" by "the major platforms" to prevent "misinformation" and "disinformation" from "going out to the American public," *i.e.*, its demand for censorship. *Id.*

125. The next day, May 6, 2021, Flaherty privately responded to Facebook's most recent email, badgering Facebook again for more explanations about why it was not censoring more aggressively. Regarding Nick Clegg's apology for not catching and censoring three viral posts earlier, Flaherty linked to one and noted: "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." Doc. 174-1, at 41.

126. Flaherty also demanded more information about Facebook's efforts to demote "borderline" content: "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

AMERICAN OVERSIGHT

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?" *Id.*

127. Flaherty then criticized Facebook's censorship efforts for vaccine-related posts in Facebook groups related to other topics: "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." *Id.* (ellipses in original).

128. Flaherty tied this criticism to his criticism of Facebook's failure 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 carries over to groups." *Id.*

129. On May 10, 2021, Facebook sent an email to Rob Flaherty and Courtney Rowe of the White House digital team, touting its efforts to promote vaccination on its platforms. Doc. 174-1, at 46. Among other things, Facebook reported that "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." *Id.*

130. The next day, May 11, 2021, Flaherty responded with a one-line, snarky email stating: "Hard to take any of this seriously when you're actively promoting anti-vaccine pages in search." *Id.* He included a link to a news report about this topic on Twitter. *Id.*

131. The next day, May 12, 2021, Facebook responded, assuring Flaherty that it had censored the accounts mentioned in the news reports: "Thanks Rob - both of the accounts featured in the tweet have been removed from Instagram entirely…. We're looking into what happened." *Id.* at 45.

AMERICAN OVERSIGHT

132. Facebook then assured Flaherty it was working on processes to suppress disfavored speech from search results on its platforms and remove anti-vaccine accounts: "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…. 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." *Id.*

133. Facebook acknowledged that its censorship efforts were not enough and promised the White House they would increase them: "We clearly still have work to do to [sic], 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." *Id.*

134. The same day, May 12, 2021, Flaherty responded sarcastically, indicating that promoting pro-vaccine speech was not enough for the White House, which demanded the removal or deboosting of anti-vaccine speech: "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!" *Id.* at 45.

135. Flaherty then accused Facebook of not doing enough to censor anti-vaccine content in search results and dissembling to deceive the White House: "'[R]emoving 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." *Id.* at 45. Flaherty continued, accusing Facebook of dishonesty: "You say in your note that you

AMERICAN OVERSIGHT

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." *Id.*

136. Flaherty then compared Facebook unfavorably to other platforms to pressure them to suppress anti-vaccine content in search results: "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." *Id.*

137. 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." Doc. 71-4, at 9.

C. Flaherty's Profane Attack: "Are You Guys Fking Serious?"**

138. At some time prior to July 15, 2021, the White House's Facebook account experienced an issue that slowed its growth in followers. Doc. 174-1, at 56. On July 15, 2021, Facebook emailed a White House staffer and reported that "the technical issues that had been affecting follower growth on @potus have been resolved…. you should start to see your numbers trend back upwards…. Thanks for your patience as we investigated this." *Id.* The White House staffer asked Facebook, "Could you tell me more about the technical issues affecting audience growth?" *Id.* at 55. Facebook responded, "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." *Id.* The White House staffer then simply added Rob Flaherty to the email chain without further comment. *Id.*

AMERICAN OVERSIGHT

139. The same minute he was added to the email chain, 3:29 p.m. on July 15, 2021, Flaherty exploded at Facebook: "Are you guys fucking serious? I want an answer on what happened here and I want it today." *Id.* at 55.

140. Facebook immediately raced to placate Flaherty, assuring him that the problem was from a "bug in our recommendation surface" that had been resolved two months earlier. *Id.* at 55. Facebook followed up with a longer explanation stating that the President's account had been affected because Facebook "take[s] 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 …." *Id.* at 54. In other words, the White House's Instagram account had been inadvertently swept into the net of censorship that it had insisted that Facebook impose on private speakers' accounts. Evidently the White House is not amused when its own accounts are subject to the same treatment that it demands the platforms impose on thousands of ordinary Americans whose viewpoint the White House disfavors.

D. President Biden on Social-Media Platforms: "They're Killing People."

141. That same day, July 15, 2021, the White House held a joint press conference with Jen Psaki and Surgeon General Murthy. Dr. Murthy participated in the White House press conference with White House Press Secretary Jennifer Psaki to announce the Surgeon General's Health Advisory on Misinformation. Waldo Ex. 10. Psaki announced of Dr. Murthy that "[t]oday, he published an advisory on health misinformation as an urgent public health crisis." *Id.* at 1.

AMERICAN OVERSIGHT

142. Among other things, Dr. Murthy stated that "Modern technology companies have enabled misinformation to poison our information environment with little accountability to their users." *Id.* at 2.

143. Dr. Murthy announced: "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." *Id.* at 3.

144. At the July 15 press conference, Dr. Murthy also demanded that the platforms do "much, much more" and "take aggressive action" against misinformation. Waldo Ex. 10, at 5.

145. Dr. Murthy also stated that platforms "have to do more to reduce the misinformation that's out there …." *Id.* at 6.

146. At the same press conference on July 15, 2021, Jennifer 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." Waldo Ex. 10, at 10.

147. Psaki stated: "We've increased disinformation research and tracking within the Surgeon General's office. We're flagging problematic posts for Facebook that spread disinformation." *Id.* at 10.

148. Regarding the Administration's "asks" to social-media platforms, Psaki stated: "There are also proposed changes that we have made to social media platforms, including Facebook, and those specifically are four key steps: One, that they measure and publicly share the impact of misinformation on their platform. Facebook should provide, publicly and transparently, data on the reach of COVID-19 — COVID vaccine misinformation. Not just engagement, but the reach of the misinformation and the audience that it's reaching." *Id.* at 11.

AMERICAN OVERSIGHT

149. Psaki also stated: "Second, that we have recommended — proposed that they create a robust enforcement strategy that bridges their properties and provides transparency about the rules. So, about — I think this was a question asked before — there'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." Waldo Ex. 10, at 11.

150. Psaki stated: "Third, it'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.* at 11.

151. And Psaki stated, publicly criticizing Facebook: "Finally, we have proposed they promote quality information sources in their feed algorithm. Facebook has repeatedly shown that they have the levers to promote quality information. We've seen them effectively do this in their algorithm over low-quality information and they've chosen not to use it in this case. And that's certainly an area that would have an impact." Waldo Ex. 10, at 11.

152. Psaki concluded: "So, these are certainly the proposals. We engage with them regularly and they certainly understand what our asks are." *Id.* at 11.

153. The next day, July 16, 2021, President Biden stated of Facebook and other platforms that "they're killing people" by failing to censor enough misinformation: "Mr. Biden was asked what his message was to social media platforms when it came to Covid-19 disinformation. 'They're killing people,' he said. 'Look, the only pandemic we have is among the

AMERICAN OVERSIGHT

unvaccinated, and that — and they're killing people.'" Glenn Decl. Ex. 33, at 1; Doc. 10-1, at 436.

154. President Biden's statement came after "weeks" of pressuring Facebook to give federal officials access to Facebook's internal data: "White House officials … 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.*

155. Surgeon General Murthy had been directly involved in those meetings with Facebook, including "tense" meetings and a meeting where he "angrily" demanded that Facebook do more to censor misinformation. *Id.* at 437.

156. When the President stated, "They're killing people," Psaki reinforced the same message: "'Our point is that there is information that is leading to people not taking the vaccine, and people are dying as a result,' Jen Psaki, the White House press secretary, said before Mr. Biden made his comments. 'And we have responsibility as a public health matter to raise that issue.'" *Id.* at 436.

157. That same day, July 16, 2021, at a White House press conference, Psaki stated that "we're in regular touch with social media platforms … about areas where we have concern. … [W]e are … regularly making sure social media platforms are aware of the latest narratives dangerous to public health that we and many other Americans seeing — are seeing across all of social and traditional media. And we work to engage with them to better understand the enforcement of social media platform policies." Glenn Decl. Ex. 34, at 6; Doc. 10-1, at 444.

158. Psaki then described a "false narrative that remains active … flowing on the internet quite a bit, in other places as well," and stated, "we want to know that the social media

AMERICAN OVERSIGHT

platforms are taking steps to address it. That is inaccurate, false information… And that is an example of the kind of information that we are flagging or raising." Glenn Decl. Ex. 34, at 7; Doc. 10-1, at 445.

159. Psaki also demanded additional "steps" "for Facebook or other platforms," including "to measure and publicly share the impact of misinformation on their platform and the audience it's reaching, also with the public." *Id.*

160. She called on the platforms "to create robust enforcement strategies that bridge their properties and provide transparency about rules." *Id.* She stated that platforms should coordinate on censoring disfavored speakers: "You shouldn't be banned from one platform and not others if you — for providing misinformation out there." *Id.*

161. Psaki also stated that the platforms should be "[t]aking faster action against harmful posts. As you all know, information travels quite quickly. If it's up there for days and days and days when people see it, you know, there's — it's hard to put that back in a box." Glenn Decl. Ex. 34, at 8; Doc. 10-1, at 446.

162. Psaki was asked whether the censorship Facebook was already doing, which included "remov[ing] 18 million pieces of COVID misinformation" and "connect[ing] more than 2 billion people to reliable information," was "sufficient," and she responded, "Clearly not, because we're talking about additional steps that should be taken." *Id.*

163. "[A] few hours after Biden's comment" that social-media platforms are "killing people" by not censoring misinformation, "Twitter suspended [Alex Berenson's] account for the first time." Jones Decl., Ex. J, at 3. Later, on August 28, 2021, Twitter permanently deplatformed Berenson. *Id.*

AMERICAN OVERSIGHT

164. 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. Glenn Decl. Ex. 35; Doc. 10-1, at 474-75 - *'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, Kate Bedingfield, 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.*

165. The White House communications director "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.*

166. 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.,* Glenn Decl. Ex. 36; Doc. 10-1, at 477-81: *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.

167. When "asked … whether these companies should be held liable for publishing false information that causes people harm, Kate Bedingfield said the administration is reviewing policies. That could include amending the Communications Decency Act, or Section 230 of the

AMERICAN OVERSIGHT

act. 'We're reviewing that and certainly they should be held accountable,' Bedingfield said. 'And I think you heard the president speak very aggressively about this. He understands that this is an important piece of the ecosystem.'" *Id.* at 478.

168. The same day, Tuesday, July 20, 2021, Clarke Humphrey of the White House communications office emailed Facebook asking for the removal of an Instagram account associated with Dr. Fauci, saying it "is not actually one of ours." Fauci Ex. 57, at 1-2. Facebook responded one minute later, stating, "Yep, on it!" Fauci Ex. 57, at 1. The next day, Facebook responded again, stating, "This account has been removed. Thank you for flagging!" *Id.*

E. The Social-Media Platforms Are Cowed into Collusion on Censorship.

169. The threats and public pressure on July 15 and 16—including the President's comment, "they're killing people"—got immediate results, as Facebook scrambled to assuage the White House's wrath and accede to all its censorship demands.

170. 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. Glenn Decl. Ex. 37; Doc. 10-1, at 483-85: *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.* at 483. 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.*

AMERICAN OVERSIGHT

171. Other platforms responded to the pressure as well, as Twitter suspended Alex Berenson within a few hours of President Biden's July 16 comments and deplatformed him Berenson on August 28, 2021. Jones Decl., Ex. J, at 3.

172. On July 17, 2021, another Facebook official sent an email to Anita B. Dunn, the political strategist and Senior Advisor to the President in the White House, begging for assistance in getting back into the White House's good graces. Doc. 174-1, at 49. The Facebook official, who evidently had a prior relationship with Dunn, wrote: "Would love to connect with you on the President's comments on Covid misinfo and our work there. Really could use your advice and counsel on how we get back to a good place here. … As I hope you know, we've been doing a significant amount of work to … fight the misinfo … 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." *Id.* Dunn looped in Rob Flaherty to schedule a call. *Id.* at 48. Facebook then wrote: "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." *Id.* Facebook also noted, with a similarly conciliatory tone: "We had a conversation with the Surgeon General's office yesterday to discuss the advisory in more detail and hope to continue to work to address concerns." *Id.*

173. The next Monday, July 19, 2021, YouTube emailed Flaherty to announce "a few new ways in which we are making it easier for people to find authoritative information on health topics on YouTube." *Id.* at 51-2. On July 20, 2021, Flaherty responded, linking to a Tweet of "borderline" content and stating, "I'm curious: Saw this tweet. [Linking the Tweet]. I think we had a pretty extensive back and forth about the degree to which you all are recommending anti-

AMERICAN OVERSIGHT

vaccination content. You were pretty emphatic that you are not. This seems to indicate that you are. What is going on here?" *Id.* at 51.

174. YouTube responded by assuring Flaherty that it "reduce[s]" the recommendation of anti-vaccine speech even when it does not violate YouTube's policies: "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 nonsubscribed, recommended borderline content below 0.5%." *Id.* at 51.

175. This was not enough for Flaherty, who demanded more information: "I see that's your goal - what is the actual number right now?" *Id.* at 50. YouTube responded that it would check for more information, and stated: "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 COVID-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." *Id.* at 50.

176. Flaherty responded, expressing surprise that YouTube was not censoring the disfavored content: "So this actually gets at a good question - the content [that the Tweet] points out isn't defined as 'borderline' and therefore isn't subject to recommendation limitations?" *Id.*

177. YouTube, like Facebook before it, assured Flaherty that it would "limit the visibility" and "reduce the spread" such content, even though it does not violate YouTube's

AMERICAN OVERSIGHT

policies: "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." *Id.* at 50.

178. On October 28, 2021, the same day as a Washington Post article about Facebook employee Frances Haugen's allegations about misinformation on Facebook, Rob Flaherty emailed Brian Rice of Facebook a hyperlink to the article. The only text in the email was the subject line, which stated: "not even sure what to say at this point." Waldo Ex. 35, at 1-2; *see also infra.*

179. 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…." Doc. 71-3, at 15.

180. On November 30, 2021, Christian Tom of the White House emailed Twitter stating, "Would you mind looking at this video and helping us with next steps to put a label or remove it?" Doc. 174-1, at 65. He included a link to a Tweet of an unflattering, comedic video of First Lady Jill Biden reading to children, which had been clearly edited to make it sound as if she was profanely heckled while reading to them. *Id.* The subject line of the message was "Doctored video on Twitter of the First Lady." *Id.* Twitter responded within six minutes: "Happy to escalate with the team for further review from here." *Id.*

181. That evening, Twitter emailed back, stating, "Update for you - The team was able to create this event page for more context and details." *Id.* at 64. The "event page" explained the context of the parody video but did not censor it; it alerted users that the video had been edited for "comedic" effect. *See A video of first lady Jill Biden reading to children was manipulated to*

AMERICAN OVERSIGHT

include profanity, according to fact-checkers, TWITTER (Nov. 30, 2021), https://twitter.com/i/events/1465769009073123330.

182. Christian Tom promptly emailed back, asking that Twitter actually censor the comedic video, not just provide an event page explaining that it was comedic: "Will you apply the 'Manipulated Media' disclaimer to the video asset itself?" Doc. 174-1, at 64.

183. The next morning, December 1, 2021, Tom emailed Twitter again, arguing that Twitter should apply a label to the video under its content-moderation policies: "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:" and linking Twitter's "manipulated media" policy. *Id.* at 63-4.

184. Twitter wrote back the same morning, explaining that the comic, parody video of Jill Biden was not subject to labeling under its policy because it was not likely to cause harm, but noting again that Twitter had created a special page to explain that the video was edited: "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." *Id.* at 63.

185. The same day, Christian Tom emailed back, disputing Twitter's interpretation of its own content-moderation policy and looping in Michael DeRosa, the First Lady's press secretary. *Id.* Michael DeRosa then emailed as well, disputing and demanding information about Twitter's application of its own policy. *Id.* at 62. Tom and DeRosa continued to press Twitter for further explanation and action on December 9, 13, and 17. *Id.* at 60-61. Twitter provided another, more detailed explanation of its decision on December 17. *Id.* at 59-60. Tom emailed back the

AMERICAN OVERSIGHT

same day, again disputing Twitter's application of its own policy and pressing Twitter again on the issue. *Id.* at 58-59. He added Rob Flaherty to the email chain for the first time. *Id.* at 58.

186. Nine minutes later, on December 17, 2021, Flaherty wrote to Twitter, angrily accusing Twitter of dishonestly misapplying its own policies: "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." *Id.* at 58. ("Calvinball" refers to a game in the cartoon "Calvin and Hobbes" where the participants make up the rules of the game as they go along.)

187. A senior-level Twitter executive then emailed Flaherty proposing to resolve the matter by phone. *Id.* After that phone conversation, it appears that the Tweet that prompted the exchange is no longer available. *See id.* at 65 (linking to https://twitter.com/ArtValley818_/status/1465442266810486787?s=20, which is no longer available).

F. White House Pressure and Collusion Continue Throughout 2022.

188. During January 2022, Facebook reported to Rowe, Manning, Flaherty, and Slavitt that it has "labeled and demoted" "vaccine humor posts whose content could discourage vaccination." 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." Doc. 71-3, at 10-11.

189. Twitter emailed back within an hour and offered to discuss, to which Flaherty responded: "Happy to talk through it but if your product is appending misinformation to our tweets that seems like a pretty fundamental issue." *Id.*

AMERICAN OVERSIGHT

190. Separately, Jesse Lee of the White House emailed Twitter in response to the same report, accusing Twitter of "calling the President a liar" and offering to talk by phone to resolve the complaint: "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," and providing his cell phone number. *Id.* at 69. Twitter then reached out by phone to resolve it. *Id.*

191. 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." Doc. 71-3, at 24.

192. 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." Glenn Decl. Ex. 38, at 15-16; Doc. 10-1, at 501-2 (emphasis added). She stated that Spotify's advisory warnings are "a good step, it's a positive step, but *there's more that can be done*." *Id.* at 502 (emphasis added).

AMERICAN OVERSIGHT

193. 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?" Glenn Decl. Ex. 40; Doc. 10-1, at 528.

194. 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.* at 528-29.

195. 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: "I would say our concerns are not new. 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." *Id.* at 534.

196. 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

AMERICAN OVERSIGHT

kind of misinformation? Or are we in a different part of the pandemic where that kind of partnership is no longer necessary?" *Id.* at 549.

197. 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.*

198. On 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. Doc. 71-3, at 6.

199. Meta got the message. It agreed to continue sending its censorship-tracking reports, and on June 22, 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. Doc. 71-3, at 5.

G. Pressure to Expand the Topics of Social-Media Censorship.

200. Since this lawsuit was filed, Defendants have expanded their social-media censorship activities and pressured social-media platforms for censorship in new areas of online discourse, including areas such as climate change, gender, abortion, and economic policy.

AMERICAN OVERSIGHT

201. For example, on June 14, 2022, White House National Climate Advisor Gina McCarthy spoke at an Axios event titled "A conversation on battling misinformation." Jones Decl. Ex. M, at 1.

202. During the event, "McCarthy skewered Big Tech companies for 'allowing' disinformation and cheered Congress for 'taking action' to enact more censorship last Thursday." *Id.* at 2. "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.* at 3 (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.*

203. Like Psaki and others, 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.* at 4.

204. On June 16, 2022, 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." Jones Decl., Ex. N, at 1.

AMERICAN OVERSIGHT

205. 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. *Id.* 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.*

206. The Task Force is charged with "developing programs and policies to address … *disinformation campaigns* targeting women and LGBTQI+ individuals 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).

207. 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).

AMERICAN OVERSIGHT

208. Relatedly, on May 27, 2022, HHS Assistant Secretary Rachel Levine demanded that social-media platforms censor "misinformation" about "gender-affirming care." Jones Decl., Ex. O, at 1. In a public address to health officials, Levine "spoke about the need for government to 'address health information directly' and specified that includes encouraging Big Tech to combat health misinformation 'beyond COVID-19.'" *Id.* Levine stated: "So I'd like to just talk briefly about another area of substantial misinformation that is directly impacting health equity in our nation, and that is the health equity of sexual and gender minorities. There is substantial misinformation about gender-affirming care for transgender and gender diverse individuals… The positive value of gender-affirming care for youth and adults is not in scientific or medical dispute … And we need to use our clinicians' voice to collectively advocate for our tech companies to create a healthier, cleaner information environment." *Id.* at 1-2.

209. On July 8, 2022, the President signed an Executive Order on protecting access to abortion. Jones Decl., Ex. P, at 1.

210. 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.* This is a plain reference to the online advertising practices of pro-life pregnancy resources centers, which the President's political allies were then attacking. Jones Decl., Ex. Q, at 1-2.

211. On August 11, 2022, Flaherty emailed Twitter to dispute a note added by Twitter to one of President Biden's tweets. Doc. 174-1, at 68. The subject line of Flaherty's email was a link to a Tweet criticizing Twitter's note: "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

AMERICAN OVERSIGHT

public's understanding in any way.'" *Id.* Linking to a tweet about gas prices, Flaherty wrote: "Happy to connect you with some economists who can explain the basics to you guys." *Id.* Flaherty copied Jesse Lee, Senior Advisor to the National Economic Council at the White House, on the email. *Id.*

III. The Pressure Campaign from Surgeon General Murthy and His Office.

212. Throughout 2021 and 2022, Surgeon General Vivek Murthy and his Office engaged in a pressure campaign in parallel with, and often overlapping with, the White House's pressure campaign on social-media platforms. Surgeon General Murthy and his staff were often included in the same meetings and communications with White House officials and social-media platforms, and joined White House officials pressuring them to increase censorship in public and in private.

A. The Surgeon General: Using the "Bully Pulpit" to Pressure Platforms.

213. Eric Waldo is the Senior Advisor to the Surgeon General of the United States, Vivek Murthy, and was formerly a Chief Engagement Officer in the Office of the Surgeon General ("OSG"). Waldo Dep. 11:15-12:2.

214. As "the engagement team leader" for OSG, Waldo was "the one in charge of maintaining the contacts and the relationships with representatives of social media platforms." *Id.* at 51:11-17.

215. Dr. Murthy was directly involved in editing and approving the final work product of the Surgeon General's Office, including the Surgeon General's July 15, 2021 health advisory on misinformation and the Surgeon General's March 3, 2022 RFI to social-media platforms. *Id.* at 14:20-22, 15:16-19, 16:9-10, 17:1-6, 187:24-188:3.

216. Calling for an "all-of-society approach" to misinformation was a pervasive theme of the Surgeon General's communications, including the health advisory and the RFI. *Id.* at 19:25,

AMERICAN OVERSIGHT

26:8, 88:9, 89:13, 101:2, 117:13, 122:15, 211:22, 246:25, 251:9, 332:22. This theme echoes the repeated call for an "all-of-society approach" in the Virality Project's public report. *See infra.*

217. Before the Surgeon General's health advisory on misinformation was published on July 15, 2021, OSG and Waldo "did pre-rollout calls with Twitter, Facebook, [and] Google/YouTube." *Id.* at 20:7-11.

218. The Surgeon General uses his "bully pulpit" to call for censorship of health misinformation: "Dr. Murthy continued from a communications perspective to talk about health misinformation using his bully pulpit." *Id.* at 25:23-25.

219. Waldo admits that the Surgeon General is directly advocating to social-media platforms to take stronger actions against health "misinformation": "[T]he Surgeon General has the ability … to talk to the relevant stakeholders and say we want you to be aware of this issue and that we think you have a role to play to improve the health outcomes, yes." *Id.* 28:10-14. As part of this role, the Surgeon General "call[s] out social media platforms in the [health] advisory." *Id.* at 28:18-19.

220. The Surgeon General's "bully pulpit," Waldo agrees, involves putting public pressure on social-media platforms: "I think the bully pulpit … is really the fact that he commands attention, including being able to … speak with the press, speak with the public, and … we think of the Surgeon General as the nation's doctor." *Id.* at 29:9-15.

221. A goal of the Surgeon General's use of the "bully pulpit" includes to "reduce the dissemination of health misinformation." *Id.* at 30:5-10. This includes making "recommendations of specific steps the social media platforms are … called out to take to reduce the spread of misinformation on the platforms." *Id.* at 31:3-8.

AMERICAN OVERSIGHT

222. OSG reinforces its public "message of calling out the social media platforms to take steps to reduce the spread of misinformation on their platforms" through private communications with platforms: "[W]hat we're saying publicly, we're also … said that privately to them as well." *Id.* at 32:5-8, 12-14. This includes during "rollout calls." *Id.* at 32:19-20.

B. Surgeon General Works in Tandem with the White House and Virality Project.

223. On the day of the health misinformation advisory rollout, July 15, 2021, "Press Secretary … Jen Psaki had already made remarks specifically about Facebook, and then," the next day, "President Biden made his remarks that social media and Facebook were killing people." *Id.* at 33:19-25. "Facebook … was upset about how the rollout had gone." *Id.* at 33:6-8. Waldo's initial rollout call with Facebook, as a result, was affected by the Administration's public attacks on Facebook: "I wouldn't call it the most productive call." *Id.* at 34:4-6.

224. After this public pressure, Facebook's senior executive, Nick Clegg, reached out to request "deescalat[ion]" and "work[ing] together" as a direct result of that public pressure on Facebook: "Then later, with our call, we had a call with Nick Clegg from Facebook, and at his request, and … his intentions were to sort of I think deescalate and just find ways that we could work together, given how Facebook … was treated in that rollout day." *Id.* at 34:7-13.

225. In the call with Nick Clegg, Surgeon General Murthy reiterated his demand for Facebook to do more to censor "misinformation" on its platforms: "[O] n the call with Nick Clegg, the Surgeon General did … reiterate the idea that, you know, as we described in the advisory, that we think there's more … that Facebook and other social media companies can do, and … we reiterated that." *Id.* at 35:7-12.

226. Murthy also asked Clegg and Facebook specific questions about requiring Facebook to share data with outside researchers about the scope and reach of misinformation on

AMERICAN OVERSIGHT

its platforms, again echoing the key recommendation of the Virality Project: "[T]he most specific questions were about understanding the data around the spread of misinformation and how we were measuring that, and … how we could have external researchers validate the spread of misinformation and -- and helping us as a field understand the depth of the problem." *Id.* at 35:20-36:2.

227. One such "external researcher" that OSG had in mind was "Renee DiResta, from the Stanford Internet Observatory," a leading organization of the Virality Project, which hosted a "rollout event" for the advisory featuring Dr. Murthy on the day the advisory was announced. *Id.* at 36:19-23.

228. Waldo admits that there was "coordination" between OSG and Renee DiResta of the Virality Project on the launch of the Surgeon General's health advisory: "I know there was coordination with [DiResta] with respect to the launch … there was a panel, a public sort of virtual town hall that we hosted -- with the Sanford [sic] Internet Observatory that Dr. Murthy spoke at, and that was part of the launch day. So certainly there would have been coordination … with her." *Id.* at 38:1-7.

229. Kyla Fullenwider is the OSG's key "subject matter expert" who "worked on the advisory" and had significant substantive input on both the Surgeon General's July 15, 2021 health advisory on misinformation, and the Surgeon General's March 3, 2022 RFI to social-media platforms on the spread of misinformation. *Id.* at 39:1-4, 59:16-23. Kyla Fullenwider is not a direct employee of the OSG, but works for a non-profit contractor named "US Digital Response," Waldo Dep. 85:13-15.

230. Kyla Fullenwider "did a follow-up call with Renee DiResta" about the health advisory. *Id.* at 38:25-39:4.

AMERICAN OVERSIGHT

231. After the launch of the health advisory, Waldo and Fullenwider "did a call" with Renee DiResta "that was more of a brainstorm around … public-facing events that we could do to talk about this issue" of stopping health misinformation. *Id.* at 40:13-17.

232. Fullenwider and DiResta "most likely" discussed misinformation in these calls. *Id.* at 41:4-6.

233. Waldo and OSG also received a briefing from the Center for Countering Digital Hate about the so-called "Disinformation Dozen." *Id.* at 43:1-48:1. CCDH gave "a presentation about the Disinformation Dozen and sort of how they were measuring … that those were the folks primarily responsible for a lot of misinformation online." *Id.* at 47:2-5.

234. Rafael Campos of OSG "helped create the event with … the Stanford Internet Observatory for the launch," and likely had communications with Stanford and Professor DiResta in the lead-up to the event. *Id.* at 48:12-14, 49:1-2.

235. The OSG anticipated that the social-media platforms would feel pressured by the advisory: "we didn't think they would be happy about this -- you know, the content of the advisory." *Id.* at 54:24-55:1.

236. Waldo is aware of "at least one call … that the Surgeon General [Murthy] had with Facebook during the transition," i.e., between President Biden's election and his assuming office. *Id.* at 55:8-10. The call involved a "Facebook individual": "Dr. Murthy had mentioned that he had been on a call with that person [from Facebook] during the transition." *Id.* at 79:11-18, 56:5-6. Waldo identified the individual as "a data person from the Facebook team." *Id.* at 56:10. The purpose of that call was "again, about that issue of trying to understand the reach of the mis- and disinformation and understanding … how far it was spreading." *Id.* at 56:15-19.

AMERICAN OVERSIGHT

237. "Data about misinformation" was "a topic of conversation" in that call, and the participants discussed "Facebook" being "un[]clear" or "unable to present … the depth or reach of the misinformation, that they didn't have that data." *Id.* at 80:1-15.

238. DJ Patil may have participated in that transitional call. Patil was the "chief data scientist in the Obama administration, and he was a special government employee at the White House for part of the first year" of the Biden Administration. *Id.* at 81:6-13. Patil was also "on the call with Dr. Murthy and [Waldo] and Nick Clegg … in his capacity as a White House official." *Id.* at 81:24-82:3.

239. Waldo "connected [Patil] to another research data person … a Facebook data person." *Id.* at 82:13-16.

240. The purpose of this follow-up was to demand more information from Facebook about monitoring the spread of misinformation on its platforms: "[T]he problem was we were still in this piece of not understanding the reach and depth … of the misinformation … on Facebook. And … this person was going to try to explain to [Patil] the data challenges in doing so." *Id.* at 83:4-9.

241. Kyla Fullenwider is the "main" or key staffer for the OSG on misinformation and disinformation. *Id.* at 58:21-24. Ann Kim is listed on the OSG's org chart, Waldo Ex. 2, as the person who "[d]irects mis- and dis-information engagement," Waldo Ex. 2, but that is solely "because Kyla Fullenwider reported up to Ann Kim. And since Kyla, I think, was our main subject matter expert or continued to do work on mis- and disinformation, maybe that was why that was put under Anne's list of duties." Waldo Dep. 58:20-24. Fullenwider, therefore, is the OSG's "main subject matter expert" on "mis- and disinformation," who "directs mis- and dis-information engagement" for the OSG. *Id.* at 58:13-59:7.

AMERICAN OVERSIGHT

242. Fullenwider works for the nonprofit U.S. Digital Response, and is not directly employed by the OSG, though she was acting in an official capacity on behalf of OSG. Waldo Ex. 3, at 32; Waldo Dep. 85:10-86:8.

243. U.S. Digital Response is not a government agency but a non-profit organization: "U.S. Digital Response (USDR) is a nonprofit, nonpartisan organization that helps governments, nonprofits, and public entities respond quickly to critical public needs." *About U.S. Digital Response*, U.S. Digital Response (last visited Feb. 17, 2023), https://www.usdigitalresponse.org/about.

244. Ann Kim has no direct involvement in mis- and disinformation. Waldo Dep. 58:25-59:3. But Kyla Fullenwider "was definitely working on mis- and disinformation." *Id.* at 59:6-7. Fullenwider "was working with Daniel [Tartakovsky] on the design of … the advisory. And then … Kyla was continuing to help us think about were there additional ways we might engage." *Id.* at 59:12-15. Further, "Kyla … was the principal designer of options around follow-up with respect to data." *Id.* at 59:16-18. And when "the Surgeon General's office put out an RFI around misinformation data" on March 3, 2022, "Kyla worked on that." *Id.* at 59:18-22. Kyla "was the subject matter expert who was chiefly creating options for the Surgeon General … to consider how we would continue to … talk about mis- and disinformation with respect to data." *Id.* at 60:6-10.

245. Kyla Fullenwider also participated in the "rollout calls" to the social-media platforms announcing the Surgeon General's health advisory on misinformation. *Id.* at 62:24-63:4.

246. Waldo was also "on some e-mails and at least one call with Rob Flaherty" when he "would communicate with Facebook." *Id.* at 64:9-11. This included a call with Rob Flaherty and

AMERICAN OVERSIGHT

the OSG: "[B]efore our call with Nick Clegg, … I had a call with Rob." *Id.* at 65:1-2. By then, Flaherty had been "separately communicating with Facebook," and he was "giving us a heads-up on his experiences … in communicating with … Facebook." *Id.* at 65:4-9.

247. In August 2021, Waldo joined a call with Rob Flaherty and Brian Rice of Facebook, who was in charge of Facebook's relationship with federal officials. *Id.* at 66:10-14, 124:24-125:2.

248. In that August 2021 call, "Brian Rice from Facebook had requested a call to give us an update on some sort of internal action they were doing. … Facebook had either found something or removed something and was letting us know about it." *Id.* at 66:16-23.

249. Andy Slavitt of the White House also communicated with Nick Clegg. *Id.* at 67:14-21. When Andy Slavitt left the White House, he offered Surgeon General Murthy as a direct contact for Nick Clegg. *Id.* at 68:4-7.

250. In addition, "Dr. Murthy has certainly had conversations with Dr. Fauci." *Id.* at 69:21-22. Waldo claims that he does not know the nature of those conversations. *Id.* at 69:23-25. "Dr. Murthy would have directly communicated with Dr. Fauci, to my knowledge." *Id.* at 70:13-15.

251. Waldo is "certain that Dr. Murthy has connected" with Dr. Francis Collins. *Id.* at 71:2-9.

252. Waldo was involved in collecting information to respond to Plaintiffs' interrogatories on behalf of OSG. *Id.* at 73:19-74:11.

C. The Surgeon General Pressures Social-Media Platforms in Private.

253. The first meeting with social-media platforms relating to misinformation that OSG identified in response to interrogatories was a brief introductory call with Nick Clegg on May 25, 2021: "On May 25, 2021, from 4:30 to 5:00 pm ET, Dr. Vivek Murthy from OSG and Andy Slavitt

AMERICAN OVERSIGHT

from the White House met remotely with Nick Clegg from Facebook. The purpose of the call was to introduce Dr. Murthy to Mr. Clegg." Waldo Ex. 3, at 32; *see also* Waldo Dep. 78:24-79:10. The next meeting disclosed was the first "rollout call" relating to the advisory on July 12, 2021. Waldo Ex. 3, at 32. As noted below, this interrogatory response failed to disclose several previous meetings between Dr. Murthy and Facebook.

254. OSG had pre-rollout calls with Twitter and YouTube on July 12 and July 14, 2021, and a rollout call with Facebook the day after the rollout on July 16, 2021. *Id.* at 32; Waldo Dep. 85:10-90:5.

255. Kyla Fullenwider handled the substantive communications with the social-media platforms in the rollout calls; Waldo's role was to "connect them to our subject matter expert." Waldo Dep. 86:24-25.

256. The July 16 call with Facebook was "the same day" that President Biden stated of Facebook that "They're killing people" by not censoring enough misinformation. *Id.* at 90:24, 93:3-5.

257. At that July 16 call, Kyla Fullenwider "was able, at a high level, to walk over the … recommendations section for … technology companies," which demand greater censorship of misinformation. *Id.* at 91:14-16.

258. The Facebook call "was definitely a slightly awkward call" because "President Biden made his comment about social media companies and Facebook killing people … right before, or even potentially during the call," and Waldo observed that "the Facebook team looked a little sad." *Id.* at 92:24-93:6.

259. On July 23, 2021, Waldo, Dr. Murthy, and DJ Patil of the White House had a call with Nick Clegg and Brian Rice of Facebook. Waldo Ex. 3, at 32-33. Nick Clegg requested the

AMERICAN OVERSIGHT

meeting "to deescalate" and "reset the tone" because the "Facebook team were feeling … that they had been uniquely called out." Waldo Dep. 95:4-13.

260. After the meeting, Nick Clegg "did share definitely over e-mail more information about what they were doing to reduce mis- and disinformation, COVID mis- and disinformation on the platform." *Id.* at 96:13-17.

261. There was also "a follow-up e-mail sometime the next couple of weeks where … Nick or Brian shared … here's additional work we're doing, here's how we're responding to the advisory." *Id.* at 97:7-11.

262. This follow-up email provided "a catalog of … both removal of misinformation and other steps to tamp down mis- and disinformation." *Id.* at 97:16-22.

263. Waldo believes that these were "new steps that they had taken in the week or so since … they felt uniquely called out on July 15th and 16th." *Id.* at 97:23-98:3. The email was in response to a request from OSG "asking for, can you let us know, like, what you're doing in addition" to combat misinformation, "and so this was responding to that." *Id.* at 98:5-7.

264. On the July 23 call with Facebook, "Dr. Murthy raised the issue of wanting to have a better understanding of the reach of the mis- and disinformation on … the social media platform." *Id.* at 98:19-22.

265. Waldo likens the problem of mis- and disinformation on social media to "eating, like, a piece of uranium," and compares misinformation to "cancer." *Id.* at 99:1-101:8.

266. The OSG's health advisory advances the view that the spread of misinformation is "very harmful." *Id.* at 101:24-102:7.

AMERICAN OVERSIGHT

267. Waldo agrees that the health advisory "provides specific examples to technology companies what they could do more of to reduce the spread of health mis- and disinformation." *Id.* at 104:16-18.

268. Waldo uses the word "poison" to describe health misinformation, as did Dr. Murthy in announcing the Health Advisory. *Id.* at 105:4; Waldo Ex. 10, at 2.

269. In the July 23, 2021 call with Nick Clegg, Dr. Murthy "didn't retreat … from the message of the advisory, which explicitly calls for social media platforms to do more to control the reach of misinformation on their platforms," and "continued … to discuss that message." Waldo Dep. 107:21-108:5.

270. In addition, in that call, the OSG asked Facebook to report back on "what they were doing in response to the advisory, if they were taking any actions." *Id.* at 109:2-4.

271. In addition, Patil was "also asking the data impact questions." *Id.* at 109:24.

272. OSG perceived that OSG's and the White House's public statements criticizing Facebook put economic pressure on Facebook, and that Facebook was engaging with Dr. Murthy to "keep Dr. Murthy from saying … any other things that might be viewed as bad for their business." *Id.* at 113:13-15.

273. Waldo agrees that the events of July 15 and July 16 put unique pressure on Facebook: "when you add the press conference remarks plus President Biden's remarks, it made it seem as though … there was more attention on Facebook." *Id.* at 116:2-5.

274. The OSG's "subject matter experts" – Kyla Fullenwider, Daniel Tartakovsky, and DJ Patil of the White House – believed that misinformation "was a problem across multiple platforms." *Id.* at 116:15-16.

AMERICAN OVERSIGHT

275. On July 30, 2022, Waldo had a meeting with Google and YouTube representatives, in which the representatives reported to OSG on what actions they were taking that were consistent with or in response to the health advisory: "The topics discussed included YouTube/Google following up on the announcement of the OSG Advisory to share more of the work it was doing around health mis- and disinformation." Waldo Ex. 3, at 33.

276. When the OSG's health advisory issued, Twitter's policy handle publicly endorsed the OSG's call for greater censorship of health misinformation: "[T]he Twitter policy handle … either retweeted or quote tweeted and said something like, we agree. … [W]e do need an all-society approach, and here's what we're doing." Waldo Dep. 122:11-16.

277. On August 10, 2021, Waldo and Rob Flaherty had a call with Facebook in which Facebook reported back to federal officials on its actions to remove misinformation, including the details of "an operation [Facebook] uncovered that is related to vaccine misinformation." Waldo Ex. 3, at 33 (alteration in original). According to Waldo, "Brian Rice had requested a call with me and Rob [Flaherty] and, during the call, flagged that Facebook … had done some sort of internal operation where … they discovered some misinformation pieces happening and had taken some corrective action." Waldo Dep. 124:13-21.

278. Brian Rice was Facebook's "main … staff level liaison" with the federal officials. *Id.* at 125:2-3.

279. Facebook emailed Waldo and Flaherty "a COVID report list that had … some sort of report from Facebook on a biweekly basis." *Id.* at 126:11-16.

280. On September 14, 2021, Waldo had another meeting with Google/YouTube representatives, "to discuss a new policy we [YouTube] are working on as well as provide an update on our overall efforts to combat harmful COVID-19 misinformation on the platform."

AMERICAN OVERSIGHT

Waldo Ex. 3, at 33. This was the "second update by [Google/Youtube] to [OSG] following the health advisory of stuff they're doing to combat harmful COVID-19 misinformation through YouTube." Waldo Dep. 129:7-12.

281. On May 28, 2021, a few days after meeting with Andy Slavitt and Dr. Murthy for the first time (and almost two months before OSG issued the Health Advisory and had the related meetings with Waldo and others), Nick Clegg emailed Dr. Murthy and stated that, "[a]s promised," he was sending a report of misinformation on Facebook. Waldo Ex. 4, at 1. Clegg also "highlighted a few policy updates we announced yesterday regarding repeat misinformation," including "expand[ing] penalties for individual Facebook accounts that share misinformation," "add[ing] more context about pages that repeatedly share false claims," and "redesign[ing] notifications when they share content that a fact-checker later rates." *Id.*

282. These "policy updates" about increasing censorship were announced on May 27, 2021, two days after Nick Clegg's meeting with Dr. Murthy and Andy Slavitt on May 25, 2021. Waldo Dep. 138:2-7.

283. Clegg plainly indicated that there had been prior conversations in which Slavitt and Dr. Murthy had demanded "defensive work" to remove misinformation: "We're . . . committed to addressing the defensive work around misinformation that you've called on us to address." Waldo Ex. 4, at 2. These prior conversations were not disclosed in OSG's responses to interrogatories, which noted the first meeting with Dr. Murthy was a mere introductory meeting with Clegg on May 25, 2021. Waldo Ex. 3, at 32.

284. On June 14, 2021, Nick Clegg emailed Dr. Murthy another ("the latest") "Facebook bi-weekly covid content report," which he indicated was "as promised/discussed," and offered

AMERICAN OVERSIGHT

"[a]s always" to "jump on a call at any point … to delve into any further details as needed." Waldo Ex. 5, at 1.

285. The "Facebook bi-weekly covid content report," *id.*, contained a report of "the most engaged posts … with respect to both accurate and inaccurate information." Waldo Dep. 140:8-10. Rob Flaherty of the White House also received these reports. *Id.* at 140:21-24.

286. Waldo admits that Facebook sending these biweekly reports to Dr. Murthy and Flaherty "had preexisted" and "predates the meeting" on May 25, 2021 – further indicating that OSG failed to disclose key meetings between Dr. Murthy and social media platforms in its interrogatory responses. *Id.* at 142:10-11.

287. On July 6, 2021, Waldo emailed contacts at Twitter to set up the "rollout call" before the health advisory and stated: "As you know, one of the issues Dr. Murthy has been thinking about is how to help stop the spread of health misinformation as we continue to tackle COVID19 and beyond. I know you and your teams are working hard and thinking deeply about this issue. We'd love to chat over zoom to connect and discuss what's on the horizon for our teams." Waldo Ex. 6, at 2; Waldo Dep. 145:15-146:22.

288. On July 6, 2021, Waldo sent an identical email to Facebook. Waldo Ex. 7, at 3-4. The purpose of these emails was to set up calls to announce the Surgeon General's forthcoming health advisory on misinformation. Waldo Dep. 149:11-16. Because of scheduling conflicts, the "rollout call" with Facebook was not scheduled until July 16, the day after the advisory was announced and the same day President Biden stated of Facebook that "they're killing people." *Id.* at 149:11-17.

AMERICAN OVERSIGHT

289. On July 6, 2021, Waldo also sent an email to YouTube with a similar statement to set up a rollout call with YouTube. Waldo Ex. 8, at 3. Waldo's emails make clear that OSG's message and purpose was to "stop the spread of misinformation" on social-media platforms. *Id.*

290. In these calls, "we had Kyla [Fullenwider] on the call and giving them a high-level update that we're going to have this advisory come out and that we want them to take a look at it." Waldo Dep. 153:23-154:1.

291. On July 10, 2021, Nick Clegg emailed Dr. Murthy, attaching another bi-weekly Covid content report, and stated, "I understand ... that my team is meeting with yours next week to delve deeper into our [C]ovid misinformation efforts." Waldo Ex. 9, at 1. Waldo understands that this refers to the July 16 rollout meeting. Waldo Dep. 155:12-18.

292. In the July 16, 2021 meeting with Facebook, Kyla Fullenwider went over the advisory, and then "asked additional questions … related to Facebook's efforts to combat health misinformation," including "some questions about, again, the research side.… [S]ome questions came up about CrowdTangle, if I recall correctly which was a … data port for … some ways to understand the Facebook, again, impact and research of the misinformation." *Id.* at 157:21-159:9.

D. The Surgeon General's Public Pressure Campaign.

293. On July 15, 2021, Dr. Murthy participated in a White House press conference with White House Press Secretary Jennifer Psaki to announce the Surgeon General's Health Advisory on Misinformation. Waldo Ex. 10. Psaki announced of Dr. Murthy that "[t]oday, he published an advisory on health misinformation as an urgent public health crisis." *Id.* at 1.

294. At the press conference, Dr. Murthy described misinformation as "one of the biggest obstacles that's preventing us from ending this pandemic," and stated: "Today, I issued a Surgeon General's Advisory on the dangers of health misinformation. Surgeon General

AMERICAN OVERSIGHT

Advisories are reserved for urgent public health threats…. [T]oday we live in a world where misinformation poses an imminent and insidious threat to our nation's health." *Id.* at 2. He stated that "misinformation takes away our freedom to make informed decisions about our health and the health of our loved ones." *Id.* at 2.

295. Dr. Murthy's definition of "misinformation" incorporates the notion that the definition changes over time: "Health misinformation is false, inaccurate, or misleading information about health, according to the best evidence at the time." *Id.* at 2. Waldo agrees that this definition "contemplate[s] that what constitutes misinformation might change over time," and that "something that we now think is misinformation may later turn out to be accurate information … [a]nd vice versa." Waldo Dep. 164:17-165:7.

296. Dr. Murthy stated that those who question mask mandates and decline vaccination are following misinformation: "During the COVID 19 pandemic, health misinformation has led people to resist wearing masks in high-risk settings. It's led them to turn down proven treatments and to choose not to get vaccinated. This has led to avoidable illnesses and death. Simply put, health [mis]information has cost us lives." Waldo Ex. 10, at 2.

297. Dr. Murthy placed specific blame on social-media platforms for the spread of misinformation: "Now, health misinformation didn't start with COVID-19. What's different now, though, is the speed and scale at which health misinformation is spreading. Modern 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.* at 2. Dr. Murthy described social-media companies as enabling the spread of "poison" in our "information environment." *Id.*

AMERICAN OVERSIGHT

298. He blamed the platforms' algorithms and features for the spread as well: "They've designed product features, such as 'Like' buttons, that reward us for sharing emotionally charged content, not accurate content. And their algorithms tend to give us more of what we click on, pulling us deeper and deeper into a well of misinformation." *Id.*

299. Echoing the language of the Virality Project, Dr. Murthy stated, "we need an all-of-society approach to fight misinformation." *Id.* at 2.

300. Dr. Murthy announced: "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." *Id.* at 3. Both the call for "transparency and accountability" and the request for increased monitoring and greater censorship of "super-spreaders" mirror the Virality Project report. *See infra.*

301. Both Dr. Murthy's public statements and his health advisory repeatedly use the word "accountable" and "accountability" to refer to the social-media platforms—again, echoing the Virality Project report. *See id.* at 2, 3, 5; Waldo Ex. 11, at 14, 16.

302. Waldo agrees that the word "accountable" carries with it the threat of consequences; he concedes that "accountability includes accepting the consequences for when you do something wrong … or inappropriate." Waldo Dep. 171:4-8. Thus, the OSG's repeated reference to holding social-media platforms "accountable" entails an implied threat of adverse consequences if the platforms do not censor more health misinformation. *See id.*

303. The Surgeon General's use of the word "accountable" also echoes the repeated use of the word "accountable" by elected federal officials, including President Biden and his political allies, to threaten adverse legal consequences against social-media platforms if they do not increase

AMERICAN OVERSIGHT

censorship of disfavored speakers, speech, and viewpoints. *See, e.g.,* Jones Decl., Ex. R (quoting White House Communications Director Kate Bedingfield: "We're reviewing [amending Section 230 of the Communications Decency Act], and certainly [the social media companies] should be held accountable. I think you've heard the president speak very aggressively about this.").

304. Waldo agrees that Murthy's comments entail that "there's an obligation … or certainly an imperative to do more. So … not only stop but reduce or take some sort of mitigating efforts so that the misinformation and disinformation is not leading to poor health results for people." Waldo Dep. 172:21-173:1.

305. Dr. Murthy's call for greater "transparency" is a call for platforms to engage in the kind of data-sharing that Dr. Murthy, Rob Flaherty, DJ Patil, and Kyla Fullenwider, among others, demanded in private meetings with Facebook. *Id.* at 174:15-23. Again, this echoes the key recommendation of the Virality Project.

306. Waldo agrees that Dr. Murthy's call for greater "accountability" includes a demand to "take more proactive steps to stop the spread of misinformation." *Id.* at 176:1-4.

307. Dr. Murthy also demanded that the platforms do "much, much more" and "take aggressive action" against misinformation: "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." Waldo Ex. 10, at 5.

308. Dr. Murthy also stated that platforms "have to do more to reduce the misinformation that's out there so that the true voices of experts can shine through." *Id.* at 6.

AMERICAN OVERSIGHT

309. After the advisory, OSG asked Facebook, Google/YouTube, and Twitter "as a follow-up what actions they might have taken in response to the advisory." Waldo Dep. 181:15-21.

310. At the same press conference on July 15, 2021, Jennifer 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." Waldo Ex. 10, at 10.

311. Psaki stated: "We've increased disinformation research and tracking within the Surgeon General's office. We're flagging problematic posts for Facebook that spread disinformation." *Id.*

312. "Regarding the Administration's "asks" to social-media platforms, Psaki stated: "There are also proposed changes that we have made to social media platforms, including Facebook, and those specifically are four key steps: One, that they measure and publicly share the impact of misinformation on their platform. Facebook should provide, publicly and transparently, data on the reach of COVID-19 — COVID vaccine misinformation. Not just engagement, but the reach of the misinformation and the audience that it's reaching." *Id.* at 11. Again, this echoes the key recommendation of the Virality Project report. It also echoes Dr. Murthy's call for "transparency" and the repeated private demands that Facebook give external researchers like Renee DiResta of the Virality Project access to its internal data. Waldo Dep. 191:17-21.

313. Psaki also stated: "Second, that we have recommended — proposed that they create a robust enforcement strategy that bridges their properties and provides transparency about the rules. So, about — I think this was a question asked before — there's about 12 people who are producing 65 percent of anti-vaccine misinformation on social media platforms All of them remain

AMERICAN OVERSIGHT

active on Facebook, despite some even being banned on other platforms, including Facebook — ones that Facebook owns." Waldo Ex. 10, at 11.

314. Psaki stated: "Third, it'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.*

315. Waldo agrees that the Surgeon General's advisory calls for platforms to "move faster" and take "more aggressive" action against supposed misinformation. Waldo Dep. 194:20-21.

316. And Psaki stated, publicly criticizing Facebook: "Finally, we have proposed they promote quality information sources in their feed algorithm. Facebook has repeatedly shown that they have the levers to promote quality information. We've seen them effectively do this in their algorithm over low-quality information and they've chosen not to use it in this case. And that's certainly an area that would have an impact." Waldo Ex. 10, at 11.

317. Psaki concluded: "So, these are certainly the proposals. We engage with them regularly and they certainly understand what our asks are." *Id.*

318. On the same day, July 15, 2021, Surgeon General Murthy issued his advisory, "Confronting Health Misinformation: The U.S. Surgeon General's Advisory on Building a Healthy Information Environment." Waldo Ex. 11, at 1 (the "Health Advisory"); Waldo Dep. 196:21-197:1.

319. The Health Advisory describes censorship of health misinformation as a "moral and civic imperative": "Health misinformation is a serious threat to public health. … Limiting the

AMERICAN OVERSIGHT

spread of health misinformation is a moral and civic imperative that will require a whole-of-society effort." Waldo Ex. 11, at 2. The "whole-of-society effort" echoes the language of the Virality Project.

320. The Health Advisory states: "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." *Id.* at 4.

321. The Health Advisory specifically blames social-media platforms for the spread of misinformation: "In recent years, the rapidly changing information environment has made it easier for misinformation to spread at unprecedented speed and scale, especially on social media and online retail sites, as well as via search engines." *Id.* at 5. According to the Advisory, "misinformation is often framed in a sensational and emotional manner that can connect viscerally, distort memory, align with cognitive biases, and heighten psychological responses such as anxiety. People can feel a sense of urgency to react to and share emotionally charged misinformation with others, enabling it to spread quickly and go 'viral.'" *Id.*

322. In addition, the Advisory blames "product features" of platforms: "[P]roduct features built into technology platforms have contributed to the spread of misinformation. For example, social media platforms incentivize people to share content to get likes, comments, and other positive signals of engagement. These features help connect and inform people but reward engagement rather than accuracy, allowing emotionally charged misinformation to spread more easily than emotionally neutral content." *Id.*

323. The Advisory also faults platforms' "algorithms": "algorithms that determine what users see online often prioritize content based on its popularity or similarity to previously seen

AMERICAN OVERSIGHT

content. As a result, a user exposed to misinformation once could see more and more of it over time, further reinforcing one's misunderstanding." *Id.*

324. The Health Advisory specifically called for platforms to enact "policy changes" to reduce the spread of misinformation: "**Implement product design and policy changes on technology platforms** to slow the spread of misinformation." *Id.* at 7 (bold in original).

325. The Health Advisory also explicitly threatened future "legal and regulatory measures" to combat misinformation: "**Convene federal, state, local, territorial, tribal, private, nonprofit, and research partners** to explore the impact of health misinformation, identify best practices to prevent and address it, issue recommendations, and find common ground on difficult questions, including *appropriate legal and regulatory measures that address health misinformation* …." *Id.* at 7 (bold in original, italics added).

326. Under the heading "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 the following: "[M]ake meaningful long-term investments to address misinformation, including product changes. Redesign recommendation algorithms to avoid amplifying misinformation, build in "frictions" … to reduce the sharing of misinformation, and make it easier for users to report misinformation. Give researchers access to useful data to properly analyze the spread and impact of misinformation. Strengthen the monitoring of misinformation. … [A]ddress misinformation in live streams, which are more difficult to moderate due to their temporary nature and use of audio and video. Prioritize early detection of misinformation 'super-spreaders' and repeat offenders. Impose clear consequences for accounts that repeatedly violate platform policies. Evaluate the effectiveness of internal policies and practices in addressing misinformation and be transparent with findings. Publish standardized

AMERICAN OVERSIGHT

measures of how often users are exposed to misinformation and through what channels, what kinds of misinformation are most prevalent, and what share of misinformation is addressed in a timely manner. Communicate why certain content is flagged, removed, downranked, or left alone." *Id.* at 12.

327. Waldo agrees that the Advisory calls for platforms to provide "a method for users to flag problematic posts so that they could be reviewed for content modulation, policy violations." Waldo Dep. 200:25-201:5.

328. Waldo agrees that "clear consequences" for repeat violators include "things like issuing strikes against them, suspensions … and sometimes permanent deplatforming." *Id.* at 205:6-13.

329. In its conclusion, the Health Advisory states: "We need institutions to recognize that this issue is their moral and civic responsibility, too, and that they are accountable." Waldo Ex. 11, at 16. Waldo agrees that the word "accountable" is repeated in the Surgeon General's remarks and the Advisory itself. Waldo Dep. 206:3-11.

F. The Surgeon General's Collaboration with the Virality Project.

330. Also on January 15, 2021, Surgeon General Murthy participated in a separate launch event hosted by Stanford Internet Observatory, which was then operating the Virality Project. Waldo Ex. 12, at 1; Waldo Dep. 206:12-207:9.

331. In his public comments with Stanford Internet Observatory, Dr. Murthy stated: "We're asking technology companies to operate with greater transparency and accountability so that misinformation doesn't continue to poison our sharing platforms, and we know the government can play an important role, too." Waldo Ex. 12, at 8 (Audio Tr. 6). This reiterates the key words "poison" and "accountability."

AMERICAN OVERSIGHT

332. Waldo describes government's "important role" as including "bringing stakeholders … together with urgency around a common vision for a healthy information environment … the government can help bring together stakeholders … what I would call the convening power of a bully pulpit." Waldo Dep. 209:15-22. This would include bringing social-media platforms around to the government's "common vision" for censorship. *Id.* at 209:24-210:8.

333. Dr. Murthy was asked, "do you believe a rapid response initiative like the Virality Project could be implemented at the federal level to combat health misinformation on a national scale from the top down?" and he answered that "having a federal organized effort to combat misinformation" is "a really, really interesting idea." Waldo Ex. 12, at 10 (Audio Tr. 8).

334. Dr. Murthy stated: "[T]echnology companies have a really important role. They must step up and play to slow the spread of misinformation on their sites wh[ether] that's by either sharing data with people and researchers about what interventions they're making and the impact that's having or whether it's by changing their algorithms and making other alterations to their platform to identify misinformation early and slow its spread and avoid sending more information of misinformation to people who are consuming it." *Id.* at 11 (Audio Tr. 9).

335. Waldo agrees that "the purpose of the data sharing is so that outside people come in and … assess how well they're doing with their own internal policies to combat the spread of misinformation." Waldo Dep. 211:6-11.

336. Dr. Murthy expressly stated that he had been coordinating with Renee DiResta and the Virality Project and planned to continue to do so: "Well, thank you, Renee, for those kind words. … I do want to say thank you to you personally because you have been a leader in this effort long before many people recognize[d] what was happening with COVID misinformation. You were there looking at the data, looking at the numbers, speaking out, raising the flags, saying

AMERICAN OVERSIGHT

there's something here we've got to address and do so urgently. I have personally learned a lot from your work and from our conversations together, and so I just want to say thank you to you for everything you've done for being such a great partner for moderating our event today, and just for being a partner in the future, because I know we have lots and lots more that we've got to do together." Waldo Ex. 12, at 12 (Audio Tr. 10).

337. Dr. Murthy also stated that his team had been "partnered with" the Stanford Internet Observatory over "many months": "myself, my team, we're committed to working with you, Renee, with others … who we've been … partnered with over the last many months…." *Id.* at 13 (Audio Tr. 11).

G. The Surgeon General's "Angry" and "Tense" Meetings With Platforms.

338. On July 16, 2021, the New York Times reported that President Biden publicly stated about Facebook, "They're killing people" by allowing misinformation to spread on its platforms. Waldo Ex. 14, at 1.

339. The article 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.*

340. The same article reported that Jennifer Psaki stated, "We raised for them in our direct channels, of which every administration has always had with every social media platform, that we're seeing this trend." *Id.* at 2.

341. The article reported that there had been a series of "talks" between Surgeon General Murthy and Facebook "since January" of 2021—none of which were disclosed in OSG's

AMERICAN OVERSIGHT

interrogatory responses: "Since January, senior White House officials, including the surgeon general, Dr. Vivek Murthy, have been in talks with the social media company to stop the spread of false stories about vaccination side effects and other harms." *Id.* at 2. In these "talks," federal officials demanded Facebook's internal data on misinformation on its platforms: "Despite repeated requests by the White House, Facebook has not shared even basic data on how much vaccine misinformation exists and if the company's efforts to stop its spread are working, according to the person familiar with the talks." *Id.* at 2.

342. "When administration officials presented data from CrowdTangle, a content tracking tool owned by Facebook, that showed vaccine misinformation was soaring, company officials dismissed its accuracy." *Id.* at 2.

343. In one meeting, Dr. Murthy "angrily" demanded that Facebook censor misinformation instead of just promoting reliable information: "In another meeting with Dr. Murthy, … Dr. Murthy angrily said that while the company [Facebook] promoted its efforts to encourage vaccination, it did not do enough to defend against bad information." *Id.* at 2.

344. In another "tense" meeting in "late spring," Dr. Murthy repeated similar demands: "In one tense meeting in the late spring, according to the person familiar with the matter, a Facebook official responded defensively, 'How do you know if your efforts are working?'" *Id.* at 2.

345. Waldo agrees that this news report "does not accurately describe … that introductory call between Nick Clegg, Andy Slavitt, and Dr. Murthy on May 25th of 2021," which is the only meeting involving Dr. Murthy disclosed in OSG's interrogatory responses. Waldo Dep. 219:17-21; 222:14-23. In those responses, OSG did not disclose Dr. Murthy's "tense" and "angry" meetings with Facebook during the spring of 2021.

AMERICAN OVERSIGHT

H. The Surgeon General Leverages Public Pressure to Increase Censorship.

346. On July 21, 2021, five days after the July 16 meeting where "the Facebook folks … had sad faces," *id.* at 226:15-16, Facebook emailed Waldo and Kyla Fullenwider, stating: "We wanted to follow up with you on a few questions you asked in the meeting focused on CrowdTangle, data on the online interventions, and Facebook's borderline content policies," Waldo Ex. 16, at 1. This referred to the July 16 meeting with Waldo and Fullenwider. Waldo Dep. 227:3-8.

347. In the email, Facebook reported back to OSG on "interventions that the team mentioned, some of which specifically create frictions in how people consume information." Waldo Ex. 16, at 1. These include limiting forwarded WhatsApp messages, placing "warning labels on fact checked content," and creating "friction when someone goes to share these posts on Facebook." *Id.*

348. Facebook also reported to OSG a series of censorship policies and actions, including the following: "We remove COVID-19 content that contributes to the risk of imminent physical harms, including numerous false claims about the COVID-19 vaccine. We permanently ban pages, groups, and accounts that repeatedly break our rules on COVID-19 misinformation. We also reduce the reach of posts, pages, groups, and accounts that share other false claims that do not violate our policies but may present misleading or sensationalized information about COVID-19 and vaccines." *Id.* at 1. Evidently, OSG's inquiry at the July 16 meeting about "borderline content" related to the censorship of such content. *See id.* Waldo agrees that Fullenwider asked Facebook to report back about censorship at the July 16 meeting: "The response indicates that it's about COVID policies including removal, banning and reducing the reach." Waldo Dep. 232:9-11, 233:12-234:1.

AMERICAN OVERSIGHT

349. On July 16, 2021, Nick Clegg emailed Dr. Murthy and stated, "Dear Vivek, Reaching out after what has transpired over the past few days following the publication of the misinformation advisory and culminating today in the President's remarks about us." Waldo Ex. 17, at 1-2. He then stated, "I know our teams met today to better understand the scope of *what the White House expects of us on misinformation* going forward." *Id.* at 2 (emphasis added). Facebook understood the purpose of the meetings was to understand the White House's expectations on misinformation. *See id.*

350. Clegg indicated that there had been a history of prior discussions with Dr. Murthy and the White House in which federal officials demanded greater censorship—both more stringent policies and greater enforcement—which were not disclosed in OSG's interrogatory responses: "Certainly we understand (and have understood for some time) that there is disagreement on some of the policies governing our approach and how they are being enforced." *Id.* at 2. Clegg asked for a meeting with Dr. Murthy, who did not immediately respond. *Id.* at 1-2.

351. On July 18, 2021, having received no response to his email requesting a meeting, Clegg texted Dr. Murthy stating, "I imagine you and your team are feeling a little aggrieved – as is the FB 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." Waldo Ex. 18, at 1.

352. On July 19, Dr. Murthy responded by email and agreed to a meeting, which was scheduled for July 23, 2021. Waldo Ex. 17, at 1; Waldo Dep. 241:1-14.

353. At the July 23, 2021 meeting, "Dr. Murthy asked Mr. Clegg about … the research questions about understanding the reach of the data in terms the impact of the … health

AMERICAN OVERSIGHT

misinformation. And … DJ [Patil] had some questions about also on the data side and Nick [Clegg] offered to connect DJ with a data person from Facebook." Waldo Dep. 242:8-16.

354. Later on June 23, 2021, after the meeting between Dr. Murthy and Nick Clegg, Clegg sent a follow-up email to Dr. Murthy stating: "Dear Vivek, if I may, thanks again for taking the time to meet earlier today….. 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'…." Waldo Ex. 19, at 1.

355. Clegg's reference to "just this past week" refers to the one-week period between this July 23 email and rollout of the Advisory on July 15 and the President's comment "They're killing people" on July 16. *Id.*; Waldo Dep. 244:14-19.

356. It is evident that Dr. Murthy and federal officials pressured Facebook for specific censorship actions in the July 23 meeting, because the same day as the meeting, Clegg reported back to them a series of new censorship actions and policies. First, Clegg reported enforcement actions against the "Disinfo Dozen" whom Jennifer Psaki had publicly demanded censorship: "We removed 17 additional Pages, Groups, and Instagram accounts tied to the disinfo dozen (so a total of 39 Profiles, Pages, Groups, and IG accounts deleted thus far, resulting in every member of the disinfo dozen having had at least one such entity removed)." Waldo Ex. 19, at 1. Clegg reported that Facebook was secretly censoring accounts associated with the Disinfo Dozen even if they had not violated Facebook's policies: "We are also continuing to make 4 other Pages and Profiles, which have not yet met their removal thresholds, more difficult to find on our platform." *Id.*

357. Clegg also reported that Facebook had amended its censorship policies to make them more restrictive: "We also expanded the group of false claims that we remove, to keep up with recent trends of misinformation that we are seeing." *Id.*

AMERICAN OVERSIGHT

358. Clegg also committed to "do more" to censor misinformation in response to federal officials' demands: "We hear your call for us to do more and, as I said on the call, we're committed to working toward our shared goal of helping America get on top of this pandemic." *Id.* Dr. Murthy, evidently, demanded that Facebook "do more" against misinformation on it platforms in the July 23 phone call. *See id.*

359. Clegg further agreed to accede to federal officials' demands that Facebook make its internal data on misinformation available to federal officials and researchers like Renee DiResta of the Virality Project: "We will reach out directly to DJ to schedule a deeper dive on how to best measure Covid related content and how to proceed with respect to the question around data." *Id.* at 1-2.

360. Clegg also pledged to report back to Dr. Murthy repeatedly so that federal officials could monitor Facebook's "progress" on censoring misinformation: "We'd also like to begin a regular cadence of meetings with your team so that we can continue to update you on our progress. You have identified 4 specific recommendations for improvement and we want to make sure to keep you informed of our work on each." *Id.* at 2. Clegg also promised to continue sending federal officials regular updated reports on the spread of misinformation on Facebook's platforms. *Id.*

361. Clegg concluded by promising that Facebook would "strive" to meet federal officials' expectations on censorship: "we will strive to do all we can to meet our shared goals." *Id.*; *see also* Waldo Dep. 245:6-247:4.

362. Waldo agrees that Clegg's statement "We hear your call for us to do more" in the July 23 email is an accurate understanding of the Surgeon General's message from the July 15 press conference, the Health Advisory, and the July 15 rollout at Stanford Internet Observatory: "Yes. I think, as we've established, the advisory and … the remarks, and the event with the Stanford

AMERICAN OVERSIGHT

Internet Observatory, Dr. Murthy is calling on … social media companies to do more to address the problem of health mis- and disinformation." Waldo Dep. 251:6-12.

363. After the July 23 email, Waldo connected Brian Rice of Facebook with DJ Patil to discuss data-sharing to monitor social-media misinformation between Facebook and federal officials. *Id.* at 252:9-19.

364. Additionally, on the July 23 call with Nick Clegg, the OSG specifically asked Facebook to report back on any additional steps they were taking in response to the Health Advisory to increase censorship of misinformation on their platforms. Waldo Ex. 21, at 1. On August 6, 2021, Waldo emailed Brian Rice and Nick Clegg of Facebook and stated, "I know on the call with Dr. Murthy he'd mentioned seeing if you were able to send an update of any new/additional steps you are taking with respect to health misinformation in light of the advisory." *Id.* Waldo noted that "we are asking all platforms for this type of update." *Id.* Waldo asked for a report from Facebook within two weeks: "Would you be able to send something over within two weeks?" *Id.*

365. In the same email, Waldo connected Facebook with DJ Patil of the White House "on next steps for connecting on data." *Id.*

366. Facebook responded that it was planning "additional steps" to increase censorship of misinformation, and promised to report back to the Surgeon General in 2 weeks: "Our teams have been working on additional steps—we will have something back to you within two weeks outlining our approach." *Id.* Facebook also followed up with Patil to schedule the meeting about using Facebook's internal data to monitor speech on its platforms. *Id.*

367. Waldo admits that, during the July 23 call, "we asked for an update," and that it was probably Dr. Murthy who asked for it. Waldo Dep. 256:20-23.

AMERICAN OVERSIGHT

368. Waldo does not dispute that he asked "all platforms" to provide a similar "update" on new or additional steps to censor misinformation in light of the Advisory, and that "all platforms" means "Facebook, Twitter, Instagram, and YouTube, and Google." *Id.* at 257:10-258:9.

369. On July 19, 2021, a few days after the President's "They're killing people" comments, Rob Flaherty of the White House emailed Dr. Murthy to put him in touch with an operative for the Democratic National Committee who works on misinformation and disinformation issues. Waldo Ex. 22, at 3. Flaherty wrote: "Vivek – wanted to link you with Jiore Craig, who's been a critical leader of the DNC's misinfo work for a long time, but also has been helping us think through mis/dis on the COVID side. I thought it would be great for you both to connect as OSG charts out next steps." *Id.* Eric Waldo followed up to schedule a Zoom meeting on July 22 between Ms. Craig of the DNC and key members of the OSG's staff. *Id.* at 1.

370. On August 18, 2021, Facebook again reported back to OSG about additional censorship actions against misinformation "superspreaders." Waldo Ex. 24, at 1. Facebook stated, "Eric and DJ – flagging this post for you and for Surgeon General Murthy. This details how we are approaching content from the disinfo dozen." *Id.* Facebook sent the same update to Rob Flaherty of the White House on the same day. *Id.* at 2.

371. The post was entitled, "How We're Taking Action Against Vaccine Misinformation Superspreaders." *Id.* at 1. The post detailed a long list of censorship actions taken against the "Disinfo Dozen," including removing over three dozen pages, groups and accounts linked with them; imposing additional penalties on another two dozen pages, groups, and accounts linked with them; applying penalties to some of their website domains so that third parties posting their content will be deamplified; and removing the remaining violating content. *Id.* at 1.

AMERICAN OVERSIGHT

372. As Waldo acknowledges, this was the "second report that Facebook has sent [OSG] after that July 23rd meeting where they're reporting back about actions taken against the Disinfo Dozen." Waldo Dep. 268:12-16.

373. On August 20, 2021—two weeks after the August 6 email in which Waldo had requested a report within two weeks on Facebook's new or additional steps to remove misinformation in light of the Health Advisory—Nick Clegg sent a long, detailed email to Dr. Murthy, Waldo, and DJ Patil, detailing Facebook's additional censorship actions taken as a result of the Advisory. Waldo Ex. 25, at 1-3.

374. In the August 20 email, Clegg noted that Dr. Murthy had "asked for an update on existing and new steps that Facebook is taking." *Id.* at 1. Clegg noted that Facebook was taking new steps in response to the pressure from the White House and Surgeon General since July 15 and 16: "In this update, we describe … further policy work to enable stronger action against persistent distributors of vaccine misinformation." *Id.*

375. In a lengthy section headed "Limiting Potentially Harmful Misinformation," Clegg provided five bullet points and four sub-bullet points detailing expanded efforts of censorship by Facebook taken in response to the Advisory. *Id.* at 2. These included, among others, " expanding our COVID policies to further reduce the spread of potentially harmful content"; "increasing the strength of our demotions for COVID and vaccine-related content that third-party fact-checkers rate as 'Partly False' or 'Missing Context'"; "making it easier to have Pages/Groups/Accounts demoted for sharing COVID and vaccine-related misinformation"; and "strengthening our existing demotion penalties for websites that are repeatedly fact-checked for COVID or vaccine misinformation content shared on our platform." *Id.* at 2. Clegg also included a report of additional actions taken against the Disinfo Dozen. *Id.* Clegg also reporteded that Facebook

AMERICAN OVERSIGHT

"continue[s] to experiment with signals that we can use … to demote content that we predict will contain low quality information." *Id.*

376. In another long section entitled "Increasing Transparency," Clegg detailed a list of actions taken by Facebook to share data about the reach of misinformation on its platforms, per federal demands. *Id.* at 2-3; *see also* Waldo Dep. 269:20-277:8 (reviewing the content of the August 20 email in detail).

377. Waldo agrees that this email is "a report back to [OSG's] request for report in two weeks related to actions they took in respect to the advisory." Waldo Dep. 270:19-23.

378. Waldo responded to Clegg by stating that "we look forward to continuing to move forward together with urgency and solutions during these extraordinary times." Waldo Ex. 25, at 1. The phrase "urgency and solutions" was intended to push Facebook to increase its anti-misinformation efforts: "I was hoping that Facebook would continue to move. Urgency means, you know, that they would take this seriously, and solutions means that they would also come with real solutions to the problems and not just pretend to solve problems." Waldo Dep. 277:23-278:3.

379. Three days later, on August 23, 2021, Rob Flaherty of the White House emailed Facebook, asking for a report on how they intended "to promote" the FDA's approval of the Pfizer vaccine and noting that the White House "[would] appreciate a push" of the vaccine information using specific "suggested language from [the White House]." Waldo Ex. 27, at 2. Facebook responded the same day with an additional report on new steps to remove vaccine misinformation: "We're … updating our misinformation policies to remove the specific claims that 'there are no FDA-approved vaccines' and 'the Pfizer vaccine is not FDA-approved.' We'll also continue to look for claims that are no longer accurate given the approval today." *Id.* at 1. Facebook forwarded

AMERICAN OVERSIGHT

this report on increasing censorship to Waldo at OSG as well. *Id.*; *see also* Waldo Dep. 280:1-281:24.

380. On September 18, 2021, Facebook sent Eric Waldo and Rob Flaherty another bi-weekly report, and also noted that "I'm sure you also saw yesterday's story in the WSJ about the spread of COVID-19 misinformation in comments on Facebook," which Facebook disagreed with and offered to discuss. Waldo Ex. 30, at 1. Flaherty responded, "Happy to talk about it, Brian. Would be interested to see, as we have long asked for, how big the problem is, what solutions you're implementing, and how effective they've been." *Id.* Facebook promised, "we will circle back over the next few days to brief." *Id.*

381. On September 29, 2021, Google emailed Eric Waldo to "share an update we recently made to YouTube's policies pertaining to vaccine-related misinformation." Google reported: "We just announced that we will be introducing a new policy that prohibits content that includes harmful misinformation about the safety, efficacy, or ingredients for currently administered vaccines…" Waldo Ex. 31, at 1.

382. On October 19, 2021, Rob Flaherty emailed Facebook, copying several White House officials and Eric Waldo, and asked Facebook to "connect on what the admin's plans are for the 5-11 vaccine rollout." Waldo Ex. 32, at 1. The "5-11 vaccine rollout" refers to the approval of vaccines for children ages 5 to 11 years old. Waldo Dep. 298:20-23.

383. Flaherty requested that Facebook report on its censorship plans for claims on social media about the authorization of vaccines for children ages 5 to 11: "We'd like to talk about what we're seeing as the biggest headwinds we're going to face, and discuss what you all are planning as we move into this next phase. We remain concerned about mis- and disinformation on feed and

AMERICAN OVERSIGHT

groups, and the wide reach of hesitancy-inducing content across your platform." Waldo Ex. 32, at 1.

384. Facebook responded, agreeing to the meeting: "we'd welcome the opportunity. Adding Felicia on our end to help coordinate." Waldo Ex. 32, at 1.

385. Waldo states that he does not recall whether this meeting occurred or if he participated, but he agrees that the meeting probably occurred: "Probably. If they added schedulers, usually those meetings happen." Waldo Dep. 300:14-23.

I. The Surgeon General and White House Hammer Facebook.

386. On October 28, 2021, the Washington Post ran a story based on information from Frances Haugen reporting that "Facebook researchers had deep knowledge of how coronavirus and vaccine misinformation moved through the company's apps, according to documents disclosed by Facebook whistleblower Frances Haugen." Waldo Ex. 33, at 1.

387. In response to the article, on October 29, Surgeon General Murthy issued a series of Tweets from his official Twitter account demanding that Facebook increase censorship and give outside researchers access to its data. Waldo Ex. 33, at 1. In the Tweet thread, Dr. Murthy stated: "I was deeply disappointed to read this story. Health misinformation has harmed people's health and cost lives. In the Surgeon General's Advisory on Health Misinformation, I stated clearly that tech platforms have a responsibility to improve our health information ecosystem. What continues to be lacking from Facebook and other tech companies is transparency and accountability. Only the companies understand the full extent of misinformation's spread and impact – yet they have not yet shared this data with independent researchers and the public. Without this critical data, it is much harder to design the right interventions or hold the platforms accountable. … We must demand Facebook and the rest of the social media ecosystem take responsibility for stopping health

AMERICAN OVERSIGHT

misinformation 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." *Id.* Dr. Murthy repeated the mantras "transparency" and "accountability," threatening that the federal government would "hold the platforms accountable" for misinformation. *Id.*

388. This Tweet thread reflects Dr. Murthy's own words, as he "made the final and substantial edits" to the Tweets. Waldo Dep. 303:25-304:17.

389. Waldo agrees that the Twitter thread demands "transparency and accountability around health misinformation, especially vis-à-vis the social media organizations," and "demands that Facebook and the other platforms do more" to "stop[] health misinformation." *Id.* at 305:6-22. "Lots of work went into" crafting that message, according to Waldo. *Id.* at 306:7-8.

390. On October 28, 2021, the same day as the Washington Post article, Rob Flaherty emailed Brian Rice of Facebook a hyperlink to the article. The only text in the email was the subject line, which stated: "not even sure what to say at this point." Waldo Ex. 35, at 1-2.

391. Facebook responded to Flaherty by stating, "nothing in the story is inconsistent with what we briefed on," and providing its account of the facts underlying the story. *Id.* at 1. Facebook then forwarded this response to Waldo and the OSG, noting that "I saw the Surgeon General's reaction on Twitter," and asking for "a longer conversation next week" about the issue. *Id.*

392. Waldo describes both the Surgeon General's public Tweet threat, and Rob Flaherty's private email to Facebook, as different ways of "hitting up Facebook" about the Frances Haugen article: "this was one of the most popular articles in all of news that week, so I'm not surprised that people who care a lot about this issue were certainly hitting up Facebook about it." Waldo Dep. 307:13-22.

AMERICAN OVERSIGHT

393. On October 28, 2021, Nick Clegg also emailed Dr. Murthy and asked for a meeting to discuss the "intense debate that's been prompted by the documents disclosed by a former employee." Waldo Ex. 36, at 2. Waldo responded on behalf of the OSG, stating that "we have seen the recent public reports around Facebook and misinformation. We are certainly concerned about what we are seeing, given our emphasis on health misinformation in our advisory and the ongoing conversations our teams have been having. As has been the case, you'll continue to see us raising the issue of health misinformation in public and in private as a critical public health issue." *Id.* at 1.

394. Regarding his reference to "in private," Waldo admits that this refers to "closed-door meetings" with platforms like Facebook: "in the government, you're not always just doing a panel that's open press, you're meeting with stakeholders … in closed-door meetings…." Waldo Dep. 312:13-16. The Surgeon General's Office was continuously pushing for action against health misinformation "in public and private" meetings with stakeholders: "talking about health mis- and disinformation was in our talking points of when we talked to stakeholders in public and private." *Id.* at 313:8-11.

395. The next day, October 29, 2021, Facebook sent a long email to Rob Flaherty, Eric Waldo, and several other White House officials referring back to an October 25 meeting about vaccines for children ages 5-11. Waldo Ex. 37, at 3-4; Waldo Dep. 315:8-316:15. The email reported to the White House and OSG a "detailed description of [Facebook's] plans" for the approval of vaccines for children. *Id.* at 4. The plans included immediately updating policies to censor claims relating to vaccination of children: "As discussed, soon as the EUA is issued, we will also be able to apply claims from our current misinfo policies for COVID-19 vaccines to include claims about child vaccinations." *Id.*

AMERICAN OVERSIGHT

396. Facebook also noted that it was relying directly on the CDC to decide what to censor: "We were able to make this change based on the conversation we had last week with the CDC…. There are several claims we will be able to remove as soon as the CDC debunks them." *Id.*

397. Facebook then asked federal officials to provide a federal health authority to dictate what content would be censored on Facebook's platforms: "We expect the approval of COVID vaccines for kids aged 5-11 will be another significant peak of new misinformation claims. Our policy allows us to take action against this content once those claims have been debunked and confirmed harmful by a public health authority. We're committing to addressing these quickly; to do so effectively, we will need a channel to a health expert with whom we can discuss these claims in real time. Is this something we could partner on, and if so, would your team be able to connect us with a point person?" *Id.*

398. On November 4, 2021, Facebook followed up again to OSG and the White House with additional reports of censoring misinformation: "Last Friday, we updated our misinformation policies for COVID-19 vaccines to make clear they apply to claim about children," identifying a list of specific claims. *Id.* at 1.

399. Facebook made clear that the CDC was serving as the "health expert" who was dictating what could be said on Facebook's platforms "in real time": "We're grateful to our partners at the CDC for helping get these debunked in advance of the announcement, and we look forward to staying connected on emerging COVID misinformation trends." *Id.* at 1, 3.

J. The Surgeon General Threatens Regulation to Increase Censorship.

400. On December 21, 2021, Dr. Murthy gave a podcast on the Omicron variant in which he again publicly threatened to hold the social-media platforms "accountable" for not censoring

AMERICAN OVERSIGHT

misinformation: "number one, we have to track down where this misinformation is coming from and understand how to hold platforms accountable, new technology platforms that are driving so much of the misinformation spread…. [B]y allowing this misinformation to proliferate on their sites, they're subjecting people in the United States and around the world to extraordinary harm, and they're doing so with little accountability at this moment and really with very little transparency. That can't be allowed to continue because it's putting everyone's health at risk." Waldo Ex. 38, at 4 (Audio Tr. 7).

401. Dr. Murthy demanded "aggressive action" from the platforms to censor speech: "I do think that part of what they have to do, the platforms is take aggressive action against people who are intentionally spreading misinformation." *Id.*

402. Waldo agrees that this message is "consistent with his previous statements as well as the content within the advisory itself." Waldo Dep. 321:22-24.

403. As Waldo concedes, Dr. Murthy's threat to hold platforms "accountable" and his demand for "aggressive action" to censor misinformation "is consistent with the messaging we've reviewed all day today of the advisory, the rollout, the public statements" by OSG. *Id.* at 322:22-24.

404. On January 3, 2022, Dr. Murthy participated in Alyssa Milano's podcast. Waldo Ex. 39, at 1. In the podcast, Dr. Murthy stated that the "sophistication with which this misinformation is spreading is truly unprecedented, and a lot of has been enabled by technology platforms in the social media which enable the spread, and … the platforms need to do a lot more is step up, to be accountable for making their spaces safer." *Id.* at 3 (Audio Tr. 2). He also stated, "finally, I just want to come back to the technology companies for a moment here, because unless those platforms step up and make their spaces safer and reduce the amount of misinformation on

AMERICAN OVERSIGHT

their site, it's going to be pretty tough to get a full handle on this spread of misinformation." *Id.* at 5 (Audio Tr. 4).

405. Immediately after these comments, the podcast broadcast public comments by President Biden, stating: "Joe Biden: The unvaccinated are responsible for their own choices, but those choices had been shulled [*sic*] by dangerous misinformation on cable TV and social media. You know, these companies … are making money by ped[dling] lies and allowing misinformation that can kill their own customers and their own supporters. It's wrong. It's immoral. I call on the purveyors of these lies and misinformation to stop it. Stop it now." *Id.*

406. Waldo agrees that this podcast is "aligned with … the advisory and the other public statements we've seen so far." Waldo Dep. 327:8-10.

407. Dr. Murthy also called for the platforms to "go after people who are superspreaders of misinformation on these sites," which Waldo agrees is "entirely consistent … with the messages that Dr. Murthy was sharing about health mis- and disinformation." *Id.* at 329:23-330:18.

408. On February 14, 2021, Dr. Murthy participated in a panel discussion hosted by the Rockefeller Foundation. Waldo Ex. 41. Dr. Murthy stated, "what feels different in this moment compared to ten years ago or [twenty] years ago is this speed, scale, and sophistication with which this misinformation is spreading and much of it has been enabled, in fact, by technology platforms, and we talk to people about where they're encountering misinformation. It's off and on social media channels and other tech platforms. … We need certainly technology companies to step up and do more, to help reduce this spread of misinformation, and to be transparent with the public about how much misinformation is being transacted on their sites and whether their methods of addressing it are working or not. We do not have enough transparency on that front and that is hindering us in our response of misinformation." *Id.* a 6-7 (Audio Tr. 9-10).

AMERICAN OVERSIGHT

409. Waldo agrees that this is "a consistent message with what we've seen in previous public statements, interviews, as well as the advisory itself." Waldo Dep. 331:23-25.

410. In the same panel, Dr. Murthy stated that there is a role for government to set "safety standards" when it comes to misinformation, which directly suggests government regulation and foreshadowed the OSG's forthcoming Request for Information (RFI): "And, of course, there's a role for government here as well to set safety standards, to push for transparency and accountability, particularly from platforms." Waldo Ex. 41, at 8 (Audio Tr. 11). Dr. Murthy then immediately foreshadowed the OSG's forthcoming Request for Information (RFI) as a step toward government "setting safety standards": "There are steps we are working now that we will be -- you know, have more to say about it in the … coming weeks and months ahead, to try to, in fact, gather even more information about the impact of health misinformation on health professionals of the public and also in the role that technology companies may be playing on that on that front." *Id.* Less than a month later, the OSG issued a formal RFI for information about misinformation on social media platforms.

411. On March 3, 2021, the OSG issued a formal RFI in the Federal Register, seeking information from social-media platforms and others about the spread of misinformation on social media. Waldo Ex. 42 (87 Fed. Reg. 12712). The RFI is entitled, "Impact of Health Misinformation in the Digital Information Environment in the United States Throughout the COVID–19 Pandemic Request for Information (RFI)." *Id.* at 1.

412. "Kyla [Fullenwider] was the primary driver on the RFI from a content expert perspective." Waldo Dep. 338:22-23. Though she was employed at U.S. Digital Response, "she was doing work on behalf of the Surgeon General." *Id.* at 340:8-9. Kyla Fullenwider is also

AMERICAN OVERSIGHT

responsible for receiving and reviewing the responses to the RFI. *Id.* at 362:6-10. "Kyla was the subject matter expert who was guiding this RFI process." *Id.* at 362:15-17.

413. The RFI defines "technology platforms" very broadly, indicating that the Surgeon General is expanding its attempts to control the spread of so-called "misinformation": "Technology platforms include the following: General search engines, content sharing platforms, social media platforms, e-commerce platforms, crowd sourced platforms, and instant messaging systems." Waldo Ex. 42, at 2; *see also* Waldo Dep. 341:14-342:7.

414. Under the heading "Information About Technology Platforms," the RFI seeks a long series of detailed information about misinformation on such platforms, including "Information about how widespread COVID–19 misinformation is on individual technology platforms," Waldo Ex. 42, at 2; "any aggregate data and analysis on the prevalence of COVID–19 misinformation on individual platforms including exactly how many users saw or may have been exposed to instances of COVID–19 misinformation," *id.* at 2-3; and "[a]ny aggregate data and analysis on how many users were exposed, were potentially exposed, or otherwise engaged with COVID–19 misinformation," *id.* at 3.

415. The RFI also seeks detailed information about censorship policies and how they are enforced: "Information about COVID–19 misinformation policies on individual technology platforms," and "[a]ny aggregate data and analysis of technology platform COVID–19 misinformation policies including implementation of those policies and evaluations of their effectiveness." *Id.* at 3.

416. The RFI also seeks detailed information about disfavored *speakers* on social-media platforms, requesting "[i]nformation about sources of COVID–19 misinformation," including "[i]nformation about the major sources of COVID–19 misinformation associated with exposure."

AMERICAN OVERSIGHT

Id. at 3. The RFI makes clear that "source" refers to *speakers* on platforms: "By source we mean both specific, public actors that are providing misinformation, as well as components of specific platforms that are driving exposure to information." *Id.* at 3.

417. Especially in light of Dr. Murthy's prior public statements about the government "setting safety standards" for misinformation, Waldo Ex. 41, at 8 (Audio Tr. 11), the RFI carries a clear implied threat of future regulation against the social-media and other technology platforms.

418. Contemporaneous media coverage portrayed the RFI as a "demand" for information from platforms. *See, e.g.,* Waldo Ex. 44, at 1 (Brad Dress, *Surgeon General Demands Data on COVID-19 Misinformation from Major Tech Firms*, The Hill (Mar. 3, 2022, 11:24 am)).

419. Max Lesko, the Surgeon General's Chief of Staff, also sent the RFI to several major tech platforms with a formal letter requesting that they respond. Waldo Dep. 348:20-22. He sent nearly identical letters to Facebook, Google, LinkedIn, Twitter, YouTube, and Microsoft. Waldo Exs. 46, 47, 48, 49, 50, 51. Each letter was directed to the CEO of the platform over General Murthy's signature. *Id.*

420. Each letter stated, "The proliferation of health misinformation during the pandemic has been both extensive and dangerous. … It is clear that we must do everything we can to address this threat." *Id.* Each letter referred to the July 15, 2021 Health Advisory, noting that "a large proportion of health misinformation is spread through technology platforms," and "my Advisory includes a call for technology companies to join this broader effort to create a safer, healthier information environment." *Id.* Each letter advised the social-media platforms of the RFI, and formally "request[ed] that your company contribute to the RFI…. Specifically, I am requesting responses from companies about the extent and spread of COVID-19 misinformation on their

AMERICAN OVERSIGHT

technology platforms, policies to address COVID-19 misinformation and their effectiveness, [and] sources of COVID-19 misinformation…." *Id.*

421. On May 3, 2022, Facebook notified the White House and OSG that it had "filed a response to the Surgeon General's rfi on Covid misinformation and would be happy to discuss at the appropriate time." Waldo Ex. 54, at 2. To date, the OSG has never made this or any other the responses to its RFI public.

422. Shortly after the RFI was issued, on March 11, 2022, GQ magazine published an interview with Dr. Murthy. Waldo Ex. 52. In this interview, Dr. Murthy stated, "we all have a responsibility to do everything we can to reduce the spread of misinformation… Whether you have one million followers on social media, or you've got 10 followers, we all have platforms and people in our lives who trust us." *Id.* at 6. He called on platforms like Spotify (which was then being criticized for hosting Joe Rogan's podcast) to censor health misinformation: "If you're running a platform, whether it's a Spotify or another social media platform, you've got to think about, how do I create a healthy information environment here? How do I create rules and a culture that promotes accurate information?" *Id.* He emphasized that "a platform has the ability, the opportunity, and the responsibility to create rules and a culture that supports the dissemination of accurate information and that reduces the spread of misinformation." *Id.* at 7.

423. Echoing his prior comments about "setting safety standards" by government, Dr. Murthy compared censorship "rules" for misinformation to speed limits: "We have speed limits on the road because we know that sometimes if you drive too fast, that can have an impact on somebody else's health and wellbeing. If we're going to live together in a society, we've got to take steps and observe certain rules to help protect other people. That's true here as well. Platforms

AMERICAN OVERSIGHT

have an opportunity to help shape that environment in their own way. We all do. That's our responsibility at a time like this." *Id.*

K. The White House and Surgeon General Continue Oversight of Censorship.

424. On June 22, 2022, Facebook again emailed Waldo, Rob Flaherty, and other White House officials with an update on Facebook's increased censorship. Waldo Ex. 53, at 1. In the email, Facebook stated that it "[w]anted to ensure that you were aware of our policy updates following the early childhood vaccine approvals. As of today, all COVID-19 vaccine related misinformation and harm policies on Facebook and Instagram apply to people 6 months or older…." *Id.* Facebook indicated that it had again relied on the CDC to dictate what claims people can post on Facebook: "We expanded these policies in coordination with the CDC and ensured that we also included false claims that might be connected to children…." *Id.*

425. Throughout this period, at the federal officials' request, Facebook continued to send bi-weekly "Covid Insights Reports" reporting on COVID-19 related misinformation on its platforms to the White House and OSG. *See, e.g.,* Waldo Ex. 54, at 2-4. In the spring of 2022, Facebook repeatedly asked the federal officials if it could discontinue or reduce the frequency of these reports, which it had been sending for over a year. *Id.* at 2. Finally, on June 13, 2022, Facebook notified the White House and OSG that "we will plan to discontinue these unless we hear from you that this information continues to be valuable." *Id.* at 1. Rob Flaherty responded the same day, requesting that Facebook continue to send the reports and further asking Facebook to report on how it would handle misinformation for early-childhood (under age 5) vaccines: "It would be helpful to continue to get these as we start to ramp up under 5 vaccines. Obviously, that has a potential to be just as charged. Would love to get a sense of what you all are planning here."

AMERICAN OVERSIGHT

Id. Facebook continued to send the reports as requested, including two reports on July 17, 2022, and promised to continue sending them. *Id.*

IV. The CDC and the Census Bureau: BOLO and Authoritative Fact-Checking.

426. In addition to the public and private pressure campaigns from the White House and the Surgeon General's Office, the CDC and the Census Bureau have engaged in a long censorship campaign together, enabled by the White House's pressure on platforms to cooperate with the federal government. Working closely with Census, the CDC flags supposed "misinformation" for censorship on platforms (sometimes using the acronym "BOLO," "Be On the Lookout"), and exercises full authority to dictate what health claims will be censored on social media platforms.

A. The CDC's Regular Communication with Social Media Platforms.

427. Carol Crawford is the division director for the division of Digital Media within the CDC Office of the Associate Director for Communication. Crawford Depo. 11:7-9.

428. According to Crawford, her "division provides leadership for CDC's web presence. We provide leadership for CDC's social media presence." *Id.* 11:14-16. Crawford is "the director of that work. I determine strategy, objectives, oversee work." *Id.* 11:21-22.

429. Before April 2022, Crawford was "the branch chief of the Digital Media Branch within the Division of Public Affairs, and most of the roles that our division currently performs, web and social media, were in that branch." *Id.* 15:3-6.

430. Crawford is "the main person that was the CDC point of contact to talk to Facebook, Twitter and the platforms since our job was to lead digital media." *Id.* 249:1-4.

431. Crawford has regular contact with social-media platforms, especially about COVID-19 issues: "We started regular contact with the [platforms] at the beginning of the COVID

AMERICAN OVERSIGHT

outbreak to exchange information about COVID, and most of the contact since then has been around COVID or other high-priority things, but mostly COVID." *Id.* 16:13-17.

432. Crawford had only "very occasional" contacts with the platforms before COVID-19, *id.* 17:8-9; but then she and the CDC "started talking to some of them in February and March of 2020," at the beginning of the pandemic. *Id.* 18:5-6.

433. At this time, CDC leaders were asking Crawford's group if they were in contact with the platforms: "there were a lot of people asking staff, or other staff, are we -- were we in contact with the groups, and do we have any arrangements." *Id.* 18:19-23.

434. Crawford communicated with platforms by email, phone, and in meetings and calls. *Id.* 20:1-19. She "had points of contact at several of them, and we would have meetings when we needed to talk. So we arranged calls." *Id.* 20:17-19.

B. CDC's and Census's Pressure and Collusion With Facebook/Meta.

435. On February 6, 2020, Facebook emailed State Department officials, noting that "Facebook has taken proactive as well as reactive steps to control information and misinformation related to Corona virus which includes … removal of misinformation." Crawford Ex. 2, at 4. The email was forwarded to Crawford, who reforwarded to her contacts at Facebook. *Id.* at 3. Facebook proposed to Crawford that "Facebook team would create a Coronavirus Page serving up content that exists on other organizations' FB pages including the CDC," and would direct users to "curated content from trusted sources." *Id.* at 3.

436. On February 7, 2020, Crawford agreed to the proposals, and she also proposed that "There could be times we might want to address widespread myths like mask use or new issues." *Id.* at 2. She discussed with Facebook the same day. *Id.* at 1.

AMERICAN OVERSIGHT

437. On March 3, 2020, Facebook emailed Crawford and noted that Facebook intended to "support governments … with their response efforts on COVID-19," including the "goal" to "remove misinformation." Crawford Ex. 3, at 1.

438. Crawford "talked pretty regularly" with Facebook "around this time," *i.e.*, March 2020. 37:7-9.

439. Crawford recalls having discussions of misinformation with Facebook "in the fall of 2020." Crawford Dep. 38:7-8. These included discussions of how to combat "growing" misinformation about COVID-19: "I can recall us generally saying things to the effect of … misinformation is really growing, or … what do you think we could be doing to address it? That kind of conversation." *Id.* 38:11-15.

440. On January 25, 2021, Facebook emailed Crawford the first of an ongoing, biweekly series of CrowdTangle reports, which report on "top engaged COVID and vaccine-related content overall across Pages and Groups." Crawford Ex. 6, at 2. The email emphasized in bold the anti-vaccine content listed in the report, including "Reports of healthcare workers refusing the vaccine," "Posts about alleged vaccine-related deaths," and "News and reports of severe vaccine side effects." *Id.* Facebook indicated that it was sending this report in response to a prior conversation with Crawford in which such data was requested: "I am following up on our conversation several weeks ago about providing more detailed reporting from our CrowdTangle team." *Id.*

441. Crawford responded that the report "looks wonderful and much appreciated." *Id.* at 1. She said that she "will be extending our distribution list" for the report. *Id.* at 1. She also noted, "One group we'll be adding" to the distribution list for the CrowdTangle reports "is the Census group who hopefully will soon start their project with us." *Id.* And she stated, "the wide group of those looking at misinfo will want this." *Id.*

AMERICAN OVERSIGHT

442. CrowdTangle is "a social media listening tool for Meta properties … [l]ike Instagram and Facebook." Crawford Dep. 50:3-6. "[S]ocial media listening reports show themes … of discussion on social media channels." *Id.* 52:10-12. The CrowdTangle report is "a search of content on social media, and a summary of the higher volume conversations." *Id.* 53:8-10. It is "a report of the most talked about topics on social media during this time period." *Id.* 54:13-15.

443. The CrowdTangle reports that Facebook regularly emailed to CDC were only one of two forms of access to CrowdTangle. Since "March or April 2020," Facebook had also allowed CDC to "directly log into CrowdTangle and run our own reports or searches." *Id.* 77:9-13.

444. According to Crawford, the CrowdTangle reports "would help us understand what was being discussed on social media about COVID, which helps us look for gaps in information, confusion about facts, things that we might need to adjust our communication materials for." *Id.* 57:24-58:3.

445. Crawford confirms that the CDC had privileged access to CrowdTangle from early 2020, and government officials used the non-public "social media listening tool" to monitor and track private speech about COVID-19 on social media: "we had access to go in directly to CrowdTangle and run in reports … from early 2020. … And I mentioned that our research team … searched in it and looked in it to create their reports, and I believe other teams did too." *Id.* 147:12-18.

446. The CDC also used other "social media and listening tools" to monitor Americans' speech on social media: "we did searches in CrowdTangle, the same way we do searches in other social media and listening tools that we have to create, to understand what's being discussed in the environment, to update our communication material." *Id.* 148:11-15.

AMERICAN OVERSIGHT

447. The CDC's "listening tools" included "Meltwater reports," where "Meltwater is sort of like CrowdTangle but for all the platforms." *Id.* 154:13-16. But CrowdTangle is superior to Meltwater for monitoring Facebook and Instagram because it provides privileged access to some online speech: "CrowdTangle can see more on the Meta properties. So it's nicer if you're just looking at Meta properties. Meltwater gives you social media at large." *Id.* 154:24-155:2.

448. Related to the bolded categories of supposed misinformation in Facebook's CrowdTangle report, Crawford claims that she does not have specific recollection about the issues, but she admits that "I do recall generally discussing misinformation with Facebook around this time." *Id.* 58:11-13.

449. Crawford added Census Bureau officials to the distribution list for the CrowdTangle reports because "[t]hey were going to start working with the CDC regarding misinformation." *Id.* 58:19-20; *see also id.* 61:11-12 ("At some point I recall adding Census to the distr[ibution]").

450. From then on, Facebook regularly sent Crawford biweekly "CrowdTangle content insights report[s]." Crawford Ex. 7, at 1-4. With each report, Facebook would highlight in bold the high-engagement misinformation-related issues for the CDC from the two-week period. *Id.* In each email, Facebook would introduce these misinformation-related posts by noting something like, "However, posts falling into the following themes also garnered high engagement." *Id.*

451. The CrowdTangle reports survey content that is not publicly available, such as "personal Group posts." *Id.* at 2.

452. Crawford is "sure that general discussions" with Facebook addressed "that there was a lot of information on vaccines, which is one of the bolded words [in the CrowdTangle Reports], for example. I am sure that did occur." Crawford Dep. 64:19-22.

AMERICAN OVERSIGHT

453. On January 27, 2021, Facebook sent Crawford a recurring invite to a "Facebook weekly sync with CDC (CDC to invite other agencies as needed)." Crawford Ex. 36, at 1. A large number of Facebook and CDC officials were included on the invite, including Liz Lagone, Facebook's content-moderation officer who communicated with the CDC. *See Id.* The agenda for the recurring meeting included "Misinfo collab status." *Id.* It also included "CDC needs/questions." *Id.*

454. Crawford confirms that CDC frequently had weekly meetings with Facebook: "There were definitely times that we were talking weekly." Crawford Dep. 226:20-21; *see also, e.g.,* Crawford Ex. 39, at 1 (recurring calendar invite for a meeting with the same agenda and participants on May 6, 2021).

455. On March 10, 2021, Crawford sent Facebook an email seeking information about "Themes that have been removed for misinfo." Crawford Ex. 44, at 3. She stated, "We mentioned this on the call last week and you said you'd be sending something as other had asked – is that available yet by chance?" *Id.* She clarified: "You mentioned that WH and HHS had asked so you'd get it to us," and responded "Yes" to Facebook's question, "Are you looking for types of COVID-19 misinfo we remove?" *Id.*

456. Facebook noted, that "[w]e are setting up a meeting with WH/HHS to discuss more likely later this week or early next. Perhaps a CDC rep could participate…." Crawford Ex. 44, at 2. Crawford noted, "They want to see what you guys proactively have removed that might not be in those [CrowdTangle] reports…. My guess is a short meeting with Lis Wilhelm['s] vaccine confidence team is what is needed if FB is willing to do it." Crawford Ex. 44, at 2.

457. In this exchange, CDC was "wondering if [Facebook] had info on the types of posts that were removed and the themes because they were worried that we could only see the live posts

AMERICAN OVERSIGHT

and so we wouldn't know if there was also confusion about other areas that had been removed." Crawford Dep. 258:6-11. CDC had "asked on the meeting if they had this data, like, because we wanted it. And I think she said, Oh, we did something like this for the White House or HHS." *Id.* 260:6-9.

458. From this, Crawford understood that HHS and the White House were having similar meetings with Facebook: "I do think that they did have meetings with the agencies." *Id.* 261:10-11.

459. On March 25, 2021, Crawford and other CDC officials met with Facebook. Ex. S, at 1. The day before the meeting, March 24, 2021, Facebook emailed Crawford and noted, "[a]s we discussed last week, we will present on COVID-19 misinformation on this session/meeting and have some of our team that is focused on that workstream provide a briefing on the current policies and approach as well as the current trends we are identifying." *Id.* at 2. The official also noted that Facebook would have a "Misinformation Manager" and Liz Lagone, a content-moderation official for Facebook who "will be leading from our side on misinformation briefing for your team. They all work on our COVID-19 policies." *Id.* at 1. Crawford responded, attaching a Powerpoint slide deck and 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." *Id.* She also noted that two Census Bureau officials (Zack Schwartz and Jennifer Shopkorn) and two Census Bureau contractors (Sam Huxley and Christopher Lewitzke) would attend the meeting. *Id.*

460. The "deck Census would like to discuss" was attached to the email, *id.* at 3-16, and it contained an overview of "Misinformation Topics" including "concerns about infertility, misinformation about side effects, and claims about vaccines leading to deaths." *Id.* at 4. "These topics were selected due to high volume, continued public discussion, and high-profile coverage,"

AMERICAN OVERSIGHT

according to the slide deck. *Id.* For each topic, the deck included sample slides and a statement from the CDC debunking the supposedly erroneous claim. *Id.* at 6-14. The slides were clearly designed to convince Facebook that such content should be censored. For example, with respect to claims of infertility, the deck provided screen shots of six specific posts on Facebook and Instagram, summarized similar claims, and stated: "According to CDC there is no evidence that fertility problems are a side effect of any vaccine, including COVID-19 vaccines." *Id.* at 6-8. It also noted that "Several of Facebook's fact check partners have covered this claim." *Id.* at 6. The deck provided a similar debunking treatment for claims about other side effects from COVID vaccines, *id.* at 9-11, and claims about vaccines leading to deaths, *id.* at 12-14—in each case, providing six sample posts from real Facebook users as examples of the type of claim, and providing information designed to ensure that the claim would be censored. *Id.*

461. On March 30, 2021, Facebook sent Crawford an email with the subject line, "This week's meeting." Crawford Ex. 8, at 3. Crawford confirms that she was engaging in weekly meetings with Facebook during this time period, as well as other time periods during the COVID-19 pandemic: "we were meeting weekly during parts, so I imagine we were." Crawford Dep. 68:9-10.

462. The email indicates that CDC and Facebook were repeatedly discussing misinformation during these weekly meetings, as Facebook stated to Crawford: "I wanted to surface any misinfo questions your team may have for the team that I had briefing last time. They are available to attend again, but also want to make sure we are answering any of your team's questions." Crawford Ex. 8, at 3.

463. Crawford admits that these weekly meetings involved CDC meeting with Facebook's *content-moderation* teams: "I do recall [Facebook] bringing in people from their Trust

AMERICAN OVERSIGHT

and Safety or Misinformation teams … to talk to us about misinformation at some weekly meetings." Crawford Dep. 68:24-69:3.

464. Crawford admits that, in these meetings with Facebook content-moderation team, CDC inquired about how Facebook was censoring COVID-19 misinformation: "we had asked questions about what they were seeing in terms of misinformation and inquired about any activities they were undertaking. And I believe this was an offer to sort of get back to us on any of those questions." *Id.* 69:9-13.

465. In response, Crawford noted that she was also communicating with Facebook through an alternative channel. Crawford Ex. 8, at 2 ("I added this part in yellow to our chain on turn.io"). She asked Facebook if they "have thoughts on how we can meet regularly with Census? … am I correct that your team is going to consider how you might want to engage with the CDC/Census team routinely and get back to us?" *Id.* at 2-3. She noted to Facebook: "I know you all have experience with Census already." *Id.* at 3.

466. At this time, CDC had recently executed an Interagency Agreement with the Census Bureau to assist the CDC in addressing misinformation: "We had entered an IAA with Census to help advise on misinformation." Crawford Dep. 71:3-4. Pursuant to this agreement, the Census Bureau provided reports to the CDC on misinformation that the Census Bureau tracked on social media: "they provided reports on misinformation that they were seeing to us." *Id.* 71:15-17. "Census did provide [CDC] with the key themes they were seeing around misinformation during the times that they were looking at it." *Id.* 72:16-19.

467. An IAA is "an agreement between two agencies to conduct some kind of work between them." *Id.* 109:23-24. Under this IAA, CDC was "only engaging" with Census "on COVID misinformation." *Id.* 110:12-13. CDC was "learning about how [Census] operated a

AMERICAN OVERSIGHT

general misinformation team." *Id.* 110:13-14. The IAA "let [CDC] partner with Census to learn how they handled misinformation and help us with the COVID misinformation. … They seemed to have more knowledge than we did." *Id.* 111:3-6.

468. Facebook replied that "it would be great to have questions that may not have been answered from your team on misinfo. That team is very busy so it's a good opportunity to di[g] deeper on that topic and especially if there are areas that are still unclear or the teams have concerns about." Crawford Ex. 8, at 2.

469. Crawford responded that CDC "would like to have more info … about what is being done on the amplification-side," and that CDC "is still interested in more info on how you analyze the data on removals, etc." *Id.* at 2. She also noted that Census Bureau was "hoping to go over the deck they had and discuss how to engage on a more regular basis." *Id.*

470. Following up, Crawford noted that Census would like to discuss the following topics: "It looks like the posts from last week's deck about infertility and side effects have all been removed. Were those re-evaluated by the moderation team or taken down for another reason?" *Id.* at 1. This remark plainly indicates that, in the last week of March 2021, the Census Bureau was sharing "decks" of posts about COVID-19 misinformation with Facebook, which Facebook then "removed," and CDC was following up to inquire whether the censorship occurred because those posts were "re-evaluated by [Facebook's] moderation team" because of Census's flagging, or for another reason. Crawford testified that she "cut and pasted" the Census Bureau's inquiries on these points. Crawford Dep. 76:10.

471. Crawford also asked Facebook to give the Census Bureau direct access to log in to Facebook's CrowdTangle tool: "Can we add the Census Team to CrowdTangle?" Crawford Ex. 8, at 1. As Crawford noted, Facebook had "allowed [CDC] to directly log into CrowdTangle and

AMERICAN OVERSIGHT

run our own reports or searches," and she was asking Facebook to let Census "log in to CrowdTangle" as well. Crawford Dep. 77:4-14.

472. In the same email, Crawford inquired of Facebook, "One of the main themes we're seeing and from the CrowdTangle report is local news coverage of deaths after receiving the vaccine. What's the approach for adding labels to those stories?" Crawford Ex. 8, at 1. Thus, the CDC inquired of Facebook what its "approach" was to censoring local news stories about vaccine-related deaths. *Id.*

473. Crawford asked Facebook "[h]ow should we best engage regularly going forward on the Census/CDC reports." Crawford Ex. 8, at 1. Crawford notes that Census had already been working with Facebook to address census-related misinformation: "we generally discussed, you know, how we should talk about misinformation because they had already been working with Census, on their own Census misinformation, and I wanted to know what was best for them for engaging on any topics that we might want to discuss." Crawford Dep. 77:19-24.

474. Facebook answered that "[w]e are working on a proposal of how to set up a sharing partnership on the misinform[ation] items." Crawford Ex. 8, at 1.

475. Crawford also had three-way meetings with Facebook, CDC, and Census about misinformation: "there were meetings where Census, myself and Facebook were on calls," in which they "had general conversations about what were opportunities to address misinformation." Crawford Dep. 83:6-12. In those conversations, specific topics like the removal of specific posts discussed in Exhibit 8 "were probably discussed," but Crawford claims she does not "have specific memory of it." *Id.* 83:12-14.

476. On April 13, 2021, Facebook followed up by emailing Crawford and proposing to enroll CDC and Census Bureau officials in a special misinformation reporting channel to

AMERICAN OVERSIGHT

Facebook. Crawford Ex. 10, at 2. With a subject line "CV19 misinfo reporting channel," Facebook wrote, "We're working to get our COVID-19 misinfo channel up for CDC and Census colleagues," and asked Crawford to confirm "if the below emails are correct for onboarding to the reporting channel and if there are others you'd like to include." *Id.* Facebook provided nine emails, including five CDC officials and four Census officials or contractors, to "onboard" into the COVID-19 "misinfo reporting channel." *Id.*

477. The officials who work for Reingold, including Christopher Lewitzke, "were contractors working with Census." Crawford Dep. 101:10.

478. Crawford states that this email refers to the fact that Facebook "has a portal or reporting channel where you can report misinformation or threats or things from a specific log-in that I believe they only provide to … federal agencies." *Id.* 91:23-92:2. The portal allows federal officials to "log onto Facebook as an administrator, and it's something that they make available to you as a federal agency." *Id.* 95:17-19. Crawford understands that this "wasn't something that was generally available" to the public but was only provided to federal officials. *Id.* 96:15-16.

479. Crawford recalls that a CDC official logged into this portal and used it to report "two or three posts." *Id.* 92:17.

480. On April 23, 2021, Crawford emailed Facebook and stated that the Wyoming Department of Health had "mentioned … that the algorithms that Facebook and other social media networks are apparently using to screen out postings by sources of vaccine misinformation are also apparently screening out valid public health messaging, including WY Health communications." Crawford Ex. 38, at 2. When she did not hear back, on April 28, she emailed Facebook again, "Anything you all can do to help on this?" *Id.* Facebook then responded and addressed the

AMERICAN OVERSIGHT

problem. *Id.* at 1-2. The government is not amused when government-induced censorship sweeps in the government's own speech.

481. On May 6, 2021, Crawford emailed Facebook a table containing a list of 16 specific postings on Facebook and Instagram, with a link and the text of each post. Crawford Ex. 9, at 1-3. Crawford wrote, "As mentioned, here are two issues that we are seeing a great deal of misinfo on that we wanted to flag for you all … These are just some example posts. … Our census team is copied here, has much more info on it if needed." Crawford Ex. 9, at 1. Crawford copied Jennifer Shopkorn of the Census Bureau and Christopher Lewitzke, a Census Bureau contractor, on the email. *Id.*

482. Crawford "flag[ged]" these posts for Facebook "[b]ecause we had had conversations with Facebook about ways that we could address misinformation, and … one suggestion … that came up in that conversation was to let them know if we were seeing major themes that CDC had scientific information on, or had web content that would address." Crawford Dep. 87:15-21.

483. When Crawford would "flag" such content for Facebook and other platforms, she knew that they would evaluate and possibly censor the content under the content-moderation policies: "I do know that the platforms have a variety of ways to address misinformation. They might tag it as something that people should look more into. I think … that they have the ability to control how often some of these things show up in peoples' feeds. And I do know that removing them is an option that they could consider." *Id.* 88:7-14.

484. CDC's "goal" in flagging misinformation for possible removal from Facebook "is to be sure that people have credible health information so that they can make the correct health decisions…. There were a lot of things circulating that were not accurate information about

AMERICAN OVERSIGHT

COVID. And so we were trying to point out and make the credible information more available to users." *Id.* 88:25-89:6.

485. CDC and Census used "the social [media] listening tools," such as CrowdTangle, to identify misinformation that was "flagged" to Facebook for possible censorship. *Id.* 90:18-23. Regarding the table of 16 posts she "flagged" in her May 6, 2021 email, she stated, "these probably came from the social listening tools … that can consolidate examples. And we provided some examples of what we meant." *Id.* 90:18-23.

486. On May 10, 2021, Crawford emailed Facebook with the subject line, "COVID BOLO Misinformation meetings." Crawford Ex. 40, at 3. She wrote: "We would like to establish COVID BOLO meetings on misinformation and invite all platforms to join the meetings. We are aiming for our first one on Friday at noon. … Are there direct POCs on your end I should include on the invite? Happy to chat if better. THANKS!" *Id.*

487. On May 18, 2021, Facebook emailed Crawford noting that a Facebook official "has an agenda item" for the "CDC call this week." Crawford Ex. 11, at 2. This official, according to Crawford, is a member of Facebook's "Trust and Safety team, or the Misinformation team." Crawford Dep. 103:9.

488. The Facebook official noted that Facebook's "Content Policies … determine what we may remove or reduce and inform." Crawford Ex. 11, at 2. She noted that "we currently remove false claims about face masks," and wanted to discuss "whether there is still a high risk of harm from mask misinformation," as well as "false claims about the efficacy of social distancing or the existence of COVID-19." *Id.*

489. Crawford admits that the CDC provided "scientific information" that Facebook would use to decide whether to "remove" or "reduce and inform," *id.*, content under its policies:

AMERICAN OVERSIGHT

"What we did provide was scientific information that I did assume that they might use to do those things," *i.e.*, "remove or reduce and inform." Crawford Dep. 105:17-19.

490. The next day, May 19, 2021, Facebook emailed Crawford and noted that, for the weekly call that week, "here are some of the COVID content items that [Facebook's content-moderation official] will be flagging for you/CDC team." Crawford Ex. 11, at 1. She then provided a list of twelve specific claims, including such claims as "COVID-19 has a 99.96% survival rate," "COVID-19 vaccines cause bell's palsy," and "[p]eople who are receiving COVID-19 vaccines are subject to medical experiments." Crawford Ex. 11, at 1-2.

491. Facebook raised these twelve claims to get CDC's guidance on whether they violated Facebook's policies: "They were wanting our feedback on whether these things were true or false statements that they were seeing. Did the CDC have science around this, did we have content on our website." Crawford Dep. 106:10-13. CDC would respond to debunk such claims if it had information: "[I]f we knew, if we had something or we had science on these items, we would point to it or provide them an answer." *Id.* 106:19-21.

492. In response, Crawford indicated that "Census team members" would join the call, and that she might not be able to address or debunk all 12 claims on the call, because "[t]here may be some facts we have to get back to the group on after the meeting." Crawford Ex. 11, at 1.

493. On the call referred to in the email, CDC discussed with Facebook these twelve claims and who at CDC might be able to address their veracity. Crawford Dep. 106:23-107-3.

494. According to Crawford, "Sometimes in these meetings they would ask do we know if this is true or false, which is what they were doing [in Exhibit 11]. And then if we knew, the communicators knew the answer, we would provide it. If not, I would say, we would say, I'll have to get back to you later, we'll talk to our SMEs," *i.e.* subject-matter experts. *Id.* 116:7-12.

AMERICAN OVERSIGHT

495. Census Bureau officials would follow up to monitor whether Facebook was actually removing the content that federal officials had flagged as misinformation: "Census was at least periodically checking on things that they had flagged, or they had seen come up." *Id.* 117:19-21.

496. After the meeting, on May 24, Facebook's content-moderation official emailed Crawford, stating, "Thanks so much again for you and team's help in debunking a few COVID-19 and vaccine misinformation claims for us." Crawford Ex. 15, at 2. She then provided a list of the twelve claims with CDC's input on each, noting "Debunked" for each claim that the CDC had debunked in the meeting. *Id.* at 2-3. Among other things, she noted that CDC "[d]ebunked" claims like "Face masks contain … harmful particles," and even plainly evaluative statements like "People who are receiving COVID-19 vaccines are subject to medical experiments." *Id.* at 2-3.

497. On June 2, 2021, Crawford emailed the Facebook content-moderation official back with further input on the claims from CDC's subject-matter experts. Crawford Ex. 16, at 2. She noted several times that CDC's "web content to debunk is in clearance," meaning that CDC was preparing web content that would debunk those claims. *Id.*

498. The next day, on June 3, 2021, the Facebook content-moderation official emailed Crawford to clarify that "web content to debunk is in clearance" means that "we should consider these debunked by the CDC now," and Crawford answered that "Yes they are debunked and we will also have content on it soon." Crawford Ex. 16, at 1. As Crawford stated, "We reported to Facebook that they were debunked at this time." Crawford Dep. 135:2-3.

499. Crawford knew that Facebook would apply its content-moderation policies to claims that the CDC debunked: "I knew that they had options … which is to inform people, to maybe reduce it in the algorithm, or to remove it…. [T]hey probably had other options, but I knew of at least those." *Id.* 138:18-22.

AMERICAN OVERSIGHT

500. On July 26, 2021, the same Facebook content-moderation official emailed Crawford, asking for CDC to debunk three more COVID-related claims. The subject line of the email was, "FB Misinformation Claims Help Debuning." Crawford Ex. 17, at 1. Crawford understood that "Debuning" was "Debunking" misspelled. Crawford Dep. 139:1-2.

501. In this email, Facebook's content moderator wrote to Crawford: "Our Misinformation Policy Team has identified some claims that we were hoping your team could **help us understand if they are false and can lead to harm**?" Crawford Ex. 17, at 1 (bold in original).

502. Facebook's content-moderation policy called for it to remove claims that are false and can lead to harm. *See, e.g.,* Crawford Ex. 26, at 4 (Facebook's content-moderation official, Liz Lagone, noting that "We remove … posts on the grounds that the claim is false and that it is harmful," where "harmful" includes cases where "if people believed it, it might make them less likely to get vaccinated."). So it was clear that Facebook's "Misinformation Policy Team" was asking CDC to advise whether these claims should be removed under Facebook's content-moderation policy. Crawford admits that she understood that CDC's guidance would "benefit" Facebook's expansion and application of its censorship "policy" to these claims, acknowledging that Facebook was asking her about these claims "[b]ecause CDC would have credible health information about the claims or scientific information that would benefit their policy making." Crawford Dep. 140:1-3.

503. The three claims included: "Spike protein in COVID-19 vaccines is dangerous/cytotoxic," "Guillain-Barre Syndrome (GBS) is a possible side effect of the COVID vaccine," and "Heart inflammation is a possible side effect of all COVID-19 vaccines." Crawford Ex. 17, at 1.

AMERICAN OVERSIGHT

504. Facebook also asked Crawford if "your team was aware of any global source of truth/database for vaccine adverse effects including possibly vaccine-related deaths." Crawford Ex. 17, at 1.

505. Crawford responded, "Got it, let me get back to you shortly and thank you much for asking!" Crawford Ex. 17, at 1.

506. Crawford does not recall her specific response to this inquiry, but she admits that "generally" she referred them to the CDC's subject-matter experts and responded to Facebook with the CDC's view on the scientific questions, as she did with similar requests. Crawford Dep. 140:16-141:4.

507. On July 20, 2021, Facebook emailed Crawford another biweekly "CrowdTangle content insights report" on COVID-19. Crawford Ex. 18, at 1. One of the misinformation-trending topics that Facebook flagged in bold in the email was "**Door-to-Door Vaccines**," which stated that "The highest interaction Page posts for this topic convey concern from political opponents about the Biden Administration's strategy to ramp up vaccination efforts in communities with low vaccination rates by going 'door-to-door' to educate and encourage more Americans to get vaccinated." *Id.* The same topic, in the same time frame, was emphasized in the Virality Project report as a prime example of viral vaccine-related "misinformation," when in fact it involved only expressions of political opinion. Scully Ex. 2, at 39, 54-55.

508. The same email also noted posts "expressing skepticism about vaccinating children." Crawford Ex. 18, at 1. Earlier CrowdTangle reports in the same email chain had flagged for the CDC highly engaged content about "**Vaccine Side Effects** … especially for children and pregnant women," "**Vaccine Refusal**," and "**Vaccination Lawsuits** … lawsuits over compulsory vaccination related to employment." *Id.* at 2-3 (bold in original).

AMERICAN OVERSIGHT

509. Facebook noted that the CrowdTangle reports were confidential and not to be disclosed further: "As always, please do not share." *Id.* at 1.

510. Facebook continued to send biweekly CrowdTangle reports, which flagged in bold high-engagement topics such as "**Proof of Vaccination Requirement**," "**COVID-19 and Unvaccinated Individuals**" (addressing "concerns that the recent uptick in hospitalizations and deaths is being driven up by unvaccinated individuals"), and "**COVID-19 Mandates**," as well as "allowing people to return to … religious services." Crawford Ex. 19, at 1-3 (bolds in original).

511. On August 19, 2021, Facebook asked Crawford for a "VAERS Policy Consultation" meeting for the CDC to give Facebook guidance on how to address VAERS-related misinformation: "Our Health Policy folks would like to meet with your VAERS experts for a consultation meeting regarding VAERS and misinformation." Crawford Ex. 20, at 1. Crawford responded, "I'm sure we can do this, and I'm glad you're asking." Crawford Ex. 20, at 1.

512. "VAERS" is the HHS's Vaccine Adverse Event Reporting System, *see* https://vaers.hhs.gov/. At that time, the CDC was greatly concerned about VAERS-related "misinformation" on social-media, because users cited and discussed VAERS data and reports to raise concerns about the safety of vaccines in ways that the CDC thought misleading, as Crawford recounted: "the topic of VAERS was an area that was widely discussed on social media, and there was a lot of areas of confusion about what VAERS data was. There was myths about VAERS data, and there was misinformation about VAERS data. So it was always one of the things that rose to the top in terms of volume of discussion of people were very confused about VAERS." Crawford Dep. 150:21-151:3. So it is not surprising that Crawford was "glad" Facebook was "asking" for a meeting in which the CDC would give Facebook guidance on how to censor "misinformation" about VAERS. Crawford Ex. 20, at 1.

AMERICAN OVERSIGHT

513. Crawford also followed up with Facebook by providing written CDC-provided materials for Facebook to use in addressing VAERS-related "misinformation" on its platforms: "If of use, we just published a new video and I've attached some recent talking points that may also inform your efforts." Crawford Ex. 20, at 1. Plainly, the "efforts" Crawford wished to "inform" were Facebook's efforts to remove VAERS-related "misinformation" from its platforms.

514. The CDC also had a meeting with Facebook about VAERS-related misinformation: "We did have a session with the VAERS experts with Facebook." Crawford Dep. 151:8-9. In the meeting, the CDC had "two experts for VAERS and a couple of their communication experts on the line with Facebook's team," which consisted of "their misinformation and policy type team" that the content-moderation official "was part of." *Id.* 151:20-24. In the meeting, the CDC "offered the [subject-matter expert] just to answer their questions about what VAERS was and what it wasn't. And my recollection is [Facebook] asked a lot of questions like … who can report something on VAERS and things like that during the session." *Id.* 152:1-6.

515. On September 1, 2021, Crawford emailed Facebook and stated: "BOLO for a small but growing area of misinfo. One of our lab alerts … was misinterpreted and was shared via social media." Crawford Ex. 21, at 1. ("BOLO" stands for "Be on the lookout." Crawford Dep. 153:21.). She explained what the CDC viewed was misinformation, and then stated, "I've attached some example Facebook posts and another document with the facts around the issue." Crawford Ex. 21, at 1.

516. Plainly, Crawford was flagging these posts and related posts for possible censorship under Facebook's content-moderation policy. She admits that the CDC's "BOLO" alerts were provided to "assist" the platforms with their enforcement decisions under their policies: "Similar to all the other BOLOs, we still thought it was good to point out if we had facts around something

AMERICAN OVERSIGHT

that was widely circulating as a cause of misinformation to the platforms to assist them in whatever they were going to do with their policy or not do." Crawford Dep. 153:23-154:3.

517. When asked what she "expected [Facebook] to do once they were on the lookout" for the supposed misinformation that the CDC had flagged, Crawford responded: "I knew that they had various options. They could have just used it to inform people. They could have considered it in their algorithm, I believe. I did understand that potentially removing posts was something that they might do." Crawford Dep. 155:15-20. So she provided the information knowing it would happen and wanting it to happen.

518. On November 2, 2021, Facebook's content-moderation official sent Crawford and other CDC officials an email stating, "thanks so much for confirming the ability for the claims in question last week having the risk of causing vaccine refusals." Crawford Ex. 22, at 1. Again, that is one of the criteria Facebook used to justify removal of content from its platforms. Crawford Ex. 26, at 4 ("We remove … posts on the grounds that the claim is false and that it is harmful because if people believed it, it might make them less likely to get vaccinated."). The content-moderation official also stated, "thank you all so much for your input over the last week on our many questions about vaccine misinformation relative to the EUA." Crawford Ex. 22, at 1. ("EUA" refers to the FDA's "emergency use authorization to the Pfizer vaccine for children." *Id.*)

519. The content-moderation official also stated: "I wanted to share that as a result of our work together, when the FDA gave emergency use authorization to the Pfizer vaccine for children last week, we immediately updated our policies globally to remove additional false claims about the COVID-19 vaccine for children (e.g. 'the COVID vaccine is not safe for kids')." Crawford Ex. 22, at 1. She also noted, "We also launched a new feature on Instagram, where accounts that repeatedly post content that violates our policies on COVID-19 or vaccine

AMERICAN OVERSIGHT

misinformation may now lose the ability to be tagged or mentioned or may see pop-ups asking if they'd like to delete certain posts that may violate our policies." Crawford Ex. 22, at 1. Thus, Facebook noted that, "as a result of our work together" with the CDC, Facebook had updated its content-moderation policies to increase censorship of vaccine-related claims in significant ways. *Id.*

520. The content-moderation official went on to ask the CDC to debunk additional claims: "**we have identified a number of additional claims we would like to get your team's assessment on … Would it at all be possible to get input by Monday, November 8th?**" Crawford Ex. 22, at 1 (bold and underline in original). She requested, "For each of the following new claims, which we've recently identified on the platform, **can you please tell us if: 1. The claim is false; and 2. If believed, could this contribute to vaccine refusals?**" *Id.* (bold in original). Again, these are the two precise criteria that Facebook relied on to remove content from its platforms. Crawford Ex. 26, at 4 ("We remove … posts on the grounds that the claim is false and that it is harmful because if people believed it, it might make them less likely to get vaccinated."). She then included a new list of ten specific claims about the COVID-19 vaccines for the CDC to debunk. Crawford Ex. 22, at 1-2.

521. Crawford understood, again, that this request was made to "inform their policies," *i.e.*, inform Facebook's application of its content-moderation policies to these claims: "It was still my interpretation that she was asking to inform their policies." Crawford Dep. 159:7-8.

522. Crawford also admits that she was "happy" when the CDC's information to Facebook caused "less spread of misinformation" on Facebook and other platforms, *i.e.*, that she desired that outcome: "I'm happy that providing the scientific information led to less spread of misinformation." *Id.* 161:23-25.

AMERICAN OVERSIGHT

523. Crawford also understood that Facebook was, in fact, removing content from its platforms based on the CDC's information: "I understand that she's removing claims … that are not scientifically accurate." *Id.* 162:21-22.

524. Crawford responded to Facebook, "Thank you so much for the feedback on what you've been able to do. This is very good to know." Crawford Ex. 22, at 1. She also stated, regarding Facebook's request that the CDC debunk the ten new claims, that "I'm going to work on this one …. I hope we can do it by Monday, I will keep you posted." *Id.*

525. The following Monday, November 8, 2021, Crawford followed up with a response from the CDC addressing seven of the ten claims Facebook had asked CDC to evaluate. Crawford Ex. 23, at 1-2. The CDC rated six of the seven claims "**False**." *Id.* (bold in original). Crawford also noted in the response email, without citing any support, that "It appears that any of these could potentially cause vaccine refusal." Crawford Ex. 23, at 1. Under Facebook's policies, a claim that is both false and could contribute to vaccine refusal was subject to removal. Crawford Ex. 26, at 4 ("We remove … posts on the grounds that the claim is false and that it is harmful because if people believed it, it might make them less likely to get vaccinated.").

526. On February 3, 2022, Facebook's content-moderation official sent Crawford another email, stating that she "wanted to **share updates we made as a result of our work together**" and "**ask for your assessment on a few things**." Crawford Ex. 26, at 1 (bold in original). She described the "updates" as follows: "On February 2nd, we launched several updates to our COVID-19 Misinformation and Harm Policy based on your [*i.e.* CDC's] inputs." *Id.* These "updates" included "[r]emoving claims that COVID-19 vaccines cause heart attacks," and "[t]aking steps to reduce the distribution of content that our systems predict likely violates our COVID-19 and vaccine misinformation policies, but has not yet been reviewed by a human; if at

AMERICAN OVERSIGHT

any point this content is confirmed to violate the policy then it will be removed from the platform." Crawford Ex. 26, at 1. Crawford responded, "the update is very helpful, thank you for including that!" *Id.*

527. Facebook's content-moderation official also included, under the heading "**NEW: For CDC Input**," another request that "For each of the following new claims, **can you please tell us if: 1. The claim is false; and 2. If believed, could this claim contribute to vaccine refusals**?" Crawford Ex. 26, at 1 (bold and underline in original). She then provided a long, detailed list of claims and sub-claims about COVID-19 for CDC's input. *Id.* at 2-4.

528. Among other things, Facebook asked the CDC to pre-refute claims based on events that had not occurred yet. Facebook asked Crawford to address "How FDA EUA authorization for children under 5 might impact our policies." Crawford Ex. 26, at 1. Facebook noted, "We understand that the FDA is considering giving emergency use authorization for the COVID-19 vaccine for children under five in the coming weeks. We are considering how our existing policies on COVID-19 vaccines … should apply to claims about children 6 months to 4 years once the vaccine is approved for use. Can you please assess for each claim whether it is false for children in this age range and if believed, likely to contribute to vaccine hesitancy or refusals? *Please let us know if it is easiest to set up a time to meet and discuss each one.*" Crawford Ex. 26, at 2 (italics in original). There followed a long, detailed list of claims about the vaccines, for which Facebook sought CDC's input on their falsity as to children under 5. *Id.* at 2-3.

529. For this long list of claims, Crawford understood that Facebook would use the CDC's input to "determine" Facebook's censorship policy for such claims: "I know that they're using our scientific information to determine their policy." Crawford Dep. 170:19-20.

AMERICAN OVERSIGHT

530. Regarding Facebook's request for CDC's input on these many new claims, Crawford responded, "I will talk to the Vaccine program and see what we can do." Crawford Ex. 27, at 1. The next day, February 4, 2022, she followed up, stating, "I'm heading out today but do you have a minute to discuss this by chance? Call anytime," and provided her phone number. Crawford Ex. 27, at 1. Crawford also changed the subject line of the email to state, "Have 5 minutes to chat? [re]: Vaccine Misinformation Questions for CDC." *Id.*

C. CDC's and Census's Pressure and Collusion with Google/YouTube.

531. On March 18, 2021, Crawford emailed contacts at Google, stating: "As I believe we discussed previously, CDC is now working with Census to leverage some of their infrastructure to help identify and address COVID vaccine mis-info." Crawford Ex. 28, at 1. She went on, "As I understand it from the Census team … when they were doing this for the Census project last year, they meet regularly with a Google/YouTube Trust team." *Id.* A "Trust team" is a content-moderation team. Crawford then asked, "Is it possible for us to start up regular meetings on this topic or maybe use our existing meeting time." *Id.* The subject line of this email was "COVID Misinfo Project." *Id.* Google and Crawford then set up a time to talk and discuss the project. *Id.*

532. Crawford states that this email refers to "the work of the IAA with Census to help consult and work with us on the COVID misinformation…" Crawford Dep. 175:6-8. Her reference to Census's infrastructure referred to "the fact that Christopher [Lewitzke, the Census contractor] ran those reports and looked for misinformation on those areas for us." *Id.* 175:11-13.

533. Crawford's reference to Census's previous project referred to their work on combating misinformation about the 2020 Census. *Id.* 175:18-19.

AMERICAN OVERSIGHT

534. Crawford does not remember the specific call referenced in this email, but she admits that, "This was in 2021. So we had been meeting pretty regularly with Google by this time." *Id.* 179:5-6.

535. On March 23, 2021, Crawford sent a calendar invite for a meeting on March 24 that included herself and five other CDC employees, four Census Bureau employees and contractors (including Zachary Schwartz, Christopher Lewitzke, and Jennifer Shopkorn), and six Google/YouTube officials. Jones Decl., Ex. T, at 1-2. The subject of the meeting was "COVID Misinformation: CDC/Census/Google." *Id.* at 1. The invite stated: "CDC/Census to meet with Google regarding our misinformation efforts." *Id.*

536. At the meeting, CDC and Census presented a slide deck similar to the one that Census prepared for the meeting with Facebook on March 25, 2021, discussed above. *See id.* 3-16. The slide deck was entitled, "COVID Vaccine Misinformation: Issue Overview." *Id.* at 3. As with the Facebook slide decks, this one stated of "Misinformation Topics" that "[t]hese topics were selected due to high volume, continued public discussion, and high-profile coverage." *Id.* at 4. It noted that these topics included "infertility, misinformation about side effects, and claims of vaccines leading to deaths." *Id.*

537. For each topic, the slide deck included a description of a common claim, specific examples of videos on YouTube and social-media postings making the disfavored claim, and a putative refutation by the CDC. *Id.* at 6-14. For infertility, the slide deck stated that "[c]ommon claims about the COVID vaccine's side effects include that it causes infertility in women and men, miscarriages, and stillbirth," and it provide screen shots of specific videos on YouTube and social-media posts making this claim. *Id.* at 6-8. The deck asserted that "[a]ccording to CDC there is no evidence that fertility problems are a side effect of any vaccine, including COVID-19 vaccines."

AMERICAN OVERSIGHT

Id. at 6. Regarding supposed misinformation about side effects, the deck stated, "speculation and misinformation about side effects after taking the COVID vaccine have been prevalent on social media since the first vaccines were approved," and it provided screen shots of an example video on YouTube and social-media posts making such claims, along with a putative refutation by the CDC. *Id.* at 9-11. Regarding the topic "Death from Vaccines," the slide deck stated that "[v]accine-hesitant groups spreading misinformation and conspiracy theories about alleged vaccine-related deaths erode trust in the COVID-19 vaccine and the public health system," and it provided a sample video on YouTube and social-media posts linking the vaccines to deaths, along with a putative refutation by the CDC: "According to CDC, VAERS has not detected patterns in cause of death that would indicate a safety problem with COVID-19 vaccines." *Id.* at 12-14. As with the similar Facebook slide deck, the evident purpose of this presentation was to induce YouTube to censor these claims on its platform.

538. On March 25, 2021, Kate Galatas of the CDC emailed the group attending the meeting and stated: "Many thanks, again, for the time yesterday. This is such important shared work we are doing in the mis/dis information space, and we deeply appreciate your contributions. Please find attached the slide deck referenced during the meeting, and we ask that you treat it close hold and not for further distribution. We are looking forward to our future collaboration efforts!" *Id.* at 1.

539. On March 29, 2021, Crawford followed up with Google, inquiring "Are you all open to using our regular 4pm meetings to go over things with Census or what is preferred?" Crawford Ex. 29, at 2. Google responded: "We would like to follow up on our discussion with your colleague, Cynthia, on vaccine information a few months ago. Specifically, we plan to share a new list of common vaccine misinformation claims and would love it if Cynthia or other vaccine

AMERICAN OVERSIGHT

experts could join." *Id.* He also stated that "we can save a few minutes … to discuss potential next steps regarding the Census…" *Id.* The subject line of this email was "Follow up on mis-info conversation." *Id.*

540. Crawford recalls that Census was asking for regular meetings with platforms specifically focused on misinformation: the statement "is in reference to discussing how to engage on an ongoing basis about misinformation and the Census suggestion that we have regular meetings with them just on that topic." Crawford Dep. 184:14-18. The exchange was "about how to engage more regularly about misinformation, or … whatever Census had done with Google and YouTube, should we have a similar structure with CDC." *Id.* 185:11-14.

541. Regarding the request for input on the "new list of common vaccine misinformation claims," Crawford responded, "I've arranged for a few SMEs [subject-matter experts] to join the call, including Cynthia." Crawford Ex. 29, at 2.

542. A few days later, on April 2, 2021, Google emailed Crawford stating, "Thanks again for your time this week. Attached are some of the claims we discussed for your reference." Crawford Ex. 29, at 1.

543. Crawford's reference to the "4pm meeting" refers to a regular biweekly meeting with Google, which still continues to the present day: "I still have a 4:00 p.m. meeting every other Monday with Google." Crawford Dep. 180:6-7.

544. Crawford also has "similar regular meetings with … Meta and Twitter." *Id.* 180:11-16. She admits that she has ongoing meetings with Google and Facebook/Meta that continue to the present: "we had regular meetings with Google, and we had regular meetings with Meta…. you know, the frequency changed…. I mean, Google we meet every other week. Right now with Meta it's more ad hoc." *Id.* 180:16-21.

AMERICAN OVERSIGHT

545. Crawford also "had a regular meeting with Pinterest for a short period of time, and we had … just more ad hoc meetings on occasion with Twitter." *Id.* 180:23-181:1.

546. Crawford states that these meetings "were mostly about things other than misinformation; though misinformation was discussed in the meetings." *Id.* 181:22-24.

547. On April 12, 2021, Google/YouTube followed up with an email to Crawford, stating, "For tomorrow's call, would it be possible to include Cynthia or other COVID-19 treatment SMEs [subject-matter experts] to follow up on some additional questions?" Crawford Ex. 30, at 1. Crawford responded, "Can you give me an idea of what topics we'll be covering? But yes, I'll ask them to attend." *Id.*

548. Crawford notes that it "wasn't uncommon" for Google/YouTube to ask her to bring subject-matter experts to meetings to go over such topics. Crawford Dep. 188:19-22.

549. On May 10, 2021, Crawford emailed her Google contacts and invited them to attend in the BOLO meetings: "We would like to establish COVID BOLO meetings on misinformation and invite all platforms to join the meetings. We are aiming for our first one on Friday at noon. We have heard through the grapevine that [an official] at YouTube would want to join. Are there other POCs on your end I should include on the invite?" Crawford Ex. 40, at 1. The subject of the email was "COVID BOLO meetings on misinformation." *Id.*

D. CDC's and Census's "BOLO Meetings."

550. On May 11, 2021, Crawford followed up with an email stating, "We would like to invite digital platforms to attend a short 'Be On The Lookout' meeting on COVID. Please let us know if you have questions and feel free to forward this message to anyone in your organization that should attend." Crawford Ex. 40, at 2. Google responded by asking that Crawford include

AMERICAN OVERSIGHT

the YouTube official in the meeting, and Crawford noted that she "was going to ask about" him at the 4:00pm recurring meeting. *Id.*

551. Crawford testified that she wanted to include YouTube on the BOLO meetings because they hosted the most content: "people from YouTube would occasionally be on our regular meetings, depending on what we talked about. And because YouTube has the most content, like, hosting, … they were a part of the BOLO meetings…" Crawford Dep. 244:21-245:1.

552. The Census officials "were arranging" the BOLO meetings, and "they drafted the slides" for the meetings. *Id.* 246:12-20.

553. Crawford ran the BOLO meetings. *Id.* 265:13. She "opened up the meeting, introduced myself, gave context for why we were doing the BOLO meeting in brief. And then I believe that Christopher [Lewitzke] went through the slide decks, and I occasionally piped in on them." *Id.* 265:15-19.

554. The "slide decks" shown at the meetings were "similar to the table" of 16 Facebook posts that Crawford previously emailed to Facebook, but "they were more like this is a theme, and then there'd be maybe a little info about what the theme was and then maybe a couple of example posts. And then there would be a slide maybe with CDC links or information related to that theme." *Id.* 266:1-6.

555. The first BOLO meeting was held on May 14, 2021. Jones Decl., Ex. U, at 1. The slide deck for that meeting was entitled "COVID Vaccine Misinformation: Hot Topics." *Id.* at 2-10. It contained a list of five "Hot Topics" with an "ADVISORY" in red noting that platforms should "**Be On the Lookout**" for "**Potential Misinformation**" on each topic, and provided specific examples of social-media posts for each topic, "Associated Link(s) and Hashtag(s)" for each topic, and the CDC's position on each topic (listed as "**The Facts**"). *Id.* at 4-8.

AMERICAN OVERSIGHT

556. Crawford also emailed similar slide decks for BOLO meetings scheduled for May 28 and June 18, 2021, though the latter was canceled due to the new Juneteenth holiday. Jones Decl., Exs. V and W. In the cover email to the May 28 slides, Crawford requested secrecy: "Please do not share outside your trust and safety teams." Jones Decl., Ex. V, at 1. Just like the May 14 BOLO slides, these slides contained lists of "Hot Topics" with an "ADVISORY" in red noting that platforms should "**Be On the Lookout**" for "**Potential Misinformation**" on each topic, and provided specific examples of social-media posts for each topic, "Associated Link(s) and Hashtag(s)" for each topic, and the CDC's position on each topic (listed as "**The Facts**"). Jones Decl., Ex. V, at 4-6; *id.* Ex. W, at 4-6.

557. In conducting the BOLO meetings, Crawford described CDC's goal as follows: "our goal is to be sure that credible information about COVID was out there. A lot of people seek information on platforms. We thought that by giving the platform scientific information it might help in our goals to being sure that credible information could be found." Crawford Dep. 266:16-21. Of course, the BOLO meetings did not address identifying and promoting "credible information," but flagging information that the CDC thinks is *not* credible for potential removal. Crawford effectively admits this; when asked if CDC's goal includes that "incredible information would not be found," she agreed that "I did want the credible information to be found in advance of the uncredible information." *Id.* 266:22-267:4.

558. Crawford believes that the third BOLO meeting was cancelled because Juneteenth was declared a new federal holiday, and "that is why we didn't end up having it and we sent the materials out via email." *Id.* 248:17-22.

559. On October 28, 2021, Google emailed Crawford stating, "do you have time to connect early next week on anticipated guidance on vaccines for [children ages] 5-11? It would

AMERICAN OVERSIGHT

be great to connect as the CDC plans communications on authoritative information for pediatric vaccines." Crawford Ex. 42, at 2.

560. Crawford responded: "Yes, we can discuss pediatric vaccines early next week but let me give you some general info: ACIP is likely to vote on this on Nov 2. CDC is likely to start posting final information on Nov 3 (possibly late Nov 2), if that helps to know. There will be many updates so the changes might span over a few days. We are also looking ahead and misinformation and hope to have a BOLO type meeting later that week with platforms that are interested." Crawford Ex. 42, at 1. ("ACIP" is the "Advisory Council for Immunization Practices." 253:21-22.)

561. On June 29, 2022, Google/YouTube emailed Crawford and her deputy, stating: "The YouTube Policy team is requesting evidence-based input on the claims below. In the past, the CDC has reviewed COVID information claims and commented TRUE or FALSE + add any additional context needed." Crawford Ex. 43, at 1. YouTube then presented two claims, relating to the safety and effectiveness of administering progesterone to reverse chemical abortion. *Id.* ("**CLAIM**: High doses of progesterone is a **safe** method of reversing chemical abortion … **CLAIM**: High doses of progesterone is an **effective** method of reversing chemical abortion….") (bold in original). Crawford responded, "I'll check on this but I think I'll probably end up needing to refer you to another agency. I'll get back to you." *Id.*

562. Regarding this exchange, Crawford notes that the CDC's "focus is not solely on COVID. We're focusing on other topics. I think [YouTube] thought that we might be able to help with this topic as well." Crawford Dep. 256:5-8. Thus, Crawford admits that the CDC is continuing to engage with social-media platforms to provide information that will lead to the

AMERICAN OVERSIGHT

censorship of health-related claims on social media, and that it is willing to expand its focus to other health topics beyond COVID-19.

E. CDC's and Census's Pressure and Collusion with Twitter.

563. On April 8, 2021, Twitter emailed Crawford stating, "I'm looking forward to setting up regular chats; my team has asked for examples of problematic content so we can examine trends. All examples of misinformation are helpful…." Crawford Ex. 32, at 1. The subject line of this email was "Request for problem accounts." *Id.* Crawford responded, "Yes, we'll get that to you early next week." *Id.*

564. Crawford believes that Twitter sent this email in response to her inquiry, "Is there a good way that we should start engaging on misinformation?" 197:19-20.

565. Crawford responded on April 14, 2021, "The Census team put this spreadsheet together with four example areas," which included the topics, "Vaccines aren't FDA approved," "Fraudulent cures," "VAERS data taken out of context," and "Infertility." Crawford Ex. 33, at 1. The attachment was called, "Twitter CDC Examples 4-13-21.xlsx." *Id.* The spreadsheet contained a "list [of] things that [Census] saw that were being stated as misinformation." Crawford Dep. 203:24-204:1. "Infertility" referred to "people claiming that getting the vaccines led to infertility." *Id.* 204:17-18.

566. Crawford believes that Twitter "was asking for these examples in this email because he was wondering … what would come up in BOLO meetings, or what we would be discussing." *Id.* 204:22-24.

567. On May 10, 2021, Crawford emailed Twitter, stating "We wanted to point out two issues we are seeing a great deal of misinfo about…." Crawford Ex. 34, at 4. She then provided

AMERICAN OVERSIGHT

a list of "sample posts" that included 12 Tweets reproduced verbatim. She stated, "Our census team is copied here, has much more info on it if needed." *Id.*

568. In the same email on May 10, 2021, Crawford wrote, "Also, we are standing up a BOLO COVID misinformation meeting and inviting all tech platforms. We are shooting for 12pm EST on Friday for our first meeting. I'll include you on the invite…." Crawford Ex. 34, at 4.

569. Crawford agrees that she was "sending this to [Twitter] so that he would be on the lookout for those things appearing on Twitter." Crawford Dep. 208:25-209:3.

570. Crawford notes that "the BOLO format … was used previously," *id.* 209:12-13, because Census had done "BOLO meetings … for their own work," *id.* 209:23-24. The platforms had done BOLO meetings for Census "in relation to the 2020 census." *Id.* 210:5-9.

571. Regarding the BOLO meetings, Census officials "explained" to Crawford "how they did it." *Id.* 210: 16. "In fact, they drafted the slide deck" for the CDC BOLO meetings with social-media platforms. *Id.* 210:16-17. Census "drafted it and showed me how they thought that we should do it, and that … we would give examples, we would give the science, and then … people could follow up separately." *Id.* 210:18-22.

572. Crawford believes that regular meetings with Twitter were not set up, but that "I know they participated in the BOLO meetings." *Id.* 198:15-16.

573. Regarding the BOLO meetings, Crawford remembers that two occurred and a third one was scheduled but cancelled due to a holiday, and "in lieu of a meeting" she sent "a Powerpoint." *Id.* 198:24-199:1.

574. Twitter responded to Crawford's May 10, 2021 email flagging 12 specific Twitter posts as examples of trending misinformation, stating: "Thanks for sharing this – agree these are important trends to note; a quick scan shows that at least some of these have been previously

AMERICAN OVERSIGHT

reviewed and actioned." Crawford Ex. 34, at 3. He then stated: "I will now ask the team to review the others." *Id.*

575. Crawford understood that "asking the team to review the others" meant referring Crawford's flagged posts and issues to Twitter's content-moderation team for possible censorship: "I interpreted it as Twitter made decisions about the areas of misinformation based on whatever policy they had." Crawford Dep. 211:17-19.

576. As with Facebook, Crawford understood that her flagging of posts would result in Twitter censoring at least some of these materials in different ways, including removing posts: "similar to Meta that they probably had multiple options. I am sure some were removed. I am sure some … were flagged. I see flags all the time on the Twitter posts. I am sure some were just maybe … maybe they weren't distributed as much on peoples' feeds." *Id.* 212:10-16.

577. In the same email, Twitter offered to enroll CDC officials in its "Partner Support Portal" to provide expedited review of content flagged for censorship: "Carol, remind me: did you have a chance to enroll in our Partner Support Portal? In the future, that's the best way to get a spreadsheet like this reviewed." Crawford Ex. 34, at 3.

578. Crawford understood that Twitter's Partner Support Portal was "similar to what I described for Meta. It's an offering where you log in and you can report misinformation or threats or problematic posted content in this portal, and it puts it in a system for review." Crawford Dep. 212:3-7.

579. On May 10, 2021, Twitter noted to Crawford, "I'd be glad to enroll you in our Partner Support Portal, which allows you a special, expedited reporting flow in the Twitter Help Center. It worked very well with Census colleagues last year." Crawford Ex. 34, at 3.

AMERICAN OVERSIGHT

580. Crawford responded by asking for instructions on how to enroll in the Partner Support Portal, and Twitter offered to enroll any Twitter accounts she identified. Crawford Ex. 34, at 3. Crawford provided her personal Twitter account to enroll. *Id.*

581. Then, on May 24, Census Bureau contractor Christopher Lewitzke followed on the same email chain with Twitter, asking about "the partner support portal enrollment for CDC." Crawford Ex. 34, at 2. Lewitzke indicated that they planned to report COVID misinformation to Twitter using existing Census accounts already enrolled in the portal, not CDC accounts, stating: "would there be any issues or complications stemming from flagging COVID misinformation on the portal using the existing census.gov accounts that have access? We'll want to have at least some CDC accounts whitelisted, but that backup may be helpful short-term." *Id.* He then stated: "Let us know any next steps we can take to make sure CDC is all set with the portal." *Id.*

582. Crawford confirms that Census had used similar portals to report misinformation to platforms in the past: "I did know from discussions with them that one technique I think that they used was using portals … for their work to report [mis]information." Crawford Dep. 213:16-19.

583. Twitter emailed Crawford on May 27, 2021, noting that she should be fully enrolled. Crawford Ex. 34, at 1. A screen shot of the portal proclaims, in very large, bolded type, "**Report any issue to get priority service**." *Id.* (bold in original, font greatly reduced).

584. Crawford believes that she attempted to use Twitter's Partner Support Portal "every now and then," but that she never solved technical issues that prevented her from reporting anything. Crawford Dep. 215:9-22.

585. Christopher Lewitzke is "a Census contractor." *Id.* 217:5-6.

AMERICAN OVERSIGHT

586. On September 2, 2021, Crawford emailed Twitter, stating, "A quick BOLO for a small but growing area of misinfo." Crawford Ex. 35, at 1. To Twitter, she claimed that "one of our Lab alerts … was misinterpreted and was shared via social media." Crawford Ex. 35, at 1. She stated, "I've attached some example Twitter posts and another document with the facts around the issue." *Id.* The subject line of the email was "BOLO: CDC lab alert & misinformation." *Id.*

587. This report was very similar to the report Crawford provided Facebook the day before, September 1, 2021. Crawford Ex. 21, at 1. "The only difference is this email is going to Twitter." Crawford Dep. 220:7-8.

588. By sending these emails to Facebook and Twitter flagging what the CDC believed was a misinterpretation of a CDC lab alert on social media, CDC intended to prevent the disfavored message from spreading on social media: "We saw this confusion about this alert brewing and more posts were going up with confusion, and we thought it would be a good idea to provide the platforms with the facts *before it became something bigger*." *Id.* 220:13-17 (emphasis added). In other words, CDC wished to cause the disfavored viewpoint to be censored before it could be viewed or repeated by others—a quintessential prior restraint.

589. CDC specifically flagged this information to the platforms, knowing that they would evaluate it for potential censorship under their content-moderation policies: Crawford "knew their policy teams or their trust teams or misinfo teams … would evaluate it." *Id.* 220:21-23. And Crawford "knew that removal was one of the options that they had, yes." *Id.* 220:25-221:1.

F. CDC Endorses the States' Theory of Standing.

AMERICAN OVERSIGHT

590. Crawford admits that government communicators have a strong interest in tracking what their constituents are saying on social media: "It's helpful for communicators to know what is being discussed because it helps improve our communication materials." *Id.* 53:10-12.

591. Crawford emphasized this point multiple times: "as I mentioned before, it does help … for communicators to know what conversations occurs on social media because it helps us identify gaps in knowledge, or confusion, or things that we're not communicating effectively that we need to adjust." *Id.* 54:15-20.

592. CrowdTangle reports "would help us understand what was being discussed on social media about COVID, which helps us look for gaps in information, confusion about facts, things that we might need to adjust our communication materials for." *Id.* 57:24-58:3.

593. Crawford specifically expressed the concern that, if content was censored or removed from social-media platforms, government communicators would not know what the citizens' true concerns were: She "was wondering if they delete the info will we know those myths or information so we could update communication activity. So if they were deleting content would we know what the themes were." *Id.* 75:14-18. Thus, Crawford was concerned that, if the platforms "were deleting content," she might not know "what the themes were" of "myths or [mis]information," which would prevent her from "updat[ing the CDC's] communication activity" to address those myths and misinformation. *Id.* Accordingly, Crawford wanted to know, "would [CDC] be able to see in CrowdTangle or other reports … what kind of themes were removed so we would still have the full picture of areas of confusion." *Id.* 75:21-76:1.

594. Crawford inquired of Facebook "about the data that we could get so we had a full picture on confusion so that we could adjust communication materials, or ways that we were communicating" about COVID-19. *Id.* 81:10-13. In other words, Crawford wanted to know about

AMERICAN OVERSIGHT

speech that was censored, as well as speech that was left up, on social-media platforms so CDC could get "a full picture" and "adjust communication materials" to address people's actual concerns. *Id.*

595. The CDC "did searches in CrowdTangle, the same way we do searches in other social media and listening tools that we have to create, to understand what's being discussed in the environment, to update our communication material." *Id.* 148:11-15.

V. Dr. Fauci's Campaigns to Censor Disfavored Viewpoints on Social Media.

596. Dr. Fauci, cooperating frequently with NIH Director Dr. Francis Collins, engaged in a series of campaigns to discredit and procure the censorship of viewpoints he disfavored on social media, beginning at least in early 2020. Once he became Chief Medical Advisor in the Biden Administration in early 2021, his censorship efforts coordinated with and reinforced those of federal officials in the White House, the Office of the Surgeon General, the CDC, and elsewhere.

597. Until his recent retirement, Dr. Anthony S. Fauci was the director of the National Institute for Allergy and Infectious Diseases at the National Institutes of Health and the Chief Medical Advisor to President Biden. Fauci Dep. 10:8-16. At the time of his deposition, Dr. Fauci had been the director of NIAID for over 38 years. *Id.* at 10:25-11:1.

A. Dr. Fauci's Conspiracy and Campaign to Suppress the Lab-Leak Theory.

598. First, in early months of 2020, Dr. Fauci worked closely with Dr. Francis Collins and Jeremy Farrar to orchestrate a campaign to discredit and suppress the opinion that SARS-CoV-2, the virus that causes COVID-19, leaked from a laboratory at the Wuhan Institute of Virology—an opinion that has recently been confirmed as likely true. Early in the pandemic, Dr. Fauci was aware that NIAID, under his direction, had funded dangerous gain-of-function research on coronaviruses at that laboratory, and he sought to discredit and suppress the lab-leak theory to

AMERICAN OVERSIGHT

deflect the scandal and blame associated with potential responsibility for the deaths of millions in the ensuing pandemic. He engaged in a campaign of deception to discredit the theory, and as a result of his efforts, the lab-leak theory was heavily censored on social media.

599. On December 30, 2011, Dr. Fauci co-authored an op-ed with Dr. Francis S. Collins in the Washington Post entitled *A Flu Virus Risk Worth Taking*. Fauci Ex. 1, Fauci Dep. 13:13-20.

600. In this op-ed, Dr. Fauci and Dr. Collins advocated for creating potentially dangerous viruses in laboratories, writing that "important information and insights can come from generating a potentially dangerous virus in a laboratory." Fauci Ex. 1, at 1. According to Fauci and Collins, "[u]nderstanding the biology of … virus transmission has implications for outbreak prediction, prevention and treatment," and "[i]dentifying threatening viruses can also facilitate the early stages of manufacturing vaccines that protect against such a virus in advance of an outbreak." *Id.* at 2. They further argued that "identifying the molecular Achilles heel of these viruses can allow scientists to identify novel antiviral drug targets that could be used to prevent infection … or better treat those who become infected." *Id.*

601. Dr. Fauci and Dr. Collins acknowledged the significant risks associated with such research, writing that "[s]afeguarding against the potential accidental release or deliberate misuse of laboratory pathogens is imperative." *Id.* But they believed that those risks were contained, writing that "engineered viruses … are maintained in high-security laboratories." They further state that "scientists, journal editors, and funding agencies involved are working together to ensure that access to specific information that could be used to create dangerous pathogens is limited to those with an established and legitimate need to know." *Id.*

AMERICAN OVERSIGHT

602. Thus, long before the COVID-19 pandemic, Dr. Fauci and Dr. Collins were highly visible, public advocates for laboratory experiments that involve "generating a potentially dangerous virus in a laboratory." *Id.* at 1.

603. Such research of "generating a potentially dangerous virus in a laboratory" is commonly called "gain-of-function" research. Dr. Fauci testified that "[g]ain of function is a very potentially misleading terminology, and that was one of the reasons why several years ago outside groups, not the NIH … did away with the terminology 'gain of function' because it can often be very confusing and misleading." Fauci Dep. 16:3-10. But Dr. Fauci confirms that "the NIH" did not "d[o] away" with that terminology, *id.*, and Dr. Fauci's own internal email uses the phrase "SARS Gain of Function" to describe the research on bat coronaviruses that was conducted by Dr. Shi Zhengli and others at the Wuhan Institute of Virology, partly funded by Dr. Fauci's NIAID through the subgrants from the EcoHealth Alliance, discussed below, *see* Fauci Ex. 6, at 8.

604. On June 1, 2014, Dr. Fauci's NIAID funded a grant to the EcoHealth Alliance for the five-year period June 1, 2014, to May 31, 2019. Fauci Ex. 2, at 2. The title of the project was "Understanding the Risk of Bat Coronavirus Emergence." *Id.* at 1. The project's Abstract stated, "This project will examine the risk of future coronavirus (CoV) emergence from wildlife using in-depth field investigations across the human-wildlife interface in China, molecular characterization of novel CoVs and host receptor binding domain genes, mathematical models of transmission and evolution, and in vitro and in vivo laboratory studies of host range." *Id.*

605. The Abstract noted that one of the project's "three specific aims" would be to "[t]est predictions of CoV inter-species transmission" by engaging in two forms of research to enhance the bat coronaviruses' transmissibility to humans: "reverse genetics," *i.e.*, genetic manipulation of the viruses to render them more transmissible; and "virus infection experiments"

AMERICAN OVERSIGHT

using "humanized mice," *i.e.*, repeatedly infecting humanized mice with bat coronaviruses to provoke mutations that render them more infectious to human cells (a process known as "serial passage," *see* https://en.wikipedia.org/wiki/Serial_passage). *Id.* at 1. Specifically, the Abstract stated: "Predictive models of host range (i.e.[,] emergence potential) will be tested experimentally using *reverse genetics*, pseudovirus and receptor binding assays, and *virus infection experiments across a range of cell cultures* from different species and humanized mice." *Id.* (emphases added).

606. Dr. Fauci attempted to argue that "reverse genetics" is so vague that it might not refer to gain-of-function research. *See* Fauci Dep. 23:18-20 ("I'm not really quite sure what they're referring to. Reverse genetics can mean many things."). But Dr. Fauci admits that "reverse genetics" means "[m]anipulation of a virus, recombination, things like that." *Id.* at 23:19-21. In 2015, in an article reporting on research performed pursuant to this grant, Dr. Ralph Baric and Dr. Shi Zhengli wrote that they used "reverse genetics" to "generate[] and characterize[] a chimeric virus" that was more infectious and more virulent in humans. Fauci Ex. 4, at 1. Dr. Fauci's own internal email describes that article as addressing "SARS Gain of Function." Fauci Ex. 6, at 8.

607. Dr. Fauci admits that "EcoHealth has a subaward from their original grant that goes to Shi Zhengli at the Wuhan Institute of Virology." Fauci Dep. 36:4-6. He agrees that EcoHealth and Shi Zhengli of the Wuhan Institute of Virology "work together on research that's directly funded by NIAID." Fauci Dep. 36:7-13.

608. Dr. Fauci also attests that Dr. Peter Daszak likely has access to the genetic sequences of chimeric viruses that Shi Zhengli created during her research funded by EcoHealth using NIAID funds: "I don't know absolutely for sure, but I would imagine that if Peter Daszak is collaborating scientifically with Shi Zhengli, that it is likely, given the norms of scientific

AMERICAN OVERSIGHT

collaboration, that he would have access to data," and "they are collaborators, since he has a subaward to the Wuhan Institute that I believe goes to Dr. Shi." Fauci Dep. 37:1-13. Daszak, therefore, is likely in possession of genetic evidence demonstrating whether SARS-CoV-2 originated from NIAID-funded research at the Wuhan Institute of Virology.

609. Dr. Fauci claimed that he had never seen this grant award before his deposition, and that he was only "vaguely" aware of NIAID's funding of EcoHealth Alliance. *Id.* at 18:10-12 ("I'm vaguely familiar with the fact that EcoHealth Alliance has been doing research on trying to understand the bat coronavirus emergence."); *id.* at 19:7-8 ("I have no recollection of the initiation of this grant."). Dr. Fauci admits that "NIAID has funded EcoHealth Alliance," 20:5-6, but he contends that he is completely unfamiliar with this project. *Id.* at 20:8-9 ("[T]his is the first time that I have seen this piece of paper."). But this very grant project was flagged for Dr. Fauci in an email from his subordinate on January 27, 2020, at the beginning of the pandemic. Fauci Ex. 5. Given the public and Congressional scrutiny of this particular project and its relation to the origins of the COVID-19 pandemic, Dr. Fauci's testimony on these points is not credible.

610. Peter Daszak is listed as the "Contact PI/Project Leader" for the grant award "Understanding the Risk of Bat Coronavirus Emergence." Fauci Ex. 2, at 1. The "Awardee Organization" is the EcoHealth Alliance. *Id.*

611. Dr. Fauci claims that he is not acquainted with Peter Daszak and does not know how to pronounce Daszak's name, Fauci Dep. 20:13 ("I'm not sure"), and that he "do[es]n't even remember meeting him," *id.* at 21:1-2, but that he has seen a photo of himself with Daszak at a public event as the only evidence that they have met. *Id.* at 21:2-8.

612. In fact, Dr. Fauci has exchanged cordial emails with Daszak on a first-name basis, and he participated in a podcast with him on February 9, 2020, in which they both sought to

AMERICAN OVERSIGHT

discredit the lab-leak theory of COVID's origins. Fauci Ex. 15, 16, 30. Dr. Fauci's attempt to deny or downplay his acquaintance and familiarity with Daszak is not credible.

613. On October 17, 2014, the U.S. Government entered a "research funding pause" on gain-of-function research on coronaviruses, in a document entitled "U.S. Government Gain-of-Function Deliberative Process and Research Funding Pause on Selected Gain-of-Function Research Involving Influenza, MERS, and SARS Viruses." Fauci Ex. 3, at 1 (the "GoF Pause" or "Pause").

614. Contrary to Dr. Fauci's testimony that the "pause" was an occasion to jettison the term "gain-of-function," the Pause provided a simple and clear definition of "gain of function" research, defining "Gain-of-function studies" as "research that improves the ability of a pathogen to cause disease." Fauci Ex. 3, at 2. The research on bat coronaviruses described in Fauci Ex. 2 meets this simple definition.

615. The Pause applied to funding for all "research such as this until a new U.S. Government research policy could be adopted." Fauci Dep. 27:17-19; Fauci Ex. 3, at 2-3.

616. The Pause provided an exception in Footnote 1, which stated: "An exception from the research pause may be obtained if the head of the USG funding agency determines that the research is urgently necessary to protect the public health or national security." Fauci Ex. 3, at 2 n.1.

617. Dr. Fauci testified that he does not recall whether NIAID ever invoked that exception during the years that the Pause was in place (2014-2017). Fauci Dep. 28:22-29:3. He testified that authorization for funding under the exception would "not usually rise up to the office of the director, but is handled at the level of staff and deputy." *Id.* at 29:1-2. He testified that such approval for projects "urgently necessary to protect the public health or national security" could

AMERICAN OVERSIGHT

have come from "any of a number of people. It could have been people at the program level. It could have been my deputy. It could have been program managers and division directors." *Id.* at 30:16-19.

618. This testimony contradicts the plain language of the exception, which states that "*the head of the USG funding agency*" must "determine[] that the research is urgently necessary to protect the public health and national security" to allow continued funding for gain-of-function research on coronaviruses. Fauci Ex. 3, at 2 n.1. At all relevant times, Dr. Fauci was the "head of the USG funding agency," *i.e.*, the Director of NIAID, and he was responsible for authorizing funding for gain-of-function research on the ground that it was "urgently necessary to protect the public health or national security."

619. Dr. Fauci states that he does not recall whether NIAID ever authorized continued funding for Peter Daszak or EcoHealth Alliance pursuant to the exception to the Pause in footnote 1. Fauci Dep. 30:3-12.

620. In fact, Dr. Fauci testified that "I don't recall" or "I do not recall" 174 times in his deposition, and testified that he could not recall or remember using variations on that phrase 212 times. *See* Fauci Dep. 22:21-352:17-18. This contrasts sharply with his public statements about the very same issues that, during his deposition, he professed near-complete loss of memory. *See, e.g.,* Jones Decl., Ex. X, at 1 ("I remember it very well"). It also contrasts sharply with his clear, specific recollection of unrelated events from the same time frame. *See, e.g.,* Fauci Dep. 353:20-354:16. Dr. Fauci's repeated claims to not remember or not recall key events and people are not credible.

621. Dr. Fauci's chief deputy is Dr. Hugh Auchincloss, who is the Principal Deputy Director of NIAID. *Id.* at 30:20-25.

AMERICAN OVERSIGHT

622. In December 2015, during the research "Pause" on gain-of-function funding, Nature Medicine published an article entitled, "A SARS-like cluster of circulating bat coronaviruses shows potential for human emergence." Fauci Ex. 4, at 1. Dr. Ralph Baric of the University of North Carolina was listed as the corresponding author, and Dr. Shi Zhengli of the Wuhan Institute of Virology was listed as a co-author. *Id.* at 1 & n.8.

623. The 2015 Nature Medicine article clearly described gain-of-function research on bat coronaviruses. The Abstract states: "Here we examine the disease potential of a SARS-like virus, SHC014-CoV, which is currently circulating in Chinese horseshoe bat populations. Using the SARS-CoV reverse genetics system, we generated and characterized a chimeric virus expressing the spike of bat coronavirus SHC014 in a mouse-adapted SARS-CoV backbone." Fauci Ex. 4, at 1. Notably, the article uses the same phrase as the EcoHealth grant, "reverse genetics," to describe creating "a chimeric virus." *Id.*

624. The article reports that the "chimeric virus" created from a "SARS-like" bat coronavirus had become highly transmissible in human tissue: it could "replicate efficiently in primary human airway cells and achieve *in vitro* titers equivalent to epidemic strains of SARS-CoV." *Id.* It had also become more virulent: "Additionally, *in vivo* experiments demonstrate replication of the chimeric virus in mouse lung with notable pathogenesis." *Id.* There were no available treatments for this lab-created "chimeric" virus: "Evaluation of available SARS-based immune-therapeutic and prophylactic modalities revealed poor efficacy; both monoclonal antibody and vaccine approaches failed to neutralize and protect from infection with CoVs using the novel spike protein." *Id.*

625. The article noted that the authors had then "synthetically re-derived an infectious full-length SHC014 recombinant virus and demonstrate robust viral replication both in vitro and

AMERICAN OVERSIGHT

in vivo." *Id.* The article concluded that "[o]ur work suggests a potential risk of SARS-CoV re-emergence from viruses currently circulating in bat populations" – and this conclusion was based on creating a more transmissible (to humans) and more virulent (to humans) SARS-like coronavirus in a lab. *Id.*

626. The article acknowledged that NIAID was the principal funder of this research, and that it had received funding from the EcoHealth Alliance, Daszak's group: "Research in this manuscript was supported by grants from the National Institute of Allergy & Infectious Disease and the National Institute of Aging of the US National Institutes of Health (NIH) … and by USAID-EPT-PREDICT funding from EcoHealth Alliance." *Id.* at 5.

627. The article also noted that the NIH had reviewed and approved the research under the GoF Pause: "Experiments with the full-length and chimeric SHC014 recombinant viruses were initiated and performed before the GOF research funding pause and have since been reviewed and approved for continued study by the NIH." *Id.* "GOF" is short for "gain-of-function."

628. Dr. Fauci testified that he first became aware of this Nature Medicine article "likely … several months" after the outbreak of the COVID-19 pandemic, and that "it was brought to my attention in the context of questions that were raised by members of Congress about experiments that were funded by the NIAID." Fauci Dep. 31:17-20, 32:7-9. In fact, Dr. Fauci attached this article to a confidential midnight email to his principal deputy, Hugh Auchincloss, on January 31, 2020, and directed Auchincloss to read it immediately and take unspecified actions on it on a Saturday morning. Fauci Ex. 6, at 8. Dr. Fauci's testimony on this point is not credible.

629. Dr. Fauci testified that he does not believe he has ever met Dr. Ralph Baric, the corresponding author of the 2015 Nature Medicine article. Fauci Dep. 32:16-19 ("I know who he is, I doubt I've ever met him. I may have met him at one of the meetings where there are thousands

AMERICAN OVERSIGHT

of scientists saying hi to each other…"); *see also id.* at 33:25-34:1. In fact, Dr. Fauci's official calendar shows a one-on-one meeting with Dr. Ralph Baric on February 11, 2020, during the events described herein. Fauci Ex. 17, at 1. A contemporaneous Slack message on February 18, 2020 reports that Dr. Baric "sat in Fauci's office talking about the outbreak and chimeras," *i.e.*, lab-created chimeric viruses. Jones Decl., Ex. Y, at 1. And Dr. Fauci testified that Dr. Baric may be the source of the phrase "SARS Gain of Function" in the attachment to his midnight email to Hugh Auchincloss. Fauci Dep. 57:11-12. Dr. Fauci's testimony on this point is not credible.

630. Dr. Fauci professed to be ignorant of the identity of Dr. Shi Zhengli, the notorious "Bat Woman" of the Wuhan Institute of Virology. When asked if he knows who she is, he stated, "I'm not a hundred percent certain. I get sometimes confused with Asian names." *Id.* at 33:9-10, 18-19. Yet Dr. Shi Zhengli, the so-called "bat woman," is world-renowned as the researcher who may have caused the COVID-19 pandemic, and has been so since the beginning of the pandemic, *see, e.g.,* Jones Decl., Ex. Z, at 1, and the name "Shi" is included in the title of the article that Dr. Fauci forwarded to Dr. Hugh Auchincloss after midnight on February 1, 2020. Fauci Ex. 6, at 8. Dr. Fauci's testimony is not credible on this point.

631. Dr. Fauci testified that he first became aware of the outbreak of COVID-19 either December 31, 2019 or "the first couple days of 2022." Fauci Dep. 34:8-11.

632. Dr. Fauci recounts that he first became aware of concerns that the SARS-CoV-2 virus that causes COVID-19 "might have been genetically engineered or originated in a laboratory" when "[t]here was a phone call in late January of 2020, I believe, from Jeremy Farrar. There was one other person on the phone. I believe it was [K]ristian [Andersen], who piped me in on a three-way call, saying that they looked at the virus and there was some concern about the

AMERICAN OVERSIGHT

molecular configuration or makeup of the virus that made them think there was a possibility that there could have been a manipulation of the virus." *Id.* at 34:12-35:1.

633. Dr. Fauci states that he does not believe that anyone ever raised the concern to him before that late January call, and he specifically attests that he does not recall Dr. Robert Redfield, then-Director of the CDC, raising the concern to him in mid-January 2020. *Id.* at 35:2-15. Dr. Fauci's recollection conflicts with that of Dr. Redfield, who specifically recalls raising this issue to Dr. Fauci earlier in January 2020, and having his concerns fall on deaf ears: "Dr. Robert Redfield, a virologist and the director of the Centers for Disease Control and Prevention (CDC), had urged Fauci privately to vigorously investigate both the lab and natural hypotheses. He was then excluded from the ensuing discussions—learning only later that they'd even occurred. 'Their goal was to have a single narrative,' Redfield [said]." Jones Decl., Ex. AA, at 7.

634. "In mid-January of 2020, … Redfield expressed his concerns in separate phone conversations with three scientific leaders: Fauci; Jeremy Farrar, the director of the U.K.'s Wellcome Trust; and Tedros Adhanom Ghebreyesus, director general of the World Health Organization (WHO). Redfield's message, he says, was simple: 'We had to take the lab-leak hypothesis with extreme seriousness.'" *Id.* at 23. Dr. Fauci disputes this account and states that this conversation did not happen: "To my recollection, no." Fauci Dep. 35:9-12.

635. On January 27, 2020, Dr. Fauci and several other senior NIAID officials received an email from Greg Folkers, who is his "immediate chief of staff in my office group," *id.* at 38:2-4; the email provided "Talking Points for NIAID Director Dr. Fauci." Fauci Ex. 5. The email stated that "when talking about CoV … we have on our team (Vincent and folks we fund, Peter Daszak, Ralph Baric, Ian Lipkin, etc.) probably the world's experts on non-human coronaviruses. … EcoHealth group (Peter Daszak et al) has for years been among the biggest players in

AMERICAN OVERSIGHT

coronavirus work, also in collaboration Ralph Baric, Ian Lipkin, and others." *Id.* at 1. It also flagged the ongoing NIAID grant to Daszak and its work with Wuhan Institute of Virology: "NIAID has funded Peter's group for coronavirus work in China for the past five years through R01 1R01AI110964: 'Understanding the Risk of Bat Coronavirus Emergence.' That's now been renewed." *Id.* It noted that "[t]he results of the work to date include … Found SARS-related CoVs that can bind to human cells (published in *Nature*) and that cause SARS-like disease in humanized mouse models"—a clear reference to the 2015 *Nature Medicine* article. *Id.* Three days later, Dr. Fauci would attach that *Nature Medicine* article to a midnight email to Hugh Auchincloss. Fauci Ex. 6, at 8.

636. Like so many other things, Dr. Fauci testifies that he does not recall receiving this email. Fauci Dep. 40:5-6.

637. Dr. Fauci states that he first became aware of the concern that the virus might be bioengineered and lab-created in a call with Dr. Kristian Andersen of Scripps and Jeremy Farrar of the Wellcome Trust on January 31, 2020. Fauci Dep. 43:17-25. In that call, according to Dr. Fauci, "Jeremy and [K]ristian said they had looked at -- or at least [K]ristian did, possibly Jeremy -- and maybe one other scientist -- and said that it is possible that there may have been a manipulation because it was an unusual virus." Fauci Dep. 44:3-9. A phone call was arranged for the next day, Saturday, February 1, 2020, to discuss the possibility. *Id.* at 44:15-17.

638. According to contemporaneous emails, Eddie Holmes and Bob Garry were involved in this call with Dr. Fauci and Kristian Andersen as well. Fauci Ex. 7, at 2. Eddie Holmes, who was then raising serious concerns that the virus had leaked from a lab, would go on to be the lead drafter of a key article discrediting the lab-leak theory.

AMERICAN OVERSIGHT

639. After the January 31 call with Farrar and Andersen, in the evening of the same day, Dr. Fauci forwarded them an article that was skeptical of the lab-leak theory, stating that "it is of interest to the current discussion." Ex. 6, at 1. Andersen responded, stating that he was not convinced by the article because "one has to look really closely at all the sequences to see that some of the features look (potentially) engineered," and that "after discussion earlier today, Eddie [Holmes], Bob [Garry], Mike [Laribee], and myself *all find the genome inconsistent with expectations from evolutionary theory*." *Id.* (emphasis added); *see also* Fauci Dep. 51:3-8.

640. A few hours later, shortly after midnight, at 12:29 a.m. on February 1, 2020, Dr. Fauci sent an email to his principal deputy, Hugh Auchincloss. Fauci Ex. 6, at 8. The subject line of the email said "IMPORTANT." *Id.* The email stated: "Hugh: It is essential that we speak this AM. Keep your cell phone on. … Read this paper as well as the e-mail that I will forward to you now. You will have tasks today that must be done. Thanks, Tony." *Id.*

641. The "this paper" that was attached to the email was the 2015 *Nature Medicine* article entitled "A SARS-like cluster of circulating bat coronaviruses shows potential for human emergence," Fauci Ex. 4, co-authored by Dr. Ralph Baric and Dr. Shi Zhengli and funded by NIAID and the EcoHealth Alliance. Fauci Ex. 6, at 8; Fauci Dep. 55:23-56:25. As an attachment to Dr. Fauci's email, this article was called "Baric, Shi et al – Nature Medicine – SARS Gain of Function.pdf." Fauci Ex. 6, at 8.

642. Dr. Fauci claims that he can recall virtually nothing about sending this urgent, confidential email to his principal deputy in the middle of the night of the day when he found out that highly qualified researchers were concerned that SARS-CoV-2 might have leaked from a laboratory. *See* Fauci Dep. 55:15-63:21 ("I don't recall … I don't know for sure … I can't say that I recall that in particular … I don't recall. I'm not sure exactly why those words got in there

AMERICAN OVERSIGHT

… I don't recall … I don't recall … I don't precisely recall … I don't recall if I did … I might have, but I don't recall. … I don't recall. … I don't recall … I don't recall. … I don't recall … I really don't recall … I actually don't recall why I forwarded it to him … I don't recall why I did that … I don't remember … I don't recall speaking to him."). This contrasts starkly with Dr. Fauci's public claim to "remember … very well" key events of the same day. Jones Decl., Ex. X, at 1. Dr. Fauci's claim to an amazing loss of memory about this urgent clandestine email to his confidential deputy is not credible.

643. Dr. Fauci admits, however, that he wanted Auchincloss to find out what coronavirus research NIAID was funding in China before his call later that afternoon with scientists about the lab-leak concerns raised by Andersen and Farrar: "And at my recollection, I brought to Hugh's attention, saying, 'We have to speak in the morning, because I want to find out what the scope of what it is that we are funding so I'll know what we're talking about.'" Fauci Dep. 58:1-5. In particular, Dr. Fauci wanted to find out what EcoHealth Alliance was doing: "this was the first that I had heard about specifics of what EcoHealth and what other people were doing, and I wanted my staff to say get me up to date. So that's what I meant by you have work to do." *Id.* at 58:6-12.

644. Regarding the "tasks that must be done," Dr. Fauci admits that "I wanted to be briefed on the scope of what our collaborations were and the kind of work that we were funding in China. I wanted to know what the nature of that work was." *Id.* at 59:12-15.

645. The tone of the email and Dr. Fauci's own testimony strongly support the inference that Dr. Fauci sent the email to Auchincloss because he was concerned that NIAID, under his leadership, was funding research in China that might have led to the creation and leak of SARS-CoV-2, and he wanted to know the full extent of NIAID's exposure before his call later that day with scientists and funding authorities. *See also* Fauci Dep. 58:18-25. If it became public that

AMERICAN OVERSIGHT

NIAID had funded the creation of SARS-CoV-2, Dr. Fauci and his agency potentially faced an enormous crisis of public credibility and accountability.

646. Immediately after sending Auchincloss the 2015 *Nature Medicine* article, Dr. Fauci also forwarded Auchincloss another article about the possibility that SARS-CoV-2 had leaked from a lab—the Jon Cohen article that he had sent to Kristian Andersen and Jeremy Farrar earlier that evening. Fauci Ex. 6, at 9. This email confirms that Dr. Fauci was deeply concerned about the prospect that NIAID, under his watch, might have funded the creation of the virus causing the global pandemic.

647. Dr. Fauci denies that, when he sent this email to Auchincloss, he was then concerned that NIAID might have funded the creation of the virus that caused the COVID-19 pandemic. When asked, "Were you concerned at that time that the work that you had funded in China might have led to the creation of the coronavirus?" Dr. Fauci responded: "I wasn't concerned that it might have." Fauci Dep. 59:16-19. In light of the tone and content of his emails at the time, and Dr. Fauci's other testimony, this statement is plainly not credible.

648. According to Dr. Fauci, when he participated in the secret call with the scientists and funding authorities later that afternoon on Saturday, Feb. 1, 2020, he did not share with them that NIAID had been funding "SARS Gain of Function" research in China leading to the outbreak of COVID-19. Fauci Dep. 63:22 ("I don't believe I did.").

649. In fact, once again, Dr. Fauci claims that he does not recall what he said on the clandestine February 1, 2020 phone call. *Id.* at 64:17 ("I don't recall").

650. At 1:19 p.m. on Saturday, Feb. 1 – about forty minutes before the secret conference call to discuss the lab-leak concern – Dr. Fauci also forwarded the "Baric, Shi et al – Nature Medicine – SARS Gain of Function" article to Lawrence Tabak of the NIH, saying only "Here it

AMERICAN OVERSIGHT

is." Fauci Ex. 6, at 15. Lawrence Tabak was then "the deputy director of the National Institutes of Health," the principal deputy to then-NIH Director Dr. Francis Collins. Fauci Dep. 65:8-11.

651. Dr. Fauci testified that "I don't recall why" he sent the 2015 *Nature Medicine* article to Lawrence Tabak, but he admits that it was likely to get it into the hands of Dr. Francis Collins, who was about to participate in the 2:00 p.m. secret conference call with Dr. Fauci and the other scientists. *Id.* at 66:15-17. Dr. Fauci claims that this was "to make sure *everyone* was aware of what the discussions were," *id.* at 66:13-15, but that is not credible in light of his testimony that he did not alert any of the *other* scientists on the call to the concern that NIAID was funding "SARS Gain of Function" research in China. *Id.* at 63:22.

652. The more compelling inference is that Dr. Fauci wanted Dr. Collins to know that NIAID and NIH faced enormous exposure if the lab-leak theory turned out to be true or publicly accepted. Dr. Collins, along with Dr. Fauci, had publicly championed gain-of-function research since at least 2011, and NIH had jointly funded Dr. Shi Zhengli's work at the Wuhan Institute of Virology through NIAID and the National Institute of Aging. Fauci Ex. 4, at 5 (referring to "grants from the National Institute of Allergy & Infectious Disease and the National Institute of Aging of the US National Institutes of Health (NIH)").

653. On Saturday, Feb. 1, 2020, at 11:47 a.m., Hugh Auchincloss emailed Dr. Fauci in response to his 12:29 a.m. email. The subject line stated only "Continued." Auchincloss stated: "The paper you sent me [*i.e.*, the 2015 *Nature Medicine* article on 'SARS Gain of Function'] says the experiments were performed before the gain of function pause but have since been reviewed and approved by NIH. Not sure what this means since Emily is sure that no Coronavirus work has gone through the P3 framework. She will try to determine if we have any distant ties to this work abroad." Fauci Ex. 6, at 16. At 5:51 p.m., Dr. Fauci responded: "OK. Stay tuned." *Id.*

AMERICAN OVERSIGHT

654. "Emily" in Auchincloss's email "is Emily Erbelding, the Director of the Division of Microbiology and Infectious Diseases at NIAID," who "would have been the one who was closest to the ground in understanding what we were doing in funding China." Fauci Dep. 70:14-18. The "P3 framework" refers to the special approval process required for funding of gain-of-function research on coronaviruses that may cause pandemics, as "P3" stands for "potential pandemic pathogens." *See* National Institutes of Health, Office of Science Policy, *Gain of Function Research*, at https://osp.od.nih.gov/policies/national-science-advisory-board-for-biosecurity-nsabb/gain-of-function-research/ ("Certain gain-of-function studies with the potential to enhance the pathogenicity or transmissibility of potential pandemic pathogens (PPPs) have raised biosafety and biosecurity concerns…"). Thus, Auchincloss and Dr. Fauci had evidently discussed the concern that NIAID had funded the creation of "potential pandemic pathogens" at the Wuhan Institute of Virology, and Dr. Fauci was concerned about NIAID's "ties to this work abroad." Fauci Ex. 6, at 16.

655. Dr. Fauci admits that this email confirms that he "wanted to be briefed as to the extent of our involvement with funding in China," Fauci Dep. 71:2-4—in particular, NIAID's funding of the Wuhan Institute of Virology, as a global SARS-like pandemic emerged from Wuhan.

656. Dr. Fauci also admits that he may have raised the concern with Auchincloss that Dr. Baric's and Dr. Shi Zhengli's research reflected in the 2015 *Nature Medicine* article may have been illegally funded in violation of the GoF Pause in effect from 2014 to 2017. Fauci Dep. 71:14-20 ("Q: Did you raise a specific concern with Hugh that the research reflected in the Baric, Shi Nature Medicine paper may have been inconsistent with the pause on -- gain-of-function funding research? A. That is possible.").

AMERICAN OVERSIGHT

657. On Saturday, Feb. 1, 2020, Jeremy Farrar sent an email organizing a secret conference call at 2:00 pm EST to a group of scientists and science-funding authorities. Fauci Ex. 6, at 17-18. The first thing that Farrar noted in the email, in bold, was "**Information and discussion is shared in total confidence and not to be shared until agreement on next steps.**" *Id.* at 17 (bold in original).

658. Separately, Farrar sent just Dr. Fauci an email on the morning of Feb. 1 to ensure that he could join the call, stating "Could you join?" Fauci Ex. 7, at 12. In that email, Farrar listed the participants and stated, "My preference is to keep this a really tight group. … Obviously ask everyone to treat in total confidence." *Id.* He also stated that the purpose of the call was "To listen to the work of Eddie, Bob and Kristian have done. Question it. And think through next steps." *Id.*

659. Dr. Fauci described the call as an open debate about the lab-leak theory among "a larger group of evolutionary virologists," Fauci Dep. 58:19-20, but in fact the call included a heavy representation of international government and science-funding authorities—including Dr. Fauci, Director of NIAID; Dr. Francis Collins, Director of NIH; Jeremy Farrar, head of the Wellcome Trust, the United Kingdom's "predominant" science-funding authority; Paul Schreier, the Chief Operating Officer of the Wellcome Trust who is responsible for "research funding" there; and Sir Patrick Vallance, the chief medical advisor to the U.K. government. Fauci Ex. 6, at 18; *see also* Fauci Dep. 75:11-76:15. All these people had a strong vested interest in avoiding a major scandal about international science-funding practices—such as the concern that Western governments may have funded the creation of a deadly virus that escaped from a lab and infected millions of people. As funding authorities who control the distribution of massive amounts of research funding, they also had powerful influence over the research scientists on the call.

AMERICAN OVERSIGHT

660. Dr. Fauci took steps to ensure that Dr. Francis Collins would be included on the call "since he's the director of NIH." Fauci Dep. 75:4-6. Dr. Fauci evidently spoke with Dr. Collins before the call, as he emailed Farrar before the call stating, "Jeremy: Francis will be on the call. He is trying to phone you." Fauci Ex. 7, at 17. Farrar then emailed Dr. Collins stating, "Francis Call me on [redacted]." Fauci Ex. 7, at 19.

661. Like the 12:29 a.m. email to Auchincloss, Dr. Fauci repeatedly claimed that he could not recall virtually any details about the 2:00 p.m. secret conference call with scientists and funding authorities about the lab-leak theory. Fauci Dep. 63:19-67:11 ("I don't recall bringing this up … I don't recall … I don't recall … I don't recall when it was … I don't recall … I don't believe that Larry was, but he could have been … I don't recall"); Fauci Dep. 73:20-74:14 ("I don't recall a discussion about confidentiality or not … I may have. I don't recall."); Fauci Dep. 77:13-15 ("Do you remember anything that anybody said on the call? A: No."); Fauci Dep. 78:10-83:10 ("I don't recall whether that was discussed … I don't recall anything from that phone call that said that … I'm not sure if I discussed it … I have a vague recollection that there was a concern … It is certainly possible, but I don't specifically remember … I don't specifically recall.").

662. This testimony to near-complete lack of memory about the call stands in stark contrast to Dr. Fauci's public statements a year and a half after the call occurred, when FOIA releases of Dr. Fauci's emails finally revealed to the public that this secret call had occurred. Then, Dr. Fauci stated, "I remember it very well." Jones Decl., Ex. X, at 1. Dr. Fauci's testimony about lack of recall is not credible.

663. Notwithstanding his repeated testimony that he cannot recall specifically what was said on the call, Dr. Fauci provided a self-justifying and innocent account of the call, describing it as a good-faith discussion among scientists trying to get to the truth without any preconceived

AMERICAN OVERSIGHT

biases. *See, e.g.,* Fauci Dep. 77:16-18 ("[T]here was what appeared to me to be good faith discussion back and forth between people who knew each other"); Fauci Dep. 79:23-80:1 ("I think the general feeling among the participants on the call is that they wanted to get down to the truth and not wild speculation about things."); Fauci Dep. 80:9-10 ("I don't think there was any other concern than sticking with the truth and sticking with data").

664. Dr. Fauci thus seeks to have his cake and eat it too—he claims both to remember little or nothing of what was said on the call, and to clearly remember that the entire discussion was done in good faith and without any bias. In any event, subsequent communications and events make clear that Dr. Fauci's testimony on this point is not credible, as discussed in detail below, as an aggressive plot to discredit the lab-leak theory commenced immediately after the call.

665. Almost an hour into the 2:00 pm call, at 2:56 p.m., Jeremy Farrar sent a cryptic email to Fauci, Collins, Vallance (all science funders) and Mike Ferguson, stating, "Can I suggest we shut down the call and then redial in? Just for 5-10 mins?" Dr. Fauci responded, "Yes." Fauci Ex. 7, at 26. Dr. Fauci claims he cannot recall whether this occurred. Fauci Dep. 92:1-93:6.

666. Dr. Fauci testified that the call participants concluded that they needed more time to take a much closer look at the biology of the virus and genetic sequences before coming to a conclusion about the virus's origins, and they planned to take more time to continue their inquiry afterward. *See* Fauci Dep. 78:3-9 ("The ten[or] of it ended that we need more time … they said we need some time to more carefully look at this to see if we can come to a sound conclusion based on further examination of the sequences."); Fauci Dep. 80:24-25 ("The plan was to go and spend more time carefully looking at it."). In fact, Eddie Holmes and Kristian Andersen began drafting an article concluding that the lab-leak hypothesis was baseless and rooted in animus

AMERICAN OVERSIGHT

immediately after the call ended, and Dr. Fauci received an initial draft of this article by the next Tuesday morning. *See infra*. Dr. Fauci's testimony on this point is not credible.

667. Dr. Fauci testified that his next interaction with the call's participants was when Kristian Andersen sent him a preprint of that article attacking the lab-leak theory. Fauci Dep. 82:19-83:1. In fact, before the preprint, Holmes and Farrar had sent Dr. Fauci at least *four* drafts of the article to review. *See infra.* Dr. Fauci's testimony is not credible on this point.

668. Dr. Fauci states that he cannot remember if he had further discussions with Jeremy Farrar, Francis Collins, and Patrick Vallance surrounding this call on Feb. 1, 2020. Fauci Dep. 83:2-10; 85:8-23, 90:25-91:15, 92:1-21. In fact, Dr. Fauci sent Jeremy Farrar a lengthy email that is entirely redacted at 12:38 a.m. on Saturday, Feb. 1, 2020, Fauci Ex. 7, at 1; Farrar emailed Fauci on Jan. 30 stating "Tony Perfect timing – thank you. Great to catch up," and provided Sir Patrick Vallance's phone number, Fauci Ex. 7, at 4; Fauci emailed Farrar and Vallance on Jan. 30, stating "Thanks, Jeremy. Great chatting with you and Patrick. Will stay in close touch," Fauci Ex. 7, at 4; Jeremy Farrar sent Dr. Fauci an email on Friday, Jan. 31, stating "Tony Really would like to speak with you this evening It is 10pm now UK Can you phone me on [redacted]," Fauci Ex. 7, at 3; Farrar and Sir Patrick Vallance had a three-way call with Dr. Fauci on Jan. 30, 2020, Fauci Ex. 7, at 4; Farrar emailed Fauci and Collins after the call referring to "Conversations with you and Tony, and Patrick and others," Fauci Ex. 7, at 34; among others. Dr. Fauci had extensive discussions with Jeremy Farrar, Francis Collins, and Patrick Vallance surrounding the 2:00 p.m. February 1, 2020 secret conference call, and his testimony to the contrary is not credible.

669. After the call, Francis Collins emailed Farrar and stated, "Hi Jeremy, I can make myself available at any time 24/7 for the call with Tedros. Just let me know. Thanks for your leadership on this critical and sensitive issue." Fauci Ex. 7, at 34. Farrar responded, "We are

AMERICAN OVERSIGHT

altogether as you know!" Fauci then chimed it: "Thanks, Jeremy. We really appreciate what you are doing here." Fauci Ex. 7, at 34. "Tedros" refers to the director of the World Health Organization. Fauci Dep. 95:6-7.

670. After the call, Dr. Fauci described the scientists as engaging in a careful investigation of the virus: "[K]ristian and a few of the others carefully got together and looked at it and examined the pros and the cons and the ups and downs, and came to the conclusion that their initial concern about the molecular basis of the concern was unwarranted and that what they saw was quite compatible and, in fact, suggestive of a natural evolution." Fauci Dep. 81:8-15. In fact, Eddie Holmes and Kristian Andersen immediately began drafting an article attacking the lab-leak theory with no further investigation, which was sent to Dr. Fauci in less than three days. *See infra.* Dr. Fauci's testimony on this point is not credible.

671. Farrar emailed Dr. Tedros of the World Health Organization and two senior WHO officials, along with Dr. Fauci and Dr. Collins, indicating that he had just spoken to the senior WHO officials and "[f]ully agree with your summary." Fauci Ex. 8, at 1. Farrar emphasized the "urgency and importance" of the lab-leak question because of the "[g]athering interest evident in the scientific literature and in mainstream and social media to the question of the origin of this virus," and thus it was "[c]ritical" to "get ahead of the science and the narrative of this" instead of "reacting to reports which could be very damaging." Fauci Ex. 8, at 1. He also wrote, "I am sure I speak for Francis [Collins] and Tony [Fauci] when I say we are here and ready to play any constructive role in this," as they "[d]o think this is an urgent matter to address." *Id.*

672. Thus, Farrar, joined by Fauci and Collins, sent a message to the WHO that they wanted to "get ahead" of potentially damaging "narrative[s]" that might emerge "in mainstream and social media" about the origins of the virus. *Id.*

AMERICAN OVERSIGHT

673. Later that day, on Feb. 2, Farrar separately emailed Fauci and Collins, stating "Tedros and Bernhard have apparently gone into conclave…they need to decide today in my view. If they do prevaricate, I would appreciate a call with you later tonight or tomorrow to think how we might take forward." Fauci. Ex. 8, at 2. He also stated, "Meanwhile…." and linked to an online article speculating about the lab-leak origins of the virus—again indicating that Fauci, Farrar, and Collins were concerned about controlling online discourse about the lab-leak theory. *Id.*

674. The day after the conference all, Sunday, Feb. 2, Dr. Fauci, Jeremy Farrar, and Dr. Collins shared a series of emails (1) acknowledging that there were very serious arguments in favor of the lab-leak theory, and (2) repeatedly expressing concern about the lab-leak theory's involvement on "social media." The group, including Dr. Fauci, repeatedly expressed concern about postings about the lab-leak theory on social media. *See* Fauci Ex. 8.

675. First, after the Feb. 1 call, still on Feb. 1, Farrar sent an email to the group expressing concern that "[t]here will be media interest and there is already chat on Twitter/WeChat" about the lab-leak theory, and stating: "In order to stay ahead of the conspiracy theories and social media I do think there is an urgency for a body to convene" to address the lab-leak question. Fauci Ex. 8, at 9.

676. The next day, Feb. 2, Farrar then expressed concern that "these questions are being asked by politicians, starting in the scientific literature, [and] certainly on social and main stream media. If, and I stress if, this does spread further, pressure and tensions will rise. [I] fear these questions will get louder and more polarised and people will start to look to who to blame. … I am concerned if this is not done quite quickly it will be reacting to what may be lurid claims." Fauci Ex. 8, at 7.

AMERICAN OVERSIGHT

677. Another call participant then agreed that "this needs to be discussed urgently," in part "because of the lurid claims on Twitter." Fauci Ex. 8, at 6. He also noted that "if the evolutionary origins of the epidemic were to be discussed, I think the only people with sufficient information or access to samples to address it would be the teams working in Wuhan." *Id.*

678. The same day, Farrar acknowledged "this is a very complex issue," and again expressed concern about "social and main stream media": "As discussed on the phone this discussion is not limited to those on this email, it is happening wider in the scientific, social and main stream media." Fauci Ex. 8, at 5.

679. Dr. Collins then responded to Farrar and Dr. Fauci only, stating that "a confidence-inspiring framework … is needed, or the voices of conspiracy will quickly dominate, doing great potential harm to science and international harmony." Fauci Ex. 8, at 5.

680. Farrar then shared notes with Fauci, Collins and Tabak (Collins' deputy) from "Mike Farzan (discoverer of SARS receptor)," which stated that Farzan "is bothered by the furin cleavage site [a virus feature that looks bioengineered] and has a hard time explaining that as an event outside the lab," and that "acquisition of the furin site would be highly compatible with the idea of continued passage of virus in tissue culture," *i.e.*, serial passage. Fauci Ex. 8, at 4. Farzan suggested that "a likely explanation" of the virus was serial passage of SARS-like coronaviruses in human cell lines, and he stated that "I am 70:30 or 60:40" in favor of laboratory origins. Fauci Ex. 8, at 3-4.

681. Farrar also shared notes from "Bob" [Garry] that he had "aligned" the new virus "with the 96% bat CoV sequenced at WIV [Wuhan Institute of Virology]," and viewed the lab-origin theory as highly likely: "I really can't think of a plausible natural scenario … I just can't

AMERICAN OVERSIGHT

figure out how this gets accomplished in nature. Do the alignment of the spikes at the amino acid level – it's stunning." Fauci Ex. 8, at 4.

682. Having shared these notes, Farrar noted, "On a spectrum if 0 is nature and 100 is release – I am honestly at 50! My guess is that this will remain grey, unless there is access to the Wuhan lab – and I suspect that is unlikely!" Fauci Ex. 8, at 3. Both Farrar and Collins expressed concerns that the WHO might move too slowly for their liking. *Id.*

683. Then, still on February 2, 2020, Dr. Fauci wrote to Farrar, Collins, and Lawrence Tabak (Dr. Collins' principal deputy), stating: "Like all of us, I do not know how this evolved, but 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." Fauci Ex. 8, at 2 (emphasis added).

684. Dr. Fauci claimed that he is completely dissociated from social media, stating: "I don't do social media so I'm not familiar with them," Fauci Dep. 98:15-16; and "You know, I'm so dissociated from social media. I don't have a Twitter account. I don't do Facebook. I don't do any of that, so I'm not familiar with that," Fauci Dep. 99:5-8; *see also, e.g.,* Fauci Dep. 103:12-14; 210:3-8; 213:10-16; 241:6-9; 241:21-242:1; 301:10-11 ("I don't pay attention to things related to social media accounts."); *id.* at 312:7-9 ("I can repeat it for the hundredth time, I really don't get involved in social media issues."); *id.* at 356:15-16 ("I'm not a social media person.").

685. In fact, Dr. Fauci's daughter was then a software engineer at Twitter, Fauci Dep. 99:23-100:15; Dr. Fauci has done numerous podcasts and interviews on social media, including with Mark Zuckerberg, Fauci Dep. 99:16-19, 101:1-6; Dr. Fauci had specifically expressed concern about "the threat of further distortions on social media" about the lab-leak theory in his contemporaneous email, Fauci Ex. 8, at 2; and Dr. Fauci's communications staff had repeatedly

AMERICAN OVERSIGHT

emailed Twitter to try to remove postings critical of Dr. Fauci, *see infra*. Dr. Fauci's professed ignorance of social media is not credible. His communications and conduct make clear that he is keenly aware and deeply concerned about what he believes are "distortions on social media." Fauci Ex. 8, at 2.

686. Dr. Fauci also testified that "I don't recall anything about social media" in his discussions with Farrar about the origins of the virus. Fauci Dep. 102:17-18. In light of the contemporaneous emails repeatedly raising concerns about discussions of the lab-leak theory on social media, this claim is not credible.

687. Dr. Fauci admits that he was "concerned about … there being misinformation or disinformation that would interfere with our trying to save the lives of people throughout the world, which happens when people spread false claims." Fauci Dep. 103:18-22. He states that "misinformation and/or disinformation can lead to loss of life … and that troubles me." Fauci Dep. 104:15-17. This includes the spread of misinformation and disinformation on social media, because "that's part of the way information is disseminated." Fauci Dep. 104:22-23.

688. After Dr. Fauci's email about "the threat of further distortions on social media," Farrar emailed back indicating that the WHO might not move quickly to address the lab-leak theory, and stating to Fauci and Collins: "they need to decide today in my view. If they do prevaricate, I would appreciate a call with you later tonight or tomorrow to think how we might take forward." Fauci Ex. 8, at 2. He also stated: "Meanwhile…." and linked to an online posting expressing concerns about the lab-leak theory – indicating his dominant concern about online speech discussing the lab-leak theory. *Id.*

689. Soon thereafter, Farrar emailed Dr. Tedros of the WHO and two senior WHO officials, copying Fauci and Collins. Fauci Ex. 8, at 1. Farrar urged the WHO to quickly establish

AMERICAN OVERSIGHT

a working group to address the lab-leak theory, and reiterated that they should "[a]ppreciate the urgency and importance of this issue," given the "[g]athering interest evident in the science literature and in mainstream and social media to the question of the origin of this virus," and pressing them to "get ahead of … the narrative of this and not reacting to reports which could be very damaging." Fauci Ex. 8, at 1.

690. Fauci claims that he does not believe there was any further communication between him and Farrar about this issue, despite Farrar's urgent request for a follow-up call if the WHO did not act immediately. Fauci Ex. 8, at 2; Fauci Dep. 109:22-110:7. In light of their subsequent communications, this testimony is not credible.

691. By the early morning of February 4, 2020, Eddie Holmes had already sent a draft research paper attacking the lab-leak theory to Jeremy Farrar. Fauci Ex. 9, at 1. Holmes noted to Farrar that, in the draft, he "[d]id not mention [the virus's] other anomalies as this will make us look like loons." Fauci Ex. 9, at 1. To complete the draft between the afternoon of Saturday, Feb. 1, and the early morning of Tuesday, Feb. 4, Holmes must have started working on it almost immediately after the Feb. 1 conference call.

692. Farrar forwarded this draft to Fauci and Collins at 2:01 a.m. on Tuesday morning, February 4, 2020, in an attachment called "Summary." Fauci Ex. 10, at 3. He noted, "Please treat in confidence – a very rough first draft from Eddie and team – they will send on the edited, cleaner version later." *Id.*; *see also* Fauci Ex. 12, at 1.

693. Dr. Collins responded: "I note that Eddie is now arguing against the idea that this is the product of intentional human engineering," Fauci Ex. 10, at 3, a dramatic reversal of Holmes's position a few days earlier that Holmes and Andersen "find the genome inconsistent with expectations from evolutionary theory." Fauci Ex. 6, at 1. The paper's conclusion was also

AMERICAN OVERSIGHT

profoundly at odds with Holmes's statement, in the email sending the draft paper itself, that they would "look like loons" if the paper discussed the virus's other "anomalies" that strongly suggested a lab origin. Fauci Ex. 9, at 1.

694. Collins also noted that Holmes had not ruled out the possibility of a lab-created virus through serial passage. Fauci Ex. 10, at 3. Farrar responded, stating "Eddie would be 60:40 lab side. I remain 50:50." *Id.* Eddie, however, had already drafted a paper that *refuted* the lab-leak theory, even though he evidently still believed was the better explanation. *See id.*

695. Regarding the possibility of serial passage, Dr. Fauci noted that "Serial passage in ACE2-transgenic mice" was a possibility for the virus's origin, Fauci Ex. 10, at 2— notably, serial passage in humanized mice as was used in the 2015 *Nature Medicine* study. (Like so many other things, Dr. Fauci claims he does not recall this statement that he wrote. Fauci Dep. 115:22-116:12.) Collins responded, "Surely that wouldn't be done in a BSL-2 lab?" and Farrar answered, "Wild West…." Fauci Ex. 10, at 2. This exchange indicates that that Fauci, Farrar, and Collins were concerned that the coronavirus had been created in Wuhan by serial passage through humanized mice in a low-security [BSL-2] lab and then escaped from that low-security lab—*i.e.*, the precise concerns surrounding the NIAID-funded research at WIV. *Id.*; *see also, e.g.,* Jones Decl., Ex. BB< at 14 ("In the above exchange, the health officials [Fauci, Farrar, and Collins] seem to be contemplating the possibility that the repeated passage of a coronavirus through genetically modified mice in an insufficiently secure lab could have resulted in the accidental emergence and release of SARS-CoV-2.").

696. Later in the evening of the same day, Tuesday, Feb. 4, Farrar sent Fauci and Collins a second version of draft, entitled "Summary," with the note "Tidied up." Fauci Ex. 12, at 7. Dr. Fauci claims he does not remember receiving these drafts. Fauci Dep. 127:4-10.

AMERICAN OVERSIGHT

697. The next day, February 5, 2020, Farrar sent Fauci and Collins a third version of the draft, still entitled "Summary," with a note: "Tony and Francis The revised draft from Eddie, copied here." Fauci Ex. 12, at 8.

698. Two days later, on February 7, 2020, Farrar sent Fauci and Collins a fourth version of the same draft, entitled "Summary.Feb7.pdf," with the note in the subject line, "Revised draft." Fauci Ex. 11, at 2. This draft made clear that Holmes and his co-authors planned to aggressively discredit the lab-leak theory. It stated in bold in the beginning "Overview" section: "**Analysis of the virus genome sequences clearly demonstrates that the virus is not a laboratory construct or experimentally manipulated virus**." Fauci Ex. 11, at 3 (bold in original).

699. This was the *fourth* updated draft that Farrar sent to Fauci and Collins of the paper discrediting the lab-leak theory in the first week since the Feb. 1 secret conference call. The draft advocated that genetic evidence "clearly demonstrates" that the lab-leak theory is false. *Id.*

700. Dr. Fauci claims that he did not have any involvement in Farrar's efforts to push the WHO to assemble a working group to address the lab-leak theory. Fauci Dep. 110:4-7 ("So I really would doubt that there was any further communication between me and the WHO about this. This was fundamentally Jeremy's lane, if you want to call it that."); *id.* at 125:17-19 ("I didn't have any direct involvement with the WHO, not to my recollection."); *id.* at 131:14-15 ("This was mostly a Jeremy-led thing"). But in fact, Dr. Fauci sent multiple emails to Farrar urging for the inclusion of a long list of specific scientists in the WHO's working group. Fauci Ex. 13, at 1-2, 6.

701. On Feb. 5, 2020, Farrar emailed Fauci and Collins, stating that he believed that the WHO would assemble a working group to address the lab-leak theory, and urging Fauci and Collins to provide names of scientists to participate in the group. Fauci Ex. 13, at 7. Farrar stated that the WHO "have asked for names to sit on that Group – please do send any names." *Id.* He

AMERICAN OVERSIGHT

then stated, "We can have a call this week with a core group of that *to frame the work of the Group* including – if you could join?" *Id.* (emphasis added). And then he stated, "With names to be put forward into the Group from us and *pressure on this group from your and our teams* next week." *Id.* (emphasis added). Plainly, Farrar intended, with Fauci and Collins' assistance, to stack the WHO's group with their hand-picked scientists, have an advance call "to frame the work of the Group," and to put "pressure on this group from [Fauci's and Collins'] and our teams next week," *id.*—to influence and control the outcome of the WHO Group's deliberations.

702. Fauci and Collins did not dispute this plan. On the contrary, Fauci responded by providing Farrar with a detailed list of eight scientists to include in the WHO's group "in addition to the individuals who were on the call with us last Saturday." Fauci Ex. 13, at 2, 6. Fauci then followed up to his own email with an additional scientist, stating she is "an important name for the coronavirus evolution working group. Please include her." *Id.* at 1. Fauci's attempts to downplay his involvement with the plan to create and control a WHO working group on COVID-19's origins to discredit the lab-leak theory, therefore, are not credible.

703. Dr. Fauci testified that he, Farrar, and Collins "wanted to get them [the WHO] involved because we wanted to make sure that this was an open and transparent discussion," Fauci Dep. 126:9-12, is not credible in light of the contemporaneous email from Farrar to Fauci and Collins plotting to "frame the work of the Group" and put "pressure on this group from your and our teams next week." Fauci Ex. 13, at 3.

704. Dr. Fauci claims he does not recall any discussions about framing the work of the Group, or putting pressure on the Group. Fauci Dep. 137:1-21.

705. On February 9, 2020, Dr. Fauci participated in a joint podcast with Dr. Peter Daszak of the EcoHealth Alliance to discuss the outbreak of COVID-19. Fauci Ex. 15, at 1.

AMERICAN OVERSIGHT

706. Peter Daszak was then involved in organizing a statement for the Lancet seeking to discredit the lab-leak theory, similar to the article then being drafted by Eddie Holmes, of which Dr. Fauci had received four drafts the previous week. *See* Jones Decl., Ex. CC, at 1. Just a few days later, The Lancet would publish a statement of scientists organized and co-signed by Daszak and Jeremy Farrar, which stated: "We stand together to strongly condemn conspiracy theories suggesting that COVID-19 does not have a natural origin." *Id.* Thus, at that time, Daszak was working in parallel with Dr. Fauci, and together with Jeremy Farrar, to produce a published article discrediting the lab-leak theory. *Id.*

707. During the podcast, both Dr. Fauci and Daszak made comments seeking to discredit the lab-leak theory. Fauci Ex. 16, at 1. Fauci, when asked "Do you have any sense of where [the virus] probably came from?" answered, "Well I think ultimately we know that these things come from an animal reservoir. I heard these conspiracy theories and like all conspiracy theories … they [are] just conspiracy theories…. I think the things you are hearing are still in the realm of conspiracy theories without any scientific basis for it." *Id.* Daszak was asked, "Is it your sense that it's almost certain it came from an animal-to-human transmission?" and he responded: "All the evidence says that is what happened. … It looks to me and to most scientists like it's a bat virus that got into people either in the market or in rural China and just unfortunately has the capacity to spread." *Id.*

708. On February 11, 2020, Dr. Fauci had a meeting at NIAID with Dr. Ralph Baric, the corresponding author of the 2015 *Nature Medicine* article about NIAID-funded gain-of-function research in Wuhan that Dr. Fauci sent to Hugh Auchincloss after midnight on Feb. 1. Fauci Ex. 17, at 1 (Dr. Fauci's official calendar, Feb. 11, 2020, at 2:30 p.m. – "Meeting with Dr. Ralph Baric"). Dr. Fauci does not dispute that he met with Dr. Ralph Baric that day, but (like so many

AMERICAN OVERSIGHT

other things) he claims that he does not recall the meeting or what they discussed. Fauci Dep. 149:9-10, 149:21-23. As noted above, given that Dr. Fauci was deeply concerned about Baric's research at the time, Dr. Fauci's testimony on this point is not credible.

709. On Feb. 11, 2020, Ian Lipkin wrote an email referring to the draft paper about the origins of COVID-19 stating that, while the paper was "well-reasoned and provides a plausible argument against genetic engineering," it "does not eliminate the possibility of an inadvertent release following adaptation through selection in culture at the institute in Wuhan. Given the scale of the bat CoV research pursued there and the site emergence of the first human cases we have a nightmare of circumstantial evidence to assess." Fauci Ex. 18, at 1. Dr. Fauci states that he does not recall this email but that "it's entirely possible that Ian wrote this to me," because "Ian communicates with me." Fauci Dep. 153:15-17.

710. Dr. Fauci testified that it is "molecularly" impossible that SARS-CoV-2 originated from NIAID-funded research: "molecularly, that could not have happened." *Id.* at 157:21-22. But separately, he repeatedly testified that molecular virology is not his field, so his certainty on this one key point is not credible. *Id.* at 64:8-9 ("that's not my field, evolutionary virology"); *id.* at 117:19-20 ("I'm hesitant to go there because that's not my area of expertise"); *id.* at 127:12-13 ("it was an area that was not my area of expertise"); *id.* at 160:7-9 ("Did I fully understand the molecular virology of it? Unlikely, because I'm not an evolutionary virologist.").

711. On February 17, 2020, the preprint version of the paper drafted by Eddie Holmes attacking the lab-leak theory was released. Fauci Ex. 19. The paper was entitled, "The Proximal Origins of SARS-CoV-2." *Id.* at 12. Its listed authors were Kristian Andersen, Andrew Rambaut, Ian Lipkin, Edward Holmes, and Robert Garry. *Id.* All these authors, except possibly Ian Lipkin,

AMERICAN OVERSIGHT

had been participants in the secret phone conference at 2:00 p.m. on Saturday, Feb. 1, 2020. Fauci Dep. 161:7-10.

712. These authors had a financial interest in supporting NIH's preferred narrative. "Garry and Andersen have both been recipients of large grants from NIH in recent years, as has another 'Proximal Origin' author, W. Ian Lipkin of Columbia University." Jones Decl., Ex. BB.

713. These authors were stunningly recent converts to the theory of natural origin. On February 11, Ian Lipkin had sent an email about the same paper stating that "we have a nightmare of circumstantial evidence to assess." Fauci Ex. 18, at 1. On February 4, Holmes had written to Farrar that he avoided discussing the virus's "other anomalies as this will make us look like loons." Fauci Ex. 9, at 1.

714. On February 2, Bob Garry had written to Farrar, "I really can't think of a plausible natural scenario … I just can't figure out how this gets accomplished in nature. Do the alignment of the spikes at the amino acid level – it's stunning." Fauci Ex. 8, at 4. On January 31, Andersen had written to Dr. Fauci that the virus's "features (potentially) look engineered," and that "after discussion earlier today, Eddie [Holmes], Bob [Garry], … and myself all find the genome inconsistent with expectations from evolutionary theory." Fauci Ex. 6, at 1.

715. The preprint version of "The Proximal Origin of SARS-CoV-2" asserted a very different conclusion. It stated that "this analysis provides evidence that SARS-CoV-2 is not a laboratory construct nor a purposefully manipulated virus." Fauci Ex. 19, at 2. It stated that "genomic evidence does not support the idea that SARS-CoV-2 is a laboratory construct." *Id.* at 6.

716. Dr. Fauci does not dispute that this preprint was sent to him. Fauci Dep. 160:3-4 ("It is likely that this was sent to me"). Dr. Fauci admits that he reviewed the preprint when it was

AMERICAN OVERSIGHT

sent to him. *Id.* at 160:7 ("Did I look through it? Yes."). And Dr. Fauci admits that he was aware of what their conclusion was about the lab-leak theory. *Id.* at 162:13-15 ("I am certain that having looked at it, I was aware of what their conclusion was.").

717. This was the *fifth* version of the paper that was sent to Dr. Fauci to review, after four drafts sent to him on Feb. 4, 5, and 7. *Id.* at 160:13-16.

718. On March 6, 2020, Kristian Andersen emailed Dr. Fauci, Dr. Collins, and Jeremy Farrar, stating, "Dear Jeremy, Tony, and Francis, Thanks again for your advice and leadership as we have been working through the SARS-CoV-2 'origins' paper. We are happy to say that the paper was just accepted by Nature Medicine and should be published shortly …. To keep you in the loop, I just wanted to share the accepted version with you, as well as a draft press release. We're still waiting for proofs, so please let me know if you have any comments, suggestions, or questions about the paper or the press release." Fauci Ex. 22, at 1. He also wrote: "Tony, thank you for your straight talk on CNN last night – it's being noticed." *Id.*

719. Thus, Andersen thanked Dr. Fauci, Collins, and Farrar for their "advice and leadership" about the paper, sent them the final draft, and asked for their input both on the draft and on their public messaging about the draft. *Id.*

720. This was the *sixth* version of the paper that was forwarded to Dr. Fauci for review and input. *Id.*

721. Dr. Fauci responded: "Kristian: Thanks for your note. Nice job on the paper. Tony." *Id.*

722. Dr. Fauci denies that he provided "advice and leadership" in the preparation of the paper. Fauci Dep. 171:11-13. In light of the extensive meetings and correspondence detailed above, that testimony is not credible.

AMERICAN OVERSIGHT

723. On March 17, 2020, *Nature Medicine* published the online version of *The Proximal Origin of COVID-19*. Fauci Ex. 24, at 3. The print version appeared in the April 2020 volume of the journal. *Id.*

724. The final, published version of the article makes even stronger claims attacking the lab-leak theory than the preprint version. In its opening, the article states: "Our analyses *clearly show* that SARS-CoV-2 is not a laboratory construct or a purposefully manipulated virus." Fauci Ex 24, at 1 (emphasis added). Similarly strong language, leaving no room for doubt, occurs throughout the article: "the genetic data *irrefutably show* that SARS-CoV-2 is not derived from any previously used viral backbone," *id.* at 1 (emphasis added). "This *clearly shows* that the SARS-CoV-2 spike protein optimized for binding to human-like ACE2 is the result of natural selection," *id.* at 2 (emphasis added). "[T]he evidence shows that SARS-CoV-2 is not a purposefully manipulated virus," *id.* at 3. "[W]e do not believe that any type of laboratory-based scenario is plausible." *Id.* at 3. "SARS-CoV-2 originated via natural selection." *Id.* at 3.

725. Thus, between the preprint version and final version of the article, the article substantially beefed up its conclusion that the lab-leak theory is implausible and should be discredited. Dr. Fauci claims he does not "recall specific conversations" about that conclusion with the authors, but he admits that he is "sure" that he discussed that conclusion with them: "we read the preprint and, therefore, we knew what the conclusion was, and I'm sure that that conclusion was discussed. So I would not be surprised at all following the initial preprint that I discussed the conclusion of these authors that this is not a laboratory construct or a purposely manipulated virus." Fauci Dep. 181:3-10; *see also id.* at 181:18-22. Based on all these circumstances, it is likely that Dr. Fauci encouraged the authors to express a stronger and more unequivocal conclusion against the lab-leak theory than reflected in the preprint.

AMERICAN OVERSIGHT

726. Once the article "The Proximal Origin of SARS-CoV-2" was released, both Dr. Fauci and Dr. Collins took steps to push it into prominence. First, on March 26, 2020, Dr. Collins published a blog post on the article on the "NIH Director's Blog" entitled "Genomic Study Points to Natural Origin of COVID-19." Fauci Ex. 25, at 1.

727. Dr. Collins used strong language relying on the study to attack and discredit the lab-leak theory as "outrageous" and "debunk[ed]": "Some folks are even making outrageous claims that the new coronavirus causing the pandemic was engineered in a lab and deliberately released to make people sick. A new study debunks such claims by providing scientific evidence that this novel coronavirus arose naturally." Fauci Ex. 25, at 2. Dr. Collins stated that the study shows that "the coronavirus that causes COVID-19 almost certainly originated in nature," and that "this study leaves little room to refute a natural origin for COVID-19." Fauci Ex. 25, at 3.

728. In his blog post, Dr. Collins did not disclose that he and Dr. Fauci had been part of the group that organized the study, nor that he and Dr. Fauci had reviewed six versions of the study before it was published. Fauci Ex. 25.

729. As was evidently intended, Dr. Collins's blog post immediately fueled media coverage attacking the lab-leak theory as a "conspiracy theory." For example, the next day, March 27, 2020, ABC News ran a story entitled, "Sorry, conspiracy theorists. Study concludes COVID-19 'is not a laboratory construct.'" Fauci Ex. 26. The article quoted Bob Garry—who on January 31 had found "the genome inconsistent with the expectations of evolutionary theory," Fauci Ex. 6, at 1, and on February 1 had told Farrar that "I just can't figure out how this gets accomplished in nature … it's stunning," Fauci Ex. 8, at 4—as stating that "[t]his study leaves little room to refute a natural origin for COVID-19." Fauci Ex. 26, at 3-4.

AMERICAN OVERSIGHT

730. Dr. Fauci testified that he could not remember any contact from Dr. Collins about "The Proximal Origin of SARS-CoV-2" after Dr. Collins' blog post on March 26, 2020. Fauci Dep. 186:19-187:6. In light of their subsequent communications and Dr. Fauci's actions, this testimony is not credible.

731. In fact, Dr. Collins emailed Dr. Fauci about the article on Thursday, April 16, 2020. Fauci Ex. 27. The email linked to a Fox News piece by Bret Baier alleging that sources were "increasingly confident" that SARS-CoV-2 originated in a lab, and it stated: "Wondering if there is something NIH can do to help put down this very destructive conspiracy, with what seems to be growing momentum." Fauci Ex. 27, at 1. Dr. Collins stated, "I hoped the Nature Medicine article on the genomic sequence of SARS-CoV-2 [*i.e.*, "The Proximal Origin of COVID-19] would settle this. … Anything more we can do?" Fauci Ex. 27, at 1.

732. Dr. Fauci responded to Dr. Collins at 2:45 a.m. the next day, Friday, April 17, stating only: "Francis: I would not do anything about this right now. It is a shiny object that will go away in times. Best, Tony." Fauci Ex. 27, at 2.

733. Dr. Fauci testified that he did not take "any steps to increase the visibility of the article after this" email exchange with Dr. Collins. 191:21-22; *see also* 195:10-17. That testimony is incorrect and not credible.

734. In fact, that same day, Dr. Fauci took matters into his own hands to make the lab-leak theory "go away." At the joint press conference on April 17, 2020, with President Trump, Vice President Pence, and Dr. Fauci, a reporter asked, "Mr. President, I wanted to ask Dr. Fauci: Could you address the suggestions or concerns that this virus was somehow manmade, possibly came out of a laboratory in China?" Fauci Ex. 28, at 2. Dr. Fauci responded: "There was a study recently that we can make available to you, where a group of highly qualified evolutionary

AMERICAN OVERSIGHT

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 [pause for emphasis] *totally consistent* with a jump of a species from an animal to a human." *Id.*; *see also id.* 199:18-25 (Dr. Fauci conceding that, "when you said that sentence about totally consistent, you pause and use that phrase, 'totally consistent' with emphasis" – "Right."); *see also* Video of April 17, 2020 White House Coronavirus Task Force Briefing, *at* https://www.youtube.com/watch?v=brbArpX8t6I (exchange starting at 1:38:32 of video).

735. Dr. Fauci then feigned ignorance and unfamiliarity with the authors of the study: "the paper will be available – I don't have the authors right now, but we can make that available to you." Fauci Ex. 28, at 2. Presenting himself as unconnected with the paper, Dr. Fauci did not reveal (1) that he was part of a group that had launched the paper in a clandestine phone call on Saturday, Feb. 1; (2) that he had extensively corresponded with Jeremy Farrar about the paper and its conclusions; (3) that the authors of the paper had sent six versions to him, Jeremy Farrar, and Dr. Collins to review; (4) that he had likely urged the authors to beef up their conclusion attacking the lab-leak theory between the preprint and published versions of the paper; (5) that the authors had personally thanked him for his "advice and leadership" in drafting the paper; or (6) that Dr. Collins had emailed him the day before to ask him to push the paper publicly or take other steps to discredit the lab-leak theory.

736. Dr. Fauci does not dispute that he was referring to "The Proximal Origin of SARS-CoV-2" in his public remarks at the April 17, 2020, White House press briefing. Fauci Dep. 201:2-6 ("I assume it was the Nature Medicine paper…. I think it was.").

737. Dr. Fauci testified that he did not make that paper available to any reporters after the press conference. *Id.* at 201:7-9 ("Not to my knowledge.). That testimony is not credible.

AMERICAN OVERSIGHT

738. In fact, over the weekend following the press conference, Dr. Fauci personally responded to an inquiry from a reporter specifically asking for the study he had referred to at the April 17, 2020 press conference, and provided a link to "The Proximal Origin of SARS-CoV-2." Fauci Ex. 29, at 1. On Sunday, April 19, a reporter emailed the White House press office asking, "Dr. Fauci said on Friday he would share a scientific paper with the press on the origin of the coronavirus. Can you please help me get a copy of that paper?" *Id.*

739. Dr. Fauci personally responded to this reporter, stating, "Bill: Here are the links to the scientific papers and a commentary about the scientific basis of the origins of SARS-CoV-2." Fauci Ex. 29, at 1. He then provided three links. The first was a link to the online version of "The Proximal Origin of SARS-CoV-2." The second and third were links to a paper and an online statement by Eddie Holmes, whom Dr. Fauci knew had begun secretly drafting the paper that became "The Proximal Origin of SARS-CoV-2" immediately after the clandestine Feb. 1 conference call with Dr. Fauci, Jeremy Farrar, and others. Fauci Ex. 29, at 1. The second link to a paper authored by Holmes was "a commentary on [The Proximal Origin of SARS-CoV-2] in the journal *Cell*." Fauci Dep. 202:25-203:1; *see also id.* at 203:2-16.

740. On April 18 and 19, 2020, Dr. Fauci exchange cordial emails with Peter Daszak of the EcoHealth Alliance, who steers NIAID funds to finance bat coronavirus research with Dr. Shi Zhengli at the Wuhan Institute of Virology. On Saturday, April 18, Daszak emailed Dr. Fauci, calling him "Tony," and stating: "As the PI of the R01 grant publicly targeted by Fox News reporters at the Presidential press briefing last night, I just wanted to say a personal thank you … for standing up and stating that the scientific evidence supports a natural origin for COVID-19 … not a lab release from the Wuhan Institute of Virology." Fauci Ex. 30, at 1. Daszak also wrote: "Once this pandemic's over I look forward to thanking you in person and let you know how

AMERICAN OVERSIGHT

important your comments are to us all." *Id.* Dr. Fauci responded on April 19: "Peter: Many thanks for your kind note." *Id.*

741. Dr. Fauci's and Dr. Collins's efforts to orchestrate and publicize "The Proximal Origin of SARS-CoV-2" as a method of discrediting the lab-leak theory were highly effective. "The Proximal Origin of SARS-CoV-2" became one of the most widely read and most publicized scientific papers in history, with pervasive media coverage using it to discredit the lab-leak theory. "The paper has been accessed online more than 5.7 million times and has been cited by more than 2,000 media outlets. … It became one of the best-read papers in the history of science." Jones Decl., Ex. BB, at 3.

742. As a direct result of these efforts, speech and speakers advocating for the lab-leak theory of COVID-19's origins were extensively censored on social media platforms.

743. Twitter took aggressive censorship action against such speech and speakers. For example, on September 16, 2020, Twitter suspended the account of a Chinese virologist who claimed coronavirus was made in a lab. Fauci Ex. 31, at 1. "Twitter has suspended the account of a Chinese scientist who suggested that the novel coronavirus was created in a lab … despite inconclusive evidence." Fauci Ex. 31 at 2.

744. Facebook, likewise, took aggressive steps to censor the lab-leak theory on social media, even going so far as to formalize this policy as part of its official content-moderation policy. Fauci Ex. 32, at 3 (Facebook announcing that "we are expanding the list of false claims we will remove to include additional debunked claims about the coronavirus and vaccines," including "COVID-19 is man-made or manufactured"). Facebook noted that "we already prohibit these claims in ads," and promised "to take aggressive action against misinformation about COVID-19 and vaccines." *Id.* Facebook promised to "begin enforcing this policy immediately, with a

AMERICAN OVERSIGHT

particular focus on Pages, groups or accounts that violate these rules …. Groups, Pages, and accounts on Facebook that repeatedly share these debunked claims may be removed altogether." *Id.*

745. Like Twitter, Facebook censored even high-profile speakers who raised questions about the origins of COVID-19 or advanced the lab-leak hypothesis. For example, Facebook censored an article by award-winning British journalist Ian Birrell who raised "the question of the origins of the Covid-19 virus within Wuhan" and criticized the natural-origin theory of the virus. Fauci Ex. 33, at 1.

746. Dr. Fauci claims that he is not aware of any suppression of speech about the lab-leak theory on social media: "I'm not aware of suppression of speech on social media to my knowledge…. I don't recall being aware of suppression of anything." Fauci Dep. 208:10-14. He claims that this ignorance is because he does not pay any attention to anything said on social media: "This is not something that would be catching my attention because, you know, the social media and Twitter, I told you, I don't have a Twitter account. I don't tweet. I don't do Facebook. I don't do anything. So social media stuff, I don't really pay that much attention to." *Id.* at 210:3-8. As noted above, Dr. Fauci's emails and actions reflect extensive concern about what is said on social media, and his attempt to cast himself as someone with no knowledge of social media is not credible.

747. Further, Dr. Fauci's emails and interrogatory responses show a close relationship with the CEO and founder of Meta (Facebook/Instagram), Mark Zuckerberg.

748. On February 27, 2020, Mark Zuckerberg emailed Dr. Fauci directly to inquire about the development of the COVID-19 vaccine and offer the assistance of the Chan-Zuckerberg foundation. Fauci Ex. 23, 1. Zuckerberg already had Dr. Fauci's email, called Dr. Fauci by his

AMERICAN OVERSIGHT

first name "Tony," and wrote as if he had a preexisting acquaintance with Dr. Fauci. *Id.* Dr. Fauci, likewise, responded to Zuckerberg on a first-name basis and with the familiar tone of an acquaintance. Fauci Ex. 23, at 2.

749. Dr. Fauci claims that he does not recall whether he had already met Mark Zuckerberg. Fauci Dep. 173:17-174:5 ("I meet thousands of people. I'm not sure I ever met him in person."). But in fact, Dr. Fauci still refers to Mark Zuckerberg by his first name. *Id.* at 289:9-16.

750. On March 15, 2020, Mark Zuckerberg sent Dr. Fauci a lengthy email to offer close coordination between Dr. Fauci and Facebook on COVID-19 messaging. In the email, Zuckerberg thanked Dr. Fauci for his leadership, and "share[d] a few ideas of ways to help you get your message out." Fauci Ex. 23, at 3. Zuckerberg made three proposals: (1) Facebook was about to launch a "Coronavirus Information Hub" visible at the top of the page to all Facebook users to "get authoritative information from reliable sources," and Zuckerberg offered to include "a video from you" as a "central part of the hub," *id.*; (2) Zuckerberg was "doing a series of livestreamed Q&As from health experts" for his 100 million followers and wanted Dr. Fauci to do one of these videos, *id.*; and (3) Zuckerberg advised Dr. Fauci that Facebook had "allocated technical resources and millions of dollars of ad credits for the US government to use for PSAs to get its message out over the platform," and he wanted Dr. Fauci to recommend "a point person for the government response," *id.*

751. Dr. Fauci responded the next day, telling "Mark" that "[y]our idea and proposal sound terrific," that he "would be happy to do a video for your hub," and that "your idea about PSAs is very exciting." Fauci Ex. 23, at 4. He copied his Special Assistant to put Zuckerberg in

AMERICAN OVERSIGHT

touch with the right point person for the government to arrange specially subsidized government messaging about COVID-19 on Facebook. *Id.*

752. Zuckerberg replied the same day, stating "[w]e'd love to move quickly to help the effort and support getting these messages out." Fauci Ex. 23, at 6.

753. Dr. Fauci claims that the U.S. Government did not accept Facebook's offer of free ad credits to support the Government's COVID-19 messaging. Fauci Dep. 177:22-178:4 ("I don't believe that there was any money that was given from the Zuckerberg to the United States government to do PSAs. It's possible, but it certainly didn't happen to my knowledge. I don't recall money being given for PSAs."). But at the time, Dr. Fauci described the proposal as "very exciting" and immediately followed up on Zuckerberg's offer. Fauci Ex. 23, at 4. Separate emails from Facebook to the White House corroborate these ad credits. *See, e.g.,* Doc. 174-1, at 46. Dr. Fauci's testimony on this point is not credible.

754. Dr. Fauci and Zuckerberg have "interacted on Facebook Zoom-type podcasts." Fauci Dep. 175:17-18. Dr. Fauci did "[t]hree live stream Facebook-type Q and As" about COVID-19 with Zuckerberg. Fauci Dep. 177:2-4.

755. Dr. Fauci's interrogatory responses reveal extensive direct communications between Dr. Fauci and Zuckerberg. *See* Scully Ex. 12, at 33, 53-54 (identifying 13 communications between Dr. Fauci and Zuckerberg, including emails, phone calls, virtual meetings, and live broadcasts, over a nine-month period in 2020).

756. Reviewing the foregoing facts about Dr. Fauci's communications with Farrar, Eddie Holmes, and others, former Director of the CDC Robert Redfield "had a dawning realization. He concluded there'd been a concerted effort not just to suppress the lab-leak theory but to manufacture the appearance of a scientific consensus in favor of a natural origin. 'They

AMERICAN OVERSIGHT

made a decision, almost a P.R. decision, that they were going to push one point of view only' and suppress rigorous debate, said Redfield. 'They argued they did it in defense of science, but it was antithetical to science.'" Jones Decl., Ex. AA.

B. Dr. Fauci's Efforts to Suppress Speech on Hydroxychloroquine.

757. 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 multinational registry analysis." Fauci Ex. 35, at 1. The article purported to analyze 96,032 patients to compare cohorts who did and did not receive hydroxychloroquine or chloroquine to treat COVID-19. *Id.* The study concluded that hydroxychloroquine and chloroquine were "associated with decreased in-hospital survival and an increased frequency of ventricular arrhythmias when used for COVID-19." *Id.*

758. On May 27, 2020, Dr. Fauci publicly cited this study to claim that hydroxychloroquine is "not effective against coronavirus." Fauci Ex. 34, at 1. Dr. Fauci "became the first Trump administration official to say definitively that hydroxychloroquine is not an effective treatment for the coronavirus." *Id.* at 2. "'The scientific data is really quite evident now about the lack of efficacy,' Fauci … said on CNN." *Id.*

759. Dr. Fauci's comments were based on the May 22 Lancet study. *Id.* at 3 ("Fauci's comments come days after the Lancet published a 96,000-patient observational study that concluded that hydroxychloroquine had no effect on Covid-19 and may even have caused some harm.").

760. The Lancet article was an observational study, not a randomized trial. At the time, "[t]here [wa]s no data yet from randomized, controlled clinical trials of hydroxychloroquine – the

AMERICAN OVERSIGHT

gold standard for evaluating potential treatments." Fauci Ex. 34, at 4. "But Fauci was unequivocal on [May 27, 2022], saying that 'the data are clear right now.'" *Id.*

761. Just a few days later, The Lancet retracted the May 22, 2022 study. Fauci Ex. 35, at 1. An article reporting on the retraction noted that the study's authors "were unable to confirm that the data set was accurate," that "several concerns were raised with respect to the veracity of the data," the study may have "include[ed] more cases than possible," and that "[a] first-year statistics major could tell you about major flaws in the design of the analysis." Jones Decl., Ex. DD, at 2-3.

762. Thus, Dr. Fauci's initial dismissal of hydroxychloroquine was based on a purely *observational* study – not a randomized, controlled trial – and one that was retracted for glaring errors just days later.

763. Dr. Fauci testified that he did not recall that The Lancet study he cited to discredit the efficacy of hydroxychloroquine had been retracted. Fauci Dep. 223:7 ("I don't recall it being retracted.").

764. Dr. Fauci stepped up his public campaign to discredit hydroxychloroquine by insisting that its effectiveness could only be judged by undergoing rigorous, randomized, double-blind, placebo-based studies, notwithstanding his previous reliance on the less-than-rigorous observational study in The Lancet that was subsequently retracted. On July 31, 2020, Dr. Fauci testified before the House Select Subcommittee on Coronavirus Crisis, during which he stated: "The point that I think is important, because we all want to keep an open mind, any and all of the randomized placebo-controlled trials, which is the gold standard of determining if something is effective, none of them had shown any efficacy by hydroxychloroquine. Having said that, I will state, when I do see a randomized placebo-controlled trial that looks at any aspect of

AMERICAN OVERSIGHT

hydroxychloroquine, either early study, middle study, or late, if that randomized placebo-controlled trial shows efficacy, I would be the first one to admit it and to promote it. But I have not seen yet a randomized placebo-controlled trial that's done that. And in fact, every randomized placebo-controlled trial that has looked at it, has shown no efficacy. So, I just have to go with the data. I don't have any horse in the game one way or the other, I just look at the data." *See* https://www.youtube.com/watch?v=RkNC5OQD2UE.

765. Despite his insistence before a congressional committee that randomized, placebo-controlled trials were the determining factor for his opinion regarding the effectiveness of hydroxychloroquine in the treatment of COVID-19, Dr. Fauci quietly admitted that such rigorous studies are not actually required to determine the efficacy of a therapeutic drug. Dr. Fauci was asked, "Do you recall saying in connection with the discussion of hydroxychloroquine that a randomized double blind placebo based study is the gold standard?" Fauci Dep. 244:8-11. He replied, "That is the gold standard for everything. *It isn't always needed*, but for the most part, it's the gold standard." *Id.* at 244:12-14 (emphasis added).

766. Dr. Fauci's sudden reversal concerning the critical standards for scientific studies to determine the effectiveness of hydroxychloroquine demonstrated a lack of candor to the House Select Subcommittee on Coronavirus Crisis. Indeed, Dr. Fauci misled the Committee when he failed to disclose that randomized, double-blind, placebo-based studies are not always needed and that he previously relied on the *observational,* i.e., non-randomized, non-double-blind, non-placebo-based study in The Lancet to form an opinion about that drug's efficacy in the first place. Dr. Fauci lacks credibility on this point.

767. Despite mounting evidence against his position, Dr. Fauci testified that his opinion against hydroxychloroquine was based on other studies as well as the retracted article in The

AMERICAN OVERSIGHT

Lancet, but he could not identify any of those studies. Fauci Dep. 223:12-18 ("I don't recall specifically what those studies are now.").

768. Dr. Fauci did not retreat from his hard public stance against hydroxychloroquine. On July 26, 2020, a group called "America's Frontline Doctors" held a press conference at the U.S. Capitol criticizing the government's response to the COVID-19 pandemic and touting the benefits of hydroxychloroquine in treating the coronavirus. Fauci Ex. 38, at 5.

769. Dr. Fauci responded to this event with highly visible public statements condemning the use of hydroxychloroquine. For example, he stated on "Good Morning America," that "[t]he overwhelming prevailing clinical trials that have looked at the efficacy of hydroxychloroquine have indicated that it is not effective in coronavirus disease." Fauci Ex. 36, at 5. Dr. Fauci made these comments in direct response to the public claims of America's Frontline Doctors. Fauci Dep. 227:7-228:13. He also stated on MSNBC's "Andrea Mitchell Reports" that the video of the press conference by America's Frontline Doctors constituted "a video out there from a bunch of people spouting something that isn't true." Fauci Ex. 37, at 3.

770. Dr. Fauci also stated that "the cumulative data on trials, clinical trials that were valid, namely clinical trials that were randomized and controlled in a proper way, … showed consistently that Hydroxychloroquine is not effective in the treatment of coronavirus disease or COVID-19." Fauci Ex. 37, at 3. But two months earlier, he had said "the data are clear right now" when no such studies existed. Fauci Ex. 34, at 4.

771. Social-media platforms reacted by aggressively censoring the video of America's Frontline Doctors. Facebook removed the video when it was "the top-performing Facebook post in the world," and "had accumulated over 17 million views by the time of its censorship by Facebook." Fauci Ex. 38, at 3, 4. Further, "Facebook's decision to censor the livestream was

AMERICAN OVERSIGHT

quickly followed by YouTube, the Google-owned video-sharing platform." *Id.* at 6. "The video had 80,000 views on YouTube prior to its removal." *Id.* "Following Facebook and YouTube's removal of the video, Twitter followed suit…." *Id.*; *see also* Fauci Ex. 36, at 3 (noting that "Twitter … removed the video, saying it was 'in violation of our COVID-19 misinformation policy'").

772. Dr. Fauci professed to be unaware of whether 17 million views of a video on Facebook are a large number of views: "I don't know what 17 million views means. What's the denominator? Is 17 million a large amount? Is it a small amount? I don't go on social media, so I don't know what 17 million views means." Fauci Dep. 236:7-11. It is common sense that 17 million views are a large number of views. Dr. Fauci's testimony on this point is not credible.

773. Dr. Fauci does not deny that he or his staff at NIAID may have communicated with Facebook regarding the censorship of the America's Frontline Doctors video. Instead, he claims that he does not recall whether they communicated with Facebook about it, and that it is possible that they did so. Fauci Dep. 238:2-5 ("I don't recall anybody communicating with them about that. Could have been, but I don't recall anybody -- I don't recall anybody communicating with the social media people."); *see also id.* at 238:6-10. He also does not deny that other federal officials may do so, but he claims that "I don't recall any of that" and "it just doesn't ring a bell to me right now." *Id.* at 238:21-239:7. He claims he doesn't "pay attention" to whether his staff or other federal officials communicate with social-media platforms about censorship because "I have a really important day job that I work at." *Id.* at 238:19-20.

774. Nevertheless, regarding the decision by YouTube and Twitter to follow Facebook in censoring the video, Dr. Fauci admits that "Yes, I knew of that." *Id.* at 239:8-13.

AMERICAN OVERSIGHT

775. A few days later, on August 1, 2020, the web host provider for America's Frontline Doctors shut down their website. *Id.* at 242:14-243:8; Fauci Ex. 39. Dr. Fauci testifies that he does not recall this occurrence. Fauci Dep. 243:13-18.

776. On November 18, 2022, a meta-analysis of 449 studies on the efficacy of hydroxychloroquine considered "449 HCQ COVID-19 studies, 351 peer reviewed, 371 comparing treatment and control groups." Fauci Ex. 40, at 1. The meta-analysis concluded that "[l]ate treatment and high dosages may be harmful, while early treatment consistently shows positive results." *Id.* It also noted that "[n]egative evaluations" of hydroxychloroquine "typically ignore treatment delay." *Id.* And it noted that "HCQ/CQ was adopted for early treatment in all or part of 41 countries." *Id.*

C. Dr. Fauci's "Devastating Takedown" of the Great Barrington Declaration.

777. Dr. Fauci recommended Dr. Clifford Lane of NIAID to participate in a WHO mission to China in February 2020. Fauci Dep. 139:15.

778. On April 3, 2020, the NIH Record wrote a report on Lane's trip entitled "NIAID's Lane Discusses WHO COVID-19 Mission to China. Fauci Ex. 20, at 1. Lane praised China's response to the pandemic, especially their reliance on lockdowns and "extreme … social distancing": "The Chinese were managing this in a very structured, organized way,' he explained. 'When we got there, the outbreak was already coming under control in China. The measures they put in place appeared to be working…. It demonstrated their successful response…. From what I saw in China, we may have to go to as extreme a degree of social distancing to help bring our outbreak under control." *Id.* at 5-6.

779. Dr. Fauci discussed this conclusion with Lane when he returned from China: "Dr. Lane was very impressed about how from a clinical public health standpoint, the Chinese were

AMERICAN OVERSIGHT

handling the isolation, the contact tracing, the building of facilities to take care of people, and that's what I believed he meant when he said were managing this in a very structured, organized way." Fauci Dep. 165:4-11.

780. Dr. Fauci admits that Lane "did discuss with me that the Chinese had a very organized way of trying to contain the spread in Wuhan and elsewhere. … he mentioned that they had a very organized, well-regimented way of handling the outbreak." *Id.* at 166:1-7.

781. Dr. Fauci came to agree with Dr. Lane's rosy assessment of China's draconian response to the outbreak: "Dr. Lane is a very astute clinician, and I have every reason to believe that his evaluation of the situation was accurate and correct." *Id.* at 166:24-167:1.

782. On Feb. 22, 2020, Dr. Lane sent an email stating, "China has demonstrated that this infection can be controlled, albeit at great cost." Fauci Ex. 21, at 1.

783. On October 4, 2020, Plaintiffs Dr. Jay Bhattacharya of Stanford and Dr. Martin Kulldorff of Harvard, along with Dr. Sunetra Gupta of Oxford, published online the "Great Barrington Declaration," which was one-page treatise opposing reliance on lockdowns and advocating for an approach to COVID-19 called "focused protection." Fauci Ex. 41.

784. The Great Barrington Declaration criticized the social-distancing and lockdown approaches to the pandemic endorsed by government experts such as Dr. Fauci and Cliff Lane: "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.* It was very critical of such government policies: "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 –

AMERICAN OVERSIGHT

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. Keeping these measures in place until a vaccine is available will cause irreparable damage, with the underprivileged disproportionately harmed." *Id.* It called for an end to lockdowns: "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.*

785. The Declaration called for an end of government-imposed lockdowns and an immediate return to normal life for those who are low-risk: "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. People 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.*

786. The Declaration was thus highly critical of the lockdown policies defended by Dr. Fauci and Dr. Cliff Lane of NIAID since Dr. Lane's trip to China at the beginning of the pandemic. The Declaration was "going against the global political consensus, which holds that lockdowns are key to minimising mortality to Covid-19." Fauci Ex. 48, at 3. After it was posted online, it rapidly gathered signatures from doctors and scientists, as well as members of the public.

AMERICAN OVERSIGHT

787. Four days later, on October 4, 2020, Dr. Francis Collins emailed Dr. Fauci and Cliff Lane, citing the Great Barrington Declaration. Fauci Ex. 42, at 1. Dr. Collins 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 on line yet – is it underway? Francis." *Id.*

788. This email seeking Dr. Fauci's assistance in a "quick and devastating … take down" of the Great Barrington Declaration" is strikingly similar to Dr. Collins' email to Dr. Fauci on April 16, 2020, asking Dr. Fauci's "help [to] put down this very destructive conspiracy," *i.e.*, the lab-leak hypothesis. Fauci Ex. 27, at 1. In both cases, Dr. Collins sought Dr. Fauci's aid in discrediting and silencing an online narrative that federal officials disfavored, and in both cases, Dr. Fauci promptly and effectively complied.

789. Dr. Collins' question to Dr. Fauci in the email, "Is it underway?" implies that Dr. Collins expected Dr. Fauci to be already working on a "quick and devastating … take down" of the Declaration, or to be aware of others working on one. Fauci Ex. 42, at 1. Dr. Fauci denies that Dr. Collins had any reason to think that Dr. Fauci might be working on a refutation of the Great Barrington Declaration, because "[t]his is not something I would be involved in," because "I have a very important day job that is running a $6.4 billion institute." Fauci Dep. 260:11-20. Given Dr. Fauci's immediately subsequent attempts to refute and discredit the Great Barrington Declaration, this testimony is not credible.

790. The same day as Dr. Collins' email, October 8, 2020, Dr. Fauci wrote back to Dr. Collins, stating "Francis: I am pasting in below a piece from *Wired* that debunks this theory. Best, Tony." Fauci Ex. 43, at 1. Dr. Fauci followed up the same day with an email to Dr. Collins linking

AMERICAN OVERSIGHT

to an article by Gregg Gonsalves which Dr. Fauci called "[a]nother refutation of the herd immunity approach." Fauci Ex. 44, at 1.

791. Dr. Fauci has known Gregg Gonsalves for decades, since the 1980s. Fauci Dep. 265:16-19. Dr. Fauci does not deny that he may have contacted Gregg Gonsalves before Gonsalves wrote this piece attacking the Great Barrington Declaration, but claims he does not recall. *Id.* at 268:8-19 ("I don't recall. I might have.").

792. Dr. Fauci and Dr. Collins followed up with a series of public media statements attacking the Great Barrington Declaration. On October 14, 2020, the Washington Post ran a story entitled, "Proposal to hasten herd immunity to the coronavirus grabs White House attention but appalls top scientists." Fauci Ex. 45, at 1. In the article, Dr. Collins described the Great Barrington Declaration and its authors as "fringe" and "dangerous": "This is a fringe component of epidemiology. This is not mainstream science. It's dangerous." *Id.* at 3.

793. Dr. Fauci consulted with Dr. Collins before he told the Washington Post that the Great Barrington Declaration represented a "fringe" and "dangerous" idea. Fauci Dep. 272:4-7.

794. Dr. Fauci endorsed these comments in an email to Dr. Collins on October 13, 2020, stating, "[w]hat you said was entirely correct." Fauci Ex. 46, at 1.

795. Dr. Fauci admits that Dr. Collins could have been concerned about the spread of the ideas in the Declaration on social media when he called it "fringe" and "dangerous." Fauci Dep. 274:19-20.

796. The next day, October 15, 2020, Dr. Fauci echoed Dr. Collins' comments, calling the Declaration "nonsense" and "dangerous." Fauci Ex. 47, at 1. Describing the proposal as "letting infections rip as it were," Dr. Fauci stated: "Quite frankly that is nonsense, and anybody

AMERICAN OVERSIGHT

who knows anything about epidemiology will tell that that is nonsense and very dangerous." *Id.* at 3.

797. Dr. Fauci testified that "it's possible that" he coordinated with Dr. Collins on their public statements attacking the Great Barrington Declaration. Fauci Dep. 279:23-24.

798. Dr. Fauci also testified of himself and Dr. Collins that "that's not our style to be coordinating things." *Id.* at 279:22-23. In light of the extensive coordination with Dr. Collins about the lab-leak theory, and the coordination about the Great Barrington Declaration, that testimony is not credible.

799. Shortly after Dr. Collins' email to Dr. Fauci seeking a "quick and devastating … take down" of the Great Barrington Declaration, the Declaration and its authors, Drs. Bhattacharya and Kulldorff, experienced extensive censorship on social media. *See infra.* In October 2020, Google deboosted the search results for the Declaration, so that "most users in English-speaking countries, when they google 'Great Barrington Declaration,' will not be directed to the declaration itself but to articles that are critical of the declaration." Fauci Ex. 48, at 4.

800. In the same time, "[c]ensorship of the declaration … also spread to Reddit. The two most popular subreddits for discussion of the coronavirus – r/COVID-19 and r/coronavirus – have both removed links to the Great Barrington Declaration. The moderators of r/coronavirus, a forum with 2.3million members, have declared it to be 'spam'." Fauci Ex. 48, at 4-5.

801. In October 2020, YouTube updated its terms of service regarding medical "misinformation," reporting "COVID-19 medical misinformation policy updated to prohibit content about vaccines contradicting consensus from health authorities." Fauci Ex. 49, at 3. "Health authorities" include federal officials like Dr. Fauci and Dr. Collins. *See id.* This October 2020 update specifically stated that claims which are "not allowed on YouTube" include "[c]laims

AMERICAN OVERSIGHT

that achieving herd immunity through natural infection is safer than vaccinating the population," which is listed on the same footing as "[c]laims that COVID-19 vaccines contain a microchip or tracking device." Fauci Ex. 50, at 3-4.

802. Pursuant to this censorship policy of YouTube, the authors of the Great Barrington Declaration had content removed from YouTube, including a video of a roundtable discussion with Governor Ron DeSantis of Florida. *See infra.*

803. Facebook, likewise, adopted censorship policies against the Great Barrington Declaration. Meta's policy on "Misinformation about vaccines" states that: "We remove misinformation primarily about vaccines when *public health authorities* conclude that the information is false and likely to directly contribute to imminent vaccine refusals." Fauci Ex. 51, at 4 (emphasis added).

804. Facebook/Meta views Dr. Fauci as a "public health authority" who may dictate what people may post about COVID-19 on its platforms (Facebook and Instagram, among others), because Mark Zuckerberg and Dr. Fauci were collaborating on multiple public appearances and videos for Facebook. *See supra*; Scully Ex. 12, at 33, 53-54 (identifying 13 communications between Dr. Fauci and Zuckerberg, including emails, phone calls, virtual meetings, and live broadcasts, over a nine-month period in 2020). Indeed, in his March 15, 2020 email to Dr. Fauci, Mark Zuckerberg described Dr. Fauci as an "expert[]," a "health expert[]" and "reliable source[]" for "authoritative information" about fighting COVID-19. Fauci Ex. 23, at 3.

805. Dr. Fauci claims that he would not have paid any attention to the Great Barrington Declaration because he is too busy and important to pay attention to such matters: "this is not something that I would have been paying a lot of attention to. I was knee deep in trying to do things like develop a vaccine that wound up saving the lives of millions of people. That's what I

AMERICAN OVERSIGHT

was doing at the time." Fauci Dep. 256:13-17. Given Dr. Fauci's direct involvement in publicly attacking the Great Barrington Declaration and collecting sources for Dr. Collins to "take [it] down," this statement is not credible. In fact, on November 1, 2020, Greg Folkers, Dr. Fauci's staffer at NIAID, sent Dr. Fauci a list of articles attacking the Great Barrington Declaration—including one co-authored by Gregg Gonsalves—with the statement "As discussed. I have highlighted the three I found the most useful." Fauci Ex. 52, at 1. The list of articles were all harshly critical of the Declaration—using phrases like "dangerous," "false promise," "ethical nightmare," and "could kill millions." *Id.* Thus, four weeks after the Declaration was published, Dr. Fauci and his staffers were still "discuss[ing]" and looking up articles on ways to attack it. *Id.*

806. Dr. Kulldorff points out that, regardless of disagreements over the policy, describing the Declaration as "fringe" and "nonsense" is fundamentally dishonest, as the Declaration reflects principles of pandemic preparedness that were widely accepted before COVID-19: "the Great Barrington Declaration is merely a restatement of the principles of public health. Lockdown … is a 'terrible experiment' that throws those principles 'out of the window' by focusing solely on one disease at the expense of all other health problems. 'Most countries in Europe had a pandemic-preparedness plan that did not recommend lockdowns, but instead proposed a risk-based strategy to protect those at high risk, which is actually the same as the focused protection we put forward in the Great Barrington Declaration. What we are proposing is, therefore, nothing revolutionary', [Kulldorff] said." Fauci Ex. 48, at 6.

807. Regarding the censorship of the Great Barrington Declaration on social media, Dr. Fauci repeatedly testified that he was oblivious to it: "I don't pay much attention to what goes on in social media … it is highly unlikely that … I paid any attention to this thing of Google censoring the Great Barrington Declaration … I would not have paid much attention to it." Fauci Dep.

AMERICAN OVERSIGHT

281:15-282:2, 283:7-10. In light of his contemporaneous statements and emails, this statement is not credible.

808. Like so many other topics, Dr. Fauci repeatedly testified that he could not recall virtually anything about his involvement in seeking to squelch the Great Barrington Declaration. He testified at least 33 times that he could not recall his involvement in this matter. *See* Fauci Dep. 251:11, 252:20, 255:6, 255:9, 256:3, 257:5, 258:12, 263:1, 263:15, 263:21, 264:17, 264:20, 264:22, 265:2, 265:6, 268:10, 268:18, 270:24, 282:19-20, 284:22-23, 290:13, 290:21, 291:13, 291:16, 292:15, 292:24, 293:15, 293:24, 295:9, 295:25, 296:21, 297:2-3, 297:14. For the reasons discussed above, these claims to almost total loss of memory are not credible.

D. NIAID Flags Social-Media Accounts for Censorship Under Dr. Fauci.

809. As noted above, Dr. Fauci testified that he is not aware of any NIAID or NIH staff contacting social media platforms to ask them to remove content. In fact, NIAID and NIH staff—including staffers in Dr. Fauci's senior circle—sent several messages to social-media platforms asking them to remove content lampooning or criticizing Dr. Fauci. Dr. Fauci's testimony to the contrary is not credible.

810. On March 14, 2020, a Twitter employee reached out to CDC officials, including Carol Crawford, and asked if a particular account associated with Dr. Fauci is "real or not." Fauci Ex. 53, at 2. Scott Prince of NIH responded, "Fake/Impostor handle. PLEASE REMOVE!!!" *Id.* Twitter responded that it would take action promptly and "circle back ASAP." *Id.* An HHS official then asked if Twitter could pre-block similar parody accounts: "Is there anything else that you can also do to block other variations of [Dr. Fauci's] name from impersonation so we don't have this happen again?" *Id.* at 1. Twitter replied: "We'll freeze this @handle and some other variations so no one can hop on them." *Id.*

AMERICAN OVERSIGHT

811. Likewise, on April 21, 2020, Judith Lavelle of NIAID emailed Facebook, copying Scott Prince of NIH and Jennifer Routh of Dr. Fauci's communications team, and stated: "We wanted to flag a few more fake Dr. Fauci accounts on FB and IG for you. I have also reported them from @niaid and my personal FB account." Fauci Ex. 55, at 3. She listed eight accounts that she considered fake. One of these was called "Dr.FauciTheHero," and she stated, "I think this one may be fine as a fan page but could use a reminder to be a bit more clear," *id.* at 4—thus noting that she was seeking the censorship only of speech about Dr. Fauci that the government disfavors, while "a fan page" was fine.

812. Both Jennifer Routh and Judith Lavelle are members of Dr. Fauci's communications staff. Fauci Dep. 308:14-21.

813. The fact that Lavelle stated they were flagging "a few *more*" accounts indicates that NIAID's flagging social-media accounts for censorship was not an isolated incident but an ongoing practice. Fauci Ex. 55, at 3.

814. Lavell then followed up flagging yet another account, saying "Apologies one more," and adding Greg Folkers of Dr. Fauci's personal staff to the email chain reporting these accounts to Facebook for censorship. Fauci Ex. 55, at 3.

815. The same day, Facebook responded, "Flagged this for the fake accounts team and they have confirmed that all but two accounts were removed for impersonation of Dr. Fauci. I guess two of the accounts are fan accounts." Fauci Ex. 55, at 3.

816. The Facebook employee then added, "Also want to intro you all to [two more Facebook employees] who have been working hard to manage any fake accounts for NIH across the board. She can work with you directly if anything like this comes up." Fauci Ex. 55, at 2. Lavelle responded that "our team will be sure to reach out if we identify any more impersonations,"

AMERICAN OVERSIGHT

id., and Facebook answered that Lavelle of NIAID should "feel [free] to flag to us the various imposter accounts," Fauci Ex. 55, at 1. Again, this response indicates an ongoing and widespread practice of NIH reporting supposedly "fake" accounts for censorship. *Id.*

817. Dr. Fauci testifies that he does not remember for certain, but he "likely" asked his communications staff to do something about these impersonation or parody accounts. Fauci Dep. 302:6-10 ("I vaguely remember somebody mentioning something about an imposter account. … And I likely would have said, 'Well, how can they do that?'"). He also agrees that his communications staff would do so on their own. *Id.* at 301:1-4 ("I have a communication staff that I'm sure, if they found out it was a false and misleading account, that they would want it to be removed."); *see also id.* at 301:23-25; 304:19-21.

818. Dr. Fauci believes it is "totally appropriate" for his communications staff to contact social-media platforms and seek the removal of such accounts. *Id.* at 312:19-21; *see also id.* at 310:14-16.

819. He thinks so because "impersonating me is a bad thing." *Id.* at 303:20; *see also id.* at 304:11-13; 309:23-310:1 ("fake accounts are bad things, I believe"); 311:20-21. Dr. Fauci specifically believes that removing accounts associated with him is "a good thing" because "those accounts are bad." *Id.* at 329:12-16.

820. Dr. Fauci does not know whether some of the so-called "fake accounts," which he calls "bad things," that his staff flagged for censorship may actually be parody accounts. *Id.* at 311:7-9.

821. Moreover, it was not just NIAID staff, but also White House staff, who flagged content about Dr. Fauci for removal from social-media platforms. As noted above on Tuesday, July 20, 2021, Clarke Humphrey of the White House communications office emailed Facebook

AMERICAN OVERSIGHT

asking for the removal of an Instagram account associated with Dr. Fauci, saying it "is not actually one of ours." Fauci Ex. 57, at 1-2. Facebook responded one minute later, stating, "Yep, on it!" Fauci Ex. 57, at 1. Courtney Billet, Dr. Fauci's communications director at NIAID, then weighed in, asking Facebook to disclose whether "there's a federal email address attached to whomever set this account up," so that she could ascertain whether the account was set up by "some federal employee outside our official comms offices." Fauci Ex. 57, at 1. The next day, Facebook responded, stating, "This account has been removed. Thank you for flagging!" Fauci Ex. 57, at 1.

822. NIAID's communications with social-media platforms were not limited to flagging impostor or parody accounts. On October 30, 2020, for example, a NIAID staffer wrote an email connecting Google/YouTube with Jennifer Routh of NIAID's "Office of Communications and Government Relations," so that NIAID and the "Google team" could "connect on vaccine communications – specifically misinformation…." Fauci Ex. 56, at 2. Routh then added Courtney Billet ("director of the Office of Communications and Government Relations at NIAID") and two other senior NIAID officials to the communications chain with YouTube. Fauci Ex. 56, at 1.

823. Likewise, in response to a third-party subpoena, Twitter has disclosed that Dina Perry, a Public Affairs Specialist for NIAID, communicates or has communicated with Twitter about misinformation and censorship. Jones Decl., Ex. F, at 1.

824. NIAID did not disclose Dina Perry in response to interrogatories seeking the identities of NIAID officials who communicate with social-media platforms about misinformation, disinformation, and censorship. Scully Ex. 12, at 17-18.

825. Dr. Fauci testified that he has never "contacted a social media company and asked them to remove misinformation from one of their platforms." Fauci Dep. 151:21-24 ("No, I have

AMERICAN OVERSIGHT

not."). He also testified that no one on his staff at NIAID has "ever reached out to a social media platform to ask them to take content down or to block content in any way. *Id.* at 152:7-15 ("To my knowledge, no."). In light of the repeated attempts of Dr. Fauci's staff to have content related to Dr. Fauci removed from social media, Dr. Fauci's testimony on this point is not credible.

E. CDC and NIH Procure the Censorship of Speech on Ivermectin.

826. On September 13, 2021, Facebook emailed Carol Crawford of the CDC to ask the CDC to identify 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," which were the qualifications for censoring that claim on Facebook's platforms. Fauci Ex. 58, at 2. Facebook noted that it was currently rating this claim as "*not false*," *i.e.*, Facebook was *not* censoring the claim that Ivermectin is effective in treating COVID-19, because there was "no consensus" of its efficacy for treatment. *Id.* at 3.

827. The next day, the CDC responded, advising Facebook that the claim that "Ivermectin is effective in treating COVID" is "***NOT ACCURATE***" (bold and italics in original) and thus should be censored on Facebook's platforms. Fauci Ex. 58, at 1. To support this claim, the CDC cited NIH's "Ivermectin | COVID-19 Treatment Guidelines." *Id.* Thus, the CDC cited the NIH's treatment guidelines for Ivermectin as authority to urge Facebook to censor claims about using Ivermectin to treat COVID-19. *Id.* CDC also cited NIH to call for the censorship of two related claims about Ivermectin, and noted that "[t]hese responses are based on the independent advice of … NIH," which had "opined that there are not data that indicate ivermectin is effective in the ways described above." *Id.*

F. Dr. Fauci's Double Standard on Acceptable Speech: Mask Mandates.

AMERICAN OVERSIGHT

828. "Sylvia Burwell is the former Secretary of the Department of Health and Human Services [under President Obama] and the current president of American University." Fauci Dep. 313:9-11. "Sylvia has, over the past couple of years, asked [Dr. Fauci] advice about personal safety during the COVID-19 pandemic." *Id.* at 313:17-19.

829. On February 4, 2020, Sylvia Burwell wrote Dr. Fauci an email stating that she was traveling and wondering if she should wear a mask in the airport. Fauci Dep. 313:21-314:5; *see also* Jones Decl., Ex. EE, at 1. Dr. Fauci responded, stating: "Masks are really for infected people to prevent them from spreading infection to people who are not infected, rather than protecting uninfected people from acquiring infection. The typical mask you buy in the drugstore is not really effective in keeping out virus, which is small enough to pass through material. … I do not recommend that you wear a mask…." Fauci Dep. 314:9-19; *see also* Jones Decl., Ex. EE, at 1.

830. Dr. Fauci agrees that he "made several statements that are similar to that at that time frame." Fauci Dep. 315:12-14.

831. He states that, at that time, there were "no studies" on the efficacy of masking to stop the spread of COVID-19. *Id.* at 316:8-13.

832. In fact, on March 31, 2020, Dr. Fauci forwarded studies showing that masking is ineffective. Fauci Dep. 318:24-319:7.

833. Dr. Fauci's position on masking dramatically changed by April 3, 2020, when he became an advocate for universal mask mandates. *Id.* at 317:14-20.

834. Dr. Fauci states that his position on masking changed in part because "[e]vidence began accumulating that masks actually work in preventing acquisition and transmission." Fauci Dep. 317:5-6.

AMERICAN OVERSIGHT

835. Dr. Fauci was asked to identify any studies that were done between February 2020 and April 3, 2020, that supported his change of position on the efficacy of masking, and he could not identify any. *Id.* at 318:8-10.

836. Dr. Fauci was asked if there were any "placebo-based, double-blind, randomized studies of the efficacy of masking that were done between February and April 2020," and he could not identify any. *Id.* at 322:1-5. In fact, it is obvious that there were none.

837. Dr. Fauci's position on masking, therefore, directly contradicts his insistence on randomized, double-blind, placebo-based clinical trials for alternative COVID-19 treatments like hydroxychloroquine and ivermectin. At best, Dr. Fauci's dramatic change in position on masking was based on observational studies—the same kind of studies that he dismissed, in the very same time frame, as inadequate to support the use of hydroxychloroquine to treat COVID-19. At worst, it was based on no evidence at all—and Dr. Fauci identified none.

838. Dr. Fauci believes it can be dangerous to give ordinary people access to scientific information: "If information is clearly inadequate and statistically not sound, there can be a danger in people who don't have the ability or the experience of being able to understand that it's a flawed study." *Id.* at 323:5-9.

839. Dr. Fauci believes that it is "disturbing" when "unwitting" people believe what he thinks is misinformation: "I think honest debate is important, but when it goes beyond debate and leads people who are unwitting about these things to do things that are clearly detrimental to their life and their safety, I find that disturbing." *Id.* at 358:13-17.

G. Dr. Fauci and the White House Cause the Censorship of Alex Berenson.

840. Alex Berenson is a former New York Times science reporter and prominent critic of government messaging about COVID-19 vaccines who was deplatformed from Twitter on

AMERICAN OVERSIGHT

August 28, 2021, after months of pressure from White House and federal officials. Fauci Ex. 59, at 4.

841. As Berenson notes: "On July 16, 2021, President Biden complained publicly that social media companies were 'killing people' by encouraging vaccine hesitancy. A few hours after Biden's comment, Twitter suspended by account for the first time." Fauci Ex. 59, at 4.

842. Dr. Fauci, who was then Chief Medical Advisor to President Biden, played a key role in procuring the censorship of Alex Berenson. Shortly before President Biden's comments, Dr. Fauci engaged in public attacks on Alex Berenson in attempt to discredit him and silence his government-skeptical opinions.

843. On July 11, 2021, appearing on CNN's "State of the Union," Dr. Fauci described Alex Berenson's comments on vaccine skepticism as "horrifying." Fauci Ex. 60, at 1. Responding to applause for a speech given by Berenson at a conference, Dr. Fauci stated: "It's horrifying. I mean, they are cheering about someone saying that it's a good thing for people not to try and save their lives." *Id.* In response to Berenson's views, Dr. Fauci stated, "it's almost frightening to say, … we don't want you to do something to save your life." *Id.* Dr. Fauci also stated, "I don't think that anybody who is thinking clearly can get that." *Id.*

844. Dr. Fauci's public comments as the President's Chief Medical Advisor specifically criticizing Alex Berenson were made at a time when other White House officials like Andrew Slavitt were *privately* pressuring Twitter to deplatform Berenson since April 21, 2020. *See, e.g.,* Fauci Ex, 58, at 7 (internal Twitter communications on April 22, 2020, indicating that White House officials "had one really tough question about why Alex Berenson hasn't been kicked off from the platform," and "yes, they really wanted to know about Alex Berenson. Andy Slavitt suggested

AMERICAN OVERSIGHT

they had seen data vis that had showed he was the epicenter of disinfo that radiated outwards to the persuadable public.").

845. Dr. Fauci does not deny that he may have discussed Alex Berenson with other White House or federal officials, but claims he does not recall whether he did so. Fauci Dep. 343:16-23.

846. Dr. Fauci believes that misinformation and disinformation "contribute to the deaths" of people: "misinformation and disinformation, particularly that encourages people to avoid lifesaving interventions, can certainly result in the unnecessary death of people whose lives would have been saved. So when misinformation and disinformation leads people to avoid a lifesaving intervention, that is equivalent to contributing to the death of that person." *Id.* at 345:8-15. "I do feel strongly that misinformation and disinformation, when it leads to people avoiding lifesaving interventions, can be deadly. *Id.* at 346:1-3.

847. Dr. Fauci also believes that misinformation and disinformation on social media are "contrary to public health" and "the enemy of public health": "If social media is propagating disinformation that leads to the death of people by encouraging them to avoid lifesaving interventions, I believe that's contrary to public health." *Id.* at 346:5-7, 346:10-13.

848. Dr. Fauci admits that it is "certainly possible" that he discussed the view that "disinformation or misinformation on social media platforms are killing people" with others in the federal government, but claims he cannot remember whether he did so. *Id.* at 345:3-25.

849. Dr. Fauci testified that the first time he heard of Alex Berenson was when Berenson publicly claimed that the White House demanded that Twitter deplatform him in 2022: "it's the person who says that the White House demanded Twitter ban me months before the company did so. I had never heard of who Alex Berenson was before this … I don't even know who he is." *Id.*

AMERICAN OVERSIGHT

at 335:1-7. In light of Dr. Fauci's public attacks on Alex Berenson in 2021, this testimony is not credible.

850. Former FDA Commissioner Scott Gottlieb also emailed Twitter to pressure them to remove Alex Berenson's content, invoking Dr. Fauci in his email. Sending Twitter a link to a post by Berenson entitled "The Arrogance of Dr. Fauci," Gottlieb wrote: "This is why Tony needs a security detail," Fauci Ex. 62, at 1—thus implying that Berenson's criticism of Dr. Fauci was endangering Dr. Fauci's life.

851. Dr. Fauci does not deny that he may have discussed this issue with Gottlieb before Gottlieb sent this email to Twitter, but he claims he does not recall whether he did so. Fauci Dep. 349:7-19, 352:12-18.

852. After testifying over 200 times during his deposition that he could not remember or could not recall events related to the case, Dr. Fauci was shown an email chain between him and Dr. Ezekial Emanuel from May 2, 2020 that had no direct connection to issues in the case. Fauci Ex 63. Unlike his convenient lack of memory as to case-related communications, Dr. Fauci was immediately able to provide a detailed, specific account of the context and communications with Dr. Emanuel relating to that email chain. Fauci Dep. 353:20-354:16.

VI. The FBI's Censorship Campaign of Pressure and Deception.

853. In parallel with the censorship of health "misinformation" and related issues achieved by the White House, the CDC, Surgeon General Murthy, Dr. Fauci, and others, *see supra* Parts I-V, federal national-security and law-enforcement agencies flex their considerable muscle to pressure and induce social-media platforms to censor disfavored speech and viewpoints about elections and other topics. The FBI's Foreign Influence Task Force (FITF) and the Cybersecurity and Infrastructure Security Agency's (CISA) "Mis, Dis, and Malinformation Team" play key roles

AMERICAN OVERSIGHT

in this efforts – in cooperation with non-profit agencies working in close collaboration with the government, such as the CISA-funded "Center for Internet Security" and the formidable censorship cartel calling itself the "Election Integrity Partnership" and the "Virality Project."

854. Elvis Chan is the Assistant Special Agent in Charge of the Cyber Branch for the San Francisco Division of the Federal Bureau of Investigation. Chan Dep. 8:11-13.

855. In this role, Chan is "one of the primary people" who communicates with social-media platforms about disinformation on behalf of the FBI. *Id.* 105:3-4 ("I would say I'm one of the primary people with pass-through information" for platforms). There are many other points of contact between the FBI and social-media platforms, however. *Id.* 105:3-7 ("[W]e have agents on the different cyber squads and our private sector engagement squad who also relay information to the companies.").

856. Chan graduated from the Naval Postgraduate School in 2021 with an M.A. in Homeland Security Studies. *Id.* 10:16-17. In connection with his master's degree, Chan authored a publicly available thesis 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." *Id.* 11:3-16; Chan Ex. 1, at 1. This thesis overtly relied only on publicly available documents, but it also reflected Chan's personal knowledge and experience of working with social-media platforms during the 2020 elections. *See id.*

857. Chan's thesis discussed "hack-and-dump activity," also known as "hack-and-leak" operations, as well as "Russian malign influence … on the social media platforms and on fake news websites that the Russians have created." Chan Dep. 13:7-21.

858. Chan's thesis relied on research performed by persons and entities comprising the Election Integrity Partnership, including Graphika, *id.* 145:1-6; and Renee DiResta of the Stanford

AMERICAN OVERSIGHT

Internet Observatory, *id.* 51:20-52:7, 85:4-12. Chan communicated directly with DiResta "about Russian disinformation," and had "[a] lot of conversations about Russian disinformation" with DiResta. *Id.* 52:5-7, 52:24-25.

859. Chan also knows Alex Stamos, the head of the Stanford Internet Observatory, from the time when Stamos participated on behalf of Facebook in the USG-Industry meetings. *Id.* 54:2-19. Chan and Stamos were involved in meetings about "malign-foreign-influence activities" on Facebook while Stamos was the chief security officer for Facebook. *Id.* Chan has also discussed "protecting platforms from hacking" with Stamos. *Id.* 55:12-13. And Chan's "colleagues at FBI headquarters regularly meet with researchers much more frequently than I do." *Id.* 57:15-18.

860. According to Chan, the FBI engages in "information sharing" with social-media platforms about content posted on their platforms, which includes both "strategic-level information" and "tactical information." *Id.* 16:16-19.

A. FBI's and CISA's Regular "USG-Industry" Disinformation Meetings

861. The FBI participates in a CISA-organized "industry working group" with Facebook, Twitter, and Google/YouTube, as well other social-media platforms. *Id.* 18:21-24. The social-media platforms that participate are Facebook, Microsoft, Google, Twitter, Yahoo! (a.k.a. Verizon Media), Wikimedia Foundation, and Reddit. *Id.* 23:24-24:3. On the U.S. Government side, the meetings are attended by representatives of CISA, the Department of Homeland Security's Intelligence & Analysis division ("I&A"), the Office of the Director of National Intelligence (ODNI), the FBI's Foreign Influence Task Force (FITF), and Elvis Chan on behalf of FBI-San Francisco when he is available. *Id.* 24:9-19; *see also* Chan Ex. 6, at 37. Chan later confirmed that "DOJ National Security Division" attends these "USG-Industry" meetings as well. Chan Dep. 171:6-8.

AMERICAN OVERSIGHT

862. Chan participates in the meetings because most social-media platforms are headquartered in San Francisco, and "FBI field offices are responsible for maintaining day-to-day relationships with the companies that are headquartered in their area of responsibility." *Id.* 24:21-25:4. As a result, Chan serves as a frequent conduit for communication between federal officials, especially FBI officials but also others, and social-media platforms. *See id.*

863. Matt Masterson attended, and Brian Scully attends, the USG-Industry meetings on behalf of CISA. They are "regular attendees" and "one of them is usually emceeing the meeting." *Id.* 25:15-18. "For the 2020 election cycle, Mr. Masterson was … primarily the facilitator. Ahead of the 2022 midterm elections, Mr. Scully has been the primary facilitator." *Id.* 26:19-22.

864. Chan also "participate[s] in the preparation meetings" for the USG-Industry meetings. *Id.* 27:24-25.

865. At these CISA-led "USG-Industry" meetings, "the disinformation content was shared by the social media companies. They would provide a strategic overview of the type of disinformation they were seeing on their respective platforms," and the FBI "provided strategic unclassified overviews of the activities that we saw [Russian actors] doing." *Id.* 156:9-157:1.

866. The "USG-Industry" meetings "are continuing" at the time of Chan's deposition on November 23, 2022, and Chan assumes that they will continue through the 2024 election cycle. Chan Dep. 284:23-285:6. Online "disinformation" continues to be discussed between the federal agencies and the social-media platforms at these meetings. Chan Dep. 285:7-286:16.

B. The FBI's Regular Bilateral Meetings with Social-Media Platforms.

867. The USG-Industry group meetings are not the only censorship-related meetings between the FBI and social-media platforms. Chan also "hosted … bilateral meetings between each of the companies I mentioned"—*i.e.*, Meta/Facebook, Twitter, Google/YouTube,

AMERICAN OVERSIGHT

Yahoo!/Verizon Media, Microsoft/LinkedIn, Wikimedia Foundation, and Reddit, *see id.* 23:24-24:3—"and the Foreign Influence Task Force." *Id.* 39:4-8.

868. During these bilateral meetings, the FBI's FITF would also "bring in field offices that had cyber investigations" of "state-sponsored actors that the FBI was investigating that we believe were capable of hack-and-dump campaigns" during the 2020 election cycle. *Id.* 39:10-16. In other words, in the bilateral meetings, the FBI repeatedly raised the concern about the possibility of "hack and dump" operations during the 2020 election cycle during FITF's bilateral meetings with each of at least seven major social-media platforms. *Id.*

869. These bilateral meetings between FBI and social-media platforms are continuing—they occurred during the 2020 election cycle, and they continued during the 2022 election cycle. *Id.* 39:18-40:1. "They occur at roughly a quarterly cadence," but "the cadence increase[s] as elections get close," so that the meetings "become monthly as the election nears and then weekly very close to the elections." *Id.* 40:2-20. These meetings will continue quarterly, monthly, and then weekly leading up to the 2024 election as well. *Id.* 41:5-15. The meetings also occurred "[o]n a quarterly cadence" during the 2018 election cycle. *Id.* 42:18-24.

870. The companies with which FITF conducts these regular bilateral meetings include "Facebook, Google, Twitter, Yahoo!, Reddit, and LinkedIn," as well as "Apple and Wikimedia Foundation." *Id.* 41:24-42:7. Apple was "added because they are a cloud infrastructure company; and we believe that tactical information, specifically indicates that we shared with them related to foreign-state-sponsored actors, might pop up on … any screening they do on iCloud." *Id.* 42:12-17.

871. In these meetings, FBI officials meet with senior social-media platform officials in the "trust and safety or site integrity" role, *i.e.*, those in charge of enforcing terms of service and

AMERICAN OVERSIGHT

content-moderation policies for the platforms. *Id.* 43:5-44:1. In other words, the FBI meets with the officials responsible for censoring speakers and content on the platforms—those "directly involved in the enforcement of terms of service for these various platforms," which "includes … content modulation of content on the platforms." *Id.* 49:19-50:2.

872. The FBI's "quarterly meetings" with social media platforms to "probe" questions about censorship of disinformation began as early as "in the 2017 time frame." *Id.* 87:24-88:14, 89:19-20.

873. A large number of FBI officials attend each regular bilateral meeting about disinformation with each of those seven social-media platforms. In addition to Chan and Laura Dehmlow, who is the head of FBI's Foreign Influence Task Force (FITF), "between three to ten" FITF officials attend each meeting, as well as "one field office comprised of two representatives" from each of "one to three field offices." *Id.* 109:21-22, 110:7-14. Frequently the number of FBI agents attending each meeting "could be as high as a dozen." *Id.* 110:17-18.

874. Likewise, large numbers of officials from the social-media platforms attend these regular bilateral meetings with the FBI about disinformation. "[A] similar amount" of people attend each meeting from the platforms, and "for the three larger companies – specifically Google/YouTube, Facebook, and Twitter – it would be equal numbers or higher numbers than the FBI." *Id.* 110:21-25.

875. In addition to all these meetings, on February 4, 2019, there was a meeting between Facebook, Google, Microsoft, and Twitter and the FBI's FITF, ODNI, and CISA to discuss election issues. Elvis Chan attended, as did Director Krebs, Matt Masterson, and possibly Brian Scully of CISA. Representatives of the social-media companies at the meeting included those

AMERICAN OVERSIGHT

from the "trust and safety" or content-modulation teams, and "the social media companies were focused on discussing disinformation." *Id.* 151:9-154:6.

876. Discovery obtained from LinkedIn contains 121 pages of emails between Elvis Chan and other FBI officials and LinkedIn officials setting up numerous meetings to discuss disinformation issues during the 2020 and 2022 election cycles. Chan Ex. 2. Chan confirms that he has a similar set of communications setting up a similar series of meetings with each of "six or seven other social-media platforms as well"—he has "similar types of correspondence" with the others, including Facebook, Twitter, Google/YouTube, etc. Chan. Dep. 288:4-17.

877. These emails confirm that Chan and the other FBI officials regularly met with senior officials at social-media platforms with responsibility for *content moderation. See* Chan Ex. 2, at 3; Chan Dep. 292:7-293:8. The FBI meets with "director level and … their direct reports" from the "trust and safety and site integrity" teams. Chan Dep. 293:4-8.

878. The FBI communicates with social-media platforms using two alternative, encrypted channels—the self-deleting messaging app Signal, and the encrypted messaging service Teleporter. Chan Dep. 295:7-296:9.

879. For each election cycle, during the days immediately preceding and through election day, the FBI maintains a command center around the clock to receive and forward reports of "disinformation" and "misinformation," and the FBI requests that the platforms have people available to receive and process those reports at all times: "FBI headquarters, they just ran 24 hours a day for their command post, I believe from Friday to Tuesday. FBI San Francisco ran from, I believe, 8:00 o'clock in the morning to perhaps 10:00 o'clock at night every day except the election, when we ran until midnight." Chan Dep. 301:14-20. In advance of the elections, the FBI "ask[ed]

AMERICAN OVERSIGHT

the companies when they intended to have personnel on what days monitoring their platform for any threats that they saw." Chan Dep. 301:21-24.

C. The FBI's Deceptive Information Censors the Hunter Biden Laptop Story.

880. Elvis Chan, other FBI officials, and other federal officials repeatedly warned industry participants to be alert for "hack and dump" or "hack and leak" operations prior to the 2020 election, even though they had no investigative basis to issue such warnings. These warnings provided the justification for the platforms to censor the Hunter Biden laptop story that the New York Post broke on October 14, 2020. *See id.* at 232:1-234:3. These "hack and leak" or "hack and dump" warnings were issued many times, both in the "USG-Industry" meetings and in the FBI's bilateral meetings with social-media platforms.

881. Hack and leak operations were discussed at the USG-Industry meetings. *Id.* 172:3-5. At the USG-Industry meetings, Elvis Chan and other FBI officials "warned the social media companies about the potential for a 2016-style DNC hack-and-dump operation." *Id.* 172:23-173:1.

882. During these meetings, Chan "warned the companies about a potential for hack-and-dump operations from the Russians and the Iranians on more than one occasion." *Id.* 175:10-13. Laura Dehmlow, the head of FITF, also "mentioned the possibility of hack-and-dump operations." *Id.* 175:17-20.

883. The prospect of hack-and-leak operations was also repeatedly raised "[a]t the FBI-led meetings with FITF and the social-media companies." *Id.* 177:24-25. It was also raised at the "CISA-hosted USG-industry" meetings. *Id.* 178:1-6, 180:24-25. "[T]he risk of hack-and-leak operations were raised at both sets of meetings, both at CISA-organized USG-industry meetings and the FITF-organized direct meetings between the FBI and social media platforms." *Id.* 181:6-11. Chan himself raised the warnings "regularly" at the bilateral FITF-platform meetings. *Id.*

AMERICAN OVERSIGHT

185:16-18. Laura Dehmlow raised the warning at the USG-Industry meetings "that the FBI is concerned about the potential for hack-and-leak or hack-and-dump operations from foreign state-sponsored actors." *Id.* 187:1-4. And Chan himself "recollect[s] mentioning the potential for hack-and-dump operations during the CISA-hosted USG-industry meetings." *Id.* 189:4-7. Chan confirms that he raised these concerns "to the social media platforms on multiple occasions in two sets of meetings in 2020," including "the USG-industry meetings organized by CISA" and "the FITF organized meetings with the individual social media platforms." *Id.* 204:2-12.

884. In the same time frame in 2020, as federal officials were repeatedly raising these concerns about hack-and-leak operations, some social media platforms updated their policies to provide that posting hacked materials would violate their policies and could result in censorship: "some social media companies adjusted or updated their terms of service or their community standards to say that they would not post any hacked materials." *Id.* 205:6-9. According to Chan, the "impetus" for these more restrictive censorship policies was the repeated concern raised by Chan, the FBI, and federal national-security officials about the risk of "a 2016-style hack-and-leak operation: "the impetus was in case there was a 2016-style hack-and-leak operation." *Id.* 205:14-21. The FBI's repeated warnings, therefore, induced social-media platforms to adopt more restrictive censorship policies on hacked materials, *see id.*, which would then be used to censor the Hunter Biden laptop story.

885. Chan denies that the FBI urged the platforms to change their terms of service to address hacked materials, but he admits that the FBI repeatedly inquired of the social-media platforms *whether* their policies would allow for or require the censorship of hacked materials. The FBI "wanted to know if they had changed their terms of service or modified it, and we wanted to know what they had changed," and thus the platforms "advise[d]" the FBI that "they had

AMERICAN OVERSIGHT

changed" their policies "to reflect the ability to pull down content that results from hack operations." *Id.* 206:5-13.

886. Again, Chan testified that, in meeting with platforms like Facebook, the FBI "asked, 'If you receive a whole -- if you see a trove of potentially hacked materials, what are you going to do about it?' Which would be our way of asking them how their terms of service would handle a situation like that." Chan Dep. 247:25-248:4. The FBI "ask[ed] how they would handle it if potentially hacked materials appeared." Chan Dep. 248:5-8. Chan believes they asked that question of Twitter, Facebook, and YouTube, and the social-media platforms responded, as he "remember[s] the social media companies having terms-of-service policies to handle this sort of situation." Chan Dep. 248:14-16. Both Facebook and Twitter, for example, "said that they would remove hacked materials if they were able to validate that it was hacked." Chan Dep. 252:24-253:4. These conversations happened "ahead of the 2020 elections." Chan Dep. 253:6-7.

887. The FBI asked the platforms how their policies would handle a hack-and-leak operation at the same time as repeatedly warning them about such operations—thus effectively inducing them to adopt such policies. Chan Dep. 248:23-249:2.

888. The FBI inquired about the platforms' hacked-materials policies because "internally we wanted to know what actions that we would need to take, whether we would need to take a legal remedy such as like a seizure warrant" to remove supposedly hacked materials. Chan Dep. 249:17-20.

889. Chan was not the only FBI official to ask the platforms about their censorship policies for hacked materials. Instead, this question was posed repeatedly by multiple FBI officials: "I would say we take turns asking. When I say 'we,' I mean either myself or the members of the Foreign Influence Task Force …. Wherever it seemed like an organic follow-up question,

AMERICAN OVERSIGHT

we would ask 'How would your terms of service apply to this situation or that situation?'" Chan Dep. 250:14-20.

890. When asked, "did anyone within the FBI discuss or suggest with you that you should raise the prospect of Russian hack-and-leak operations with social media platforms in 2020?" Chan repeatedly responded with a stock answer, "I do not recollect." *Id.* 189:14-23; 189:8-191:21, 203:13-15 ("I cannot recollect." … "I do not recollect." … "I do not recollect." … "I don't recollect." … "I don't recollect." … "I do not recollect.").

891. These responses are not credible because they are stock responses, and it is facially implausible that Chan does not recall whether other federal officials discussed warning platforms about "hack-and-leak" operations during 2020, especially after the fiasco of censorship of the Hunter Biden laptop story. These "I do not recollect" responses also contradict Chan's testimony later in the deposition that he "regularly" communicated with FITF and FBI's cyber division about the possibility of a hack-and-leak operation: "I believe that we internally discussed the potential for hack-and-leak operations, and so I regularly was in communication with the cyber division of the FBI as well as with the Foreign Influence Task Force to see if they had heard of anything that I had not heard of. So I would say that the people that I communicate with, everyone was vigilant, but no one -- I believe that in general people at the FBI were concerned about the potential for hack-and-leak operations, but that we had not seen any investigations that led in that direction or that would lead us in that direction." *Id.* 206:23-207:10. He specifically admitted that he recalls discussing hack-and-leak operations with FITF officials "Ms. Dehmlow, Mr. Olson, Mr. Cone, and Mr. Giannini." *Id.* 207:19-23. It is not credible that the *only* aspect of his internal discussions with the FBI about hack-and-leak operations that he does not recall is whether someone from the FBI suggested or directed him to raise the issue with social-media platforms.

AMERICAN OVERSIGHT

892. Further, as revealed on the video of Chan's deposition, his demeanor in answering questions on this point changes and becomes evasive. Chan's demeanor when testifying on this point undermines his credibility.

893. The FBI and other federal officials had no specific investigative basis for these repeated warnings about possible "hack-and-dump" operations. As Chan admits, "[t]hrough our investigations, we did not see any similar competing intrusions to what had happened in 2016. So although from our standpoint we had not seen anything, we specifically, in an abundance of caution, warned the companies in case they saw something that we did not." *Id.* 174:7-13. As Chan admits, "we were not aware of any hack-and-leak operations that were forthcoming or impending" when he and other federal officials warned about the "risk of hack-and-leak operations, especially before the general election." *Id.* 192:19-24.

894. Matt Masterson and Brian Scully of CISA also raised the concern about the threat of hack-and-leak operations in the 2020 election cycle to the social-media platforms during the "USG-Industry" meetings that occurred quarterly, then monthly, then weekly leading up to the 2020 election. *Id.* 212:3-22.

895. Yoel Roth, then-Head of Site Integrity at Twitter, provided a formal declaration to the Federal Election Commission containing a contemporaneous account of the discussion of the threat of "hack-and-leak operations" at the meetings between the FBI, other federal law-enforcement and national-security agencies, and the social-media platforms. His declaration states: "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 [*i.e.*, Russians or other foreign

AMERICAN OVERSIGHT

governments] might occur in 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 throughout 2020. *I also learned in these meetings that there were rumors that a hack-and-leak operation would involve Hunter Biden*." Chan. Ex. 8, ¶¶ 10-11, at 2-3 (emphasis added). Yoel Roth executed this declaration on December 17, 2020, shortly after the events described, and submitted it to the Federal Election Commission in a formal enforcement proceeding, so it has the force of a statement under oath. *Id.* at 4.

896. Chan's account of these meetings largely matches Roth's account, *see, e.g.,* Chan Dep. 218:5-220:15, but there are two key discrepancies between Roth's and Chan's accounts. First, Roth recounts that the FBI and national-security officials communicated to Twitter that they "*expected*" that there would be one or more hack-and-leak operations by Russia or other "state actors." *Id.* at 2. Chan testified that he believed they used words like "concern" instead of "expected." Chan. Dep. 220:20-24, 224:5-17, 226:5-12, 227:3-6. Second, Roth specifically recalls that federal officials told him that "there were rumors that a hack-and-leak operation would involve Hunter Biden." Chan Ex. 8, ¶ 11, at 3. Chan testified that "in my recollection, Hunter Biden was not referred to in any of the CISA USG-Industry meetings." Chan Dep. 213:8-10; *see also id.* 227:24-228:1, 228:21-23, 229:9-11 229:15-20.

897. On these points, Roth's declaration is more credible than Chan's testimony, for at least four reasons. First, Roth's declaration was executed much closer in time to the events described—just two months later—while Chan's testimony occurred over two years later. Indeed,

AMERICAN OVERSIGHT

as noted above, Chan himself admitted that he "could not recollect" key details about the federal officials' course of conduct in warning social-media platforms about a supposed "hack and dump" operation, so there is no reason to think that Chan's recollection is more reliable on these similarly specific details.

898. Second, Roth had no incentive to color or shade his account of communications from federal officials when he submitted this Declaration to the FEC, while Chan has strong incentives to shade his testimony on these points to deemphasize the FBI's involvement in censoring the Hunter Biden laptop story. Indeed, if the FBI and other federal officials warned social-media platforms about a hack-and-leak operation *involving Hunter Biden*—when the FBI had received Hunter Biden's laptop from the Delaware repair-shop owner and thus *knew* that it was not hacked, *see* Doc. 106-3, at 5-11 —that raises a compelling inference that the FBI deliberately gave misleading information to social-media platforms to induce them to wrongfully censor the Hunter Biden laptop story.

899. Third, Chan's testimony on a closely related point—whether Chan was instructed by an FBI official to warn social-media platforms about "hack and leak" operations—is not credible. Chan's minor disagreements with Roth's account are not credible for similar reasons. For example, Chan claims to have extremely specific recollection of the FBI's word-choice in meetings that occurred over two years earlier—disputing that the FBI used the word "expected," *id.* 220:20-24, 223:12-22, 224:5-17, 226:5-12, 227:3-6, and affirmatively asserting with confidence that "Hunter Biden" was never mentioned, *id.* 213:8-10, 227:24-228:1, 228:21-23, 229:9-11 229:15-20—while at the same time claiming that he could not recollect whether he discussed the same issues with the FBI internally *at all*, *Id.* 189:14-23; 189:8-191:21, 203:13-15.

AMERICAN OVERSIGHT

900. Fourth, Chan's demeanor while testifying by videotape on this point is evasive and undermines his credibility.

901. Two additional points support the credibility of Roth's account over Chan's. First, Brian Scully's testimony, unlike Chan's, did not dispute or quibble with any aspect of Roth's near-contemporaneous account of these conversations—Scully merely contended that he could not remember. Scully Dep. 247:18-248:2.

902. Second, Roth's account directly matches the less detailed but even more contemporaneous account provided by Mark Zuckerberg in his testimony before Congress on October 28, 2020. Zuckerberg's testimony confirms that, as Yoel Roth recounted, the FBI conveyed a strong risk or expectation of a foreign hack-and-leak operation shortly before the 2020 election: "So you had both the public testimony from the FBI and in private meetings alerts that were given to at least our company … that suggested that we be on *high alert and sensitivity* that if a trove of documents appeared that we should view that with suspicion, that it might be part of a foreign manipulation attempt." Chan Ex. 9, at 56 (emphasis added). Indeed, Chan did not dispute Zuckerberg's account: "I don't remember the exact framing of our discussions with them [*i.e.*, Facebook]." Chan Dep. 247:14-15. And again, Chan did not dispute the fundamental details of Zuckerberg's account; he admitted that he "hosted several private meetings with Facebook where the concern about a hack-and-leak operation was raised" in 2020. Chan Dep. 246:17-20. Though Chan did state that "I would not have framed it like Mr. Zuckerberg did," Chan essentially concedes the accuracy of Zuckerberg's account. Chan Dep. 255:14-15.

903. After the Hunter Biden story broke on October 14, 2020, Laura Dehmlow of the FBI refused to comment on the status of the Hunter Biden laptop in response to a direct inquiry

AMERICAN OVERSIGHT

from Facebook, even though the FBI had the laptop in its possession since late 2019 and knew that its contents were not hacked. Chan Dep. 213:11-215:5.

904. When the Hunter Biden laptop story broke on October 14, 2020, it was widely censored on social media, including by Twitter and Facebook, pursuant to their hacked-materials policies. For example, Twitter's Site Integrity Team "blocked Twitter users from sharing links over Twitter to the applicable New York Post articles and prevented users who had previously sent Tweets sharing those articles from sending new Tweets until they deleted the Tweets" sharing the Hunter Biden laptop story. Chan Ex. 8, at 3. "Facebook, according to its policy communications manager began 'reducing its distribution on the platform,' pending … a third-party fact check. Twitter went beyond that, blocking all users, including the House Judiciary Committee, from sharing the article on feeds and through direct messages. Twitter even locked the New York Post account entirely, claiming the story included hacked materials and was potentially harmful." Chan Ex. 9, at 2.

D. The FBI Routinely Flags Speakers and Content for Censorship.

905. According to Chan, during the 2020 election cycle, "the U.S. government and social media companies effectively impeded [foreign] influence campaigns primarily through information sharing and *account takedowns*, respectively." Chan Ex. 1, at i (emphasis added).

906. According to Chan, the FBI's "information sharing" includes both "strategic information," which "discusses the tools, tactics or processes" used by foreign-influence campaigns, and "tactical information," which means identifying specific "indicators or selectors," which are both "a term of art" that refers to "IP addresses, email accounts, social media accounts, … website domain names, and … file hash values." Chan Dep. 29:15-30:7.

AMERICAN OVERSIGHT

907. In other words, according to Chan, the FBI "shares information" with social-media platforms that includes information about specific IP addresses, email accounts, social-media accounts, and website domain names that the FBI believes should be censored, and this sharing of information leads social-media platforms to engage in "account takedowns" based on the FBI's information. *See id.* According to Chan, this combination of "information sharing" and "account takedowns" "effectively impeded [foreign] influence campaigns" during the 2020 election cycle. Chan Ex. 1, at i.

908. Chan testified that the FBI shares this information with social-media platforms so that they can "protect their platforms"—indeed, "protect their platforms" was a stock phrase in Chan's testimony. Chan Dep. 32:19, 34:7-12, 35:8-10, 36:25, 87:22-23, 274:14. As Chan's testimony makes clear, however, the phrase "protecting their platforms" is a euphemism for "censoring speech that federal officials disfavor." For example, Chan admits that "protect their platforms" means "knocking down accounts or knocking down misinformation content." Chan Dep. 273:12-17. Chan's thesis and testimony make clear that the FBI's purpose in "information sharing" with social-media platforms is to induce them to censor speech that the FBI dislikes and wants to see censored. For example, Chan testified that "my purpose is to share the information with them so they can protect their platforms as they deem appropriate," but he immediately admitted that "one way to protect their platforms is to take down these accounts." *Id.* 35:9-14. Thus, Chan admits that the FBI's "purpose" in "information-sharing" includes "to take down these accounts" that the FBI believes are Russian-influenced. *Id.*

909. Chan admits that the purpose and predictable effect of "tactical" information-sharing—*i.e.*, the FBI flagging specific accounts, websites, URLs, IP addresses, web domain names, etc., to social-media platforms for censorship—is that the platforms will take action against

AMERICAN OVERSIGHT

such specific content and accounts under their content-moderation policies: "from what I have observed and what they have told me when we have provided them with high confidence of Russian selectors, that they have been able to discover fake Russian accounts and take them down." *Id.* 32:20-24.

910. According to Chan, the social-media platforms "take the information that we share, they validate it through their own means. And then if they determine that these are accounts being operated by Russian state-sponsored actors, then they have taken them down." *Id.* 33: 12-17.

911. Chan admits that, during the 2020 election cycle, the U.S. Government engaged in "information sharing with the social media companies to expose Russia's different operations and shut down its accounts." Chan Ex. 1, at xvii. In other words, Chan admits that the purpose of federal officials' "information sharing" was to "shut down … accounts" on social media that the Government disfavored. *Id.*; *see also* Chan Dep. 37:17-38:2.

912. In addition to social-media platforms, Chan and the FBI also "share indicators" with state and local government election officials, such as "county registrars or county clerk's offices"—who are also state actors subject to the First Amendment. Chan "would share indicators with them," and "share the same type of information that I shared with social media companies," including "IP addresses and domain names, so that they could see if they were popping up anywhere on their networks." *Id.* 50:11-51:6. In other words, the FBI feeds information to state and local election officials so that they can make their own reports of supposed "misinformation" and "disinformation" to social-media platforms, creating a First Amendment feedback loop. The FBI seeds concerns with the state and local election officials, who then identify supposed "disinformation" and "misinformation" based on the FBI's information, and then report it to the social-media platforms through CISA and the FBI.

AMERICAN OVERSIGHT

913. Chan contends that Russian "state-sponsored actors … have created fake social media accounts," which "have either generated disinformation themselves or they have amplified existing content from current users of social media platforms." *Id.* 60:1-7.

914. These supposedly Russian-controlled accounts "make their own content," such as "mak[ing] their own Facebook postings," and they "try to find what are the hot-button or current issues in the news … and then they will try to either generate content themselves related to that or they will amplify existing content." *Id.* 60:13-22. This is supposedly done with the goal to "sow discord in the American online environment." *Id.* 61:12-13.

915. Chan agrees that "the goal there is … they post messages that they anticipate will be divisive and try and get Americans to engage with them." *Id.* 61:14-18.

916. As Chan agrees, "engagement" with a social-media posting includes viewing the content, liking or disliking it, reposting it, commenting on it, and/or reposting it with commentary. *Id.* 61:19-63:13. All of these are First Amendment-protected activities. In this way, according to Chan, "the Russians are trying to get people to engage on their divisive content." *Id.* 63:19-64:1.

917. According to Chan, over 126 million Americans "engaged" with Russian-originated content on Facebook, and 1.4 million Americans engaged with such content on Twitter, during the 2016 election cycle. *Id.* 66:2-25. All of this was First Amendment-protected activity. Chan credits federal government efforts during the 2020 election cycle with preventing the vast majority of such "engagement" by American citizens with Russian-originate content on social media during the 2020 election cycle. Chan Ex. 1, at v ("This thesis finds that the Russians shifted their tactics from 2016 to 2020. Still, the U.S. government and social media companies effectively impeded their influence campaigns primarily through information sharing and account takedowns,

AMERICAN OVERSIGHT

respectively."). Thus, the federal officials' "information sharing" activities prevented an enormous amount of First Amendment-protected activity from occurring.

918. Chan's thesis and testimony provide clear examples of how supposedly Russian-originated "disinformation" on social media becomes intertwined with, and inseparable from, First Amendment-protected forms of expression by American citizens. Chan identifies a supposedly Russian-originated political ad on Facebook that features a picture of Hillary Clinton with a black X painted over her face, advertising an event called "Down with Hillary!" and stating, "Hillary Clinton is the co-author of Obama's anti-police and anti-Constitutional propaganda." Chan Ex. 1, at 29. None of this is "disinformation" in any meaningful sense—it is actually expression of political opinions. The posting notes that it received 763 reactions and 78 comments on Facebook, which Chan agrees are "engagements by users." *See id.*; *see also* Chan Dep. 67:1-68:20. Chan contends that the underlying ad was "Russian-originated content masquerading as something posted by an American," *id.* 67:6-10—*i.e.*, just the sort of content that the FBI would flag for censorship to social-media platforms through "tactical information-sharing." But once the FBI induces Facebook to pull down the ad from the platform, the First Amendment-protected "engagements" by Americans—likes, dislikes, re-posts, comments, etc.—are all obliterated as well. This is the collateral damage to *Americans'* freedom of speech in the FBI's war on so-called Russian "disinformation."

919. Chan's thesis provides similar examples of supposedly Russian-originated content with heavy engagement by Americans. For example, it reproduces two supposedly Russian-originated political ads containing a secure-borders message ("Secured Borders: Every man should stand for our borders! Join!") and a pro-Second Amendment message ("Defend the 2nd: The community of 2nd Amendment supporters, gun-lovers & patriots"). Chan Ex. 1, at 32. Again,

AMERICAN OVERSIGHT

these are expressions of political opinion, not "disinformation" in any meaningful sense. The former posting garnered 134,943 "likes," and the latter posting garnered 96,678 "likes"—each of which is a First Amendment-protected expression of support for the underlying, supposedly Russian-originated, political message. *See id.* Another similar ad, targeting black voters, simply stated "Black Matters: Join us because we care. Black matters!" and it drew 223,799 "likes" from ordinary users. *Id.* at 32; Chan Dep. 80:12-20. Chan admits that these are "high" levels of "engagement" from ordinary users. Chan Dep. 83:21.

920. Chan also reports that "IRA employees used social media bots, i.e., computer programs which control social media accounts, to amplify existing content." Chan Ex. 1, at 30. To "amplify existing content" means to do "things like liking it or reposting it." Chan Dep. 71:20-24.

921. Based on research, Chan estimates that "over 100,000 real people had their postings amplified by [Russian]-controlled social media bots." *Id.* 87:2-6.

922. In addition, the "indicators" that the FBI targeted for censorship included supposedly Russian-aligned websites that hosted First Amendment-protected content posted by Americans. For example, Chan identified a supposedly Russia-generated website called "PeaceData," which "hire[d] unwitting freelance journalists, including Americans, to write articles for the site." *Id.* 141:24-142:3. "[A]t least 20 freelance journalists, which includes Americans, had been duped into writing articles for the site." *Id.* 142:4-9. The FBI identified this site as Russia-generated to the social-media platforms, and as a result, the platforms "identified accounts that were foreign-associated … that were directing users to those platforms" and "t[ook] actions against those accounts." *Id.* 143:10-20. The speech of the American freelance journalists was thus suppressed due to FBI inducement.

AMERICAN OVERSIGHT

923. Similarly, Chan identified a website called "NAEBC" as a Russia-generated website. According to Chan, the Russians "used various social media accounts to engage with real users and convince them to post on the NAEBC site, which met with some success." *Id.* 144:13-145:2. Thus, "the NAEBC site also included content drafted and written by real users that had posted on that site." *Id.* 145:3-6. "The FBI flagged the NAEBC site to social-media platforms as a … Russian-originated source." *Id.* 146:12-15. On that basis, "the companies were able to discover Russian-controlled accounts that were used to try to redirect users to those websites," and the platforms "said they had taken down those accounts." *Id.* 146:16-147:7. The FBI thus induced the platforms to censor the speech of "real users" on a supposedly fake Russian website.

924. Chan admits that "Russia's influence operations" are deeply intertwined with First-Amendment-protected speech by ordinary social-media users, as he describes: "Many factors are at play when trying to measure the effects of Russia's influence operations. First-order effects include real users interacting with inauthentic content, Russian-bot amplification of divisive organic content, and IRA-controlled accounts communicating directly with real users." Chan Ex. 1, at 94.

925. During the days surrounding the 2020 election, the FBI's command post also routed reports of domestic "disinformation" to social-media platforms for censorship to social-media. "During FBI San Francisco's 2020 election command post, which I believe was held from the Friday before the election through election night, that Tuesday at midnight, information would be provided by other field offices and FBI headquarters about disinformation …. These were passed to FBI San Francisco's command post, which I mentioned to you before I was the daytime shift commander, and we would relay this information to the social media platforms where these accounts were detected." Chan Dep. 162:12-24.

AMERICAN OVERSIGHT

926. The FBI made no attempt to distinguish whether these reports of "election disinformation" "whether they were American or foreign." *Id.* 163:1-3. "[M]any field offices" of the FBI "relayed this information to us." *Id.* 163:7-11.

927. "[T]hose reports would come to FBI San Francisco … and then FBI San Francisco would relay them to the various social media platforms where the problematic posts had been made," in order "to alert the social media companies to see if they violated their terms of service…. which may include taking down accounts." *Id.* 165:3-17.

928. The FBI has about a "50 percent success rate" in getting reported disinformation taken down or censored by the platforms, *i.e.*, "that some action had been taken because it was a terms-of-service violation." *Id.* 167:7-14.

E. The FBI Demands Information on Censorship from the Platforms.

929. Regarding the algorithms that platforms use to detect inauthentic activity and to censor content, the FBI has "probed them to ask for details" about those algorithms, "so that we could make sure we were sharing the most effective and actionable type of information with them," *id.* 88:5-7, 20-22—in other words, to maximize the chances that disfavored speech would be censored as a result of the FBI's "information sharing."

930. The FBI "would … ask them what their terms of service or community standards were." *Id.* 90:21-23. But Chan contends that "we never told the companies to modify their terms of service or community standards." *Id.* 92:5-7.

F. The FBI Flags Accounts and URLs for Censorship on a Monthly Basis

931. The FBI gives "tactical information" to social-media platforms, where "tactical information includes identifying specific social media accounts and URLs" to be evaluated for censorship. *Id.* 96:24-97:2. Chan estimates that this occurs "one to five times per month." *Id.*

AMERICAN OVERSIGHT

97:17-18. This includes such "tactical" information-sharing at most quarterly meetings. *Id.* 98:18-19.

932. To flag such specific accounts, URLs, and content to the platforms, Chan "would typically … send an email to the recipients at the companies" notifying them that he would be using "a secure file transfer application within the FBI that is called Teleporter," and "the Teleporter email contains a link for them to securely download the files from the FBI." *Id.* 98:20-11. The Teleporter files contain "different types of indicators," *i.e.*, specific social-media accounts, web sites, URLs, email accounts, etc. that the FBI wants the platforms to evaluate under their content-moderation policies. *Id.* 99:15.

933. Each such communication may contain any number of such "indicators," ranging "from one account or one selector to many, like a whole spreadsheet full of them." *Id.* 100:16-17.

934. Chan "estimate[s] that during 2020 [he] shared information with the companies between one to five or one to six times per month." *Id.* 100:21-24. Each such incident of information-sharing included flagging a number of specific "indicators" that ranged anywhere from one to "hundreds" of specific accounts, web sites, URLs, etc... *Id.* 101:4-7.

935. During the 2022 election cycle, Chan shared such information with the platforms "one to four times per month." *Id.* 101:13-14. Each such incident involved flagging a number of specific "indicators" that ranged anywhere from one to "in the tens, in the dozens" of specific accounts, web sites, URLs, etc. *Id.* 101:17-19.

936. "[I]n general" these flagging communications would go to all seven social-media platforms identified above, but sometimes there would be "company-specific information" that would go to a particular company. *Id.* 102:3-9. "[M]ost of the time we would share with that list of [seven] companies." *Id.* 102:14-15.

AMERICAN OVERSIGHT

937. When it made such communications, the FBI would request that the platforms report back to the FBI their specific actions taken toward the accounts that the FBI specifically flagged for possible censorship. *Id.* 102:18-25. "[A]t every quarterly meeting we try to follow up to ask if information we shared has been relevant if we have not received a response yet." *Id.* 103:5-9. Sometimes, but not always, the platforms report back to the FBI on what accounts they have removed based on the FBI's information, in which case the FBI documents the report to "help[] us fine-tune the information we're sharing." *Id.* 103:14-22.

938. Including Chan, at least *eight* FBI agents in the San Francisco field office are involved in reporting disinformation to social-media platforms—Chan himself, two GS-14 supervisors who report to Chan, and roughly five FBI field agents in two different squads within the office. *Id.* 105:19-108:18. All these agents share both "strategic" and "tactical" information with social-media platforms about supposed malign-foreign-influence content on platforms, and they are "involved in following up to find out if their tactical information was acted on." *Id.* 108:8-10.

939. In addition, a significant number of FBI officials from FBI's Foreign Influence Task Force (FITF) also participate in regular meetings with social-media platforms about supposed disinformation. *Id.* 108:19-110:14. These include "three to ten" FITF officials at bilateral meetings with social-media platforms. *Id.* 110:7-8.

940. The FBI uses both its criminal-investigation authority and its national-security authority to gather information about supposed malign-foreign-influence activities and content on social-media platforms. This specifically includes using "the Foreign Intelligence Surveillance Act … the PATRIOT Act, [and] Executive Order 12333 that allows us to gather national security intelligence" to investigate content on social media. *Id.* 111:13-112:8.

AMERICAN OVERSIGHT

941. In one case in 2020, for example, a single "Teleporter message was sent" to platform(s) "with a spreadsheet with hundreds of accounts," all of which the FBI was flagging for the platforms as supposed malign-foreign-influence accounts. *Id.* 112:9-14.

942. Chan expressed a high degree of confidence that the FBI's identification of "tactical information" (*i.e.*, specific accounts, URLs, sites, etc.) to social-media platforms was always accurate, and that the FBI never misidentified accounts, content, web sites etc. as operated by malign foreign actors when in fact they were operated by American citizens. He testified that "we only share information that we have a high confidence that is attributed to a foreign-state actor," and that "[i]n my experience, it has always been correct." *Id.* 112:15-113:16.

943. But there are substantial reasons to think that Chan is wrong. For example, Chan reports that the FBI induced Twitter to remove accounts and Tweets related to the #ReleaseTheMemo hashtag in 2019, which supported Congressman Devin Nunes' investigation regarding Russia collusion. *Id.* 149:13-21; Chan Ex. 1, at 71 (noting that 929,000 Tweets removed by Twitter as supposedly Russian disinformation included thousands of Tweets amplifying the #ReleaseTheMemo hashtag). In fact, recent reporting indicates that Twitter was aware that the accounts pushing #ReleaseTheMemo were *not* Russian-controlled inauthentic accounts, but core political speech by ordinary American citizens that the FBI conspired to suppress.

944. The FBI's flagging accounts for censorship often leads to the censorship of additional accounts. According to Chan, the FBI "may share, for example, one account with them, but then they may find ten connected accounts and take all of them down." *Id.* 113:23-114:1.

G. Pressure from Congress Induces Platforms to Increase Censorship.

AMERICAN OVERSIGHT

945. According to Chan, the social-media platforms were far more aggressive in taking down disfavored accounts and content in the 2018 and 2020 election cycles than they were in the 2016 cycle. *Id.* 115:18-116:6.

946. Based on his personal observation, experience, and research, Chan concludes that "pressure from Congress, specifically HPSCI and SSCI," induced the social-media platforms to adopt more aggressive censorship policies in 2018 and 2020. *Id.* 116:1-3. "HPSCI" stands for the House Permanent Select Committee on Intelligence, and "SSCI" stands for the Senate Select Committee on Intelligence. *Id.* 116:11-14.

947. This "pressure from Congress" took multiple forms. First, those Congressional committees called "the CEOs for the companies … to testify in front of their committees," including "Mark Zuckerberg and Jack Dorsey and Sundar Pichai." *Id.* 116:20-117:2. These CEOs were called to testify about disinformation on their platforms "more than once." *Id.* 117:5-6. Chan believes that "that kind of scrutiny and public pressure from Congress … motivated them to be more aggressive in the account takedowns." *Id.* 117:7-14. Chan believes this based on conversations with social-media platform employees. *Id.* 117:15-118:2.

948. Chan identifies specific congressional hearings that placed such pressure on social-media platforms to adopt more restrictive censorship policies: "On April 10–11, 2018, the Senate Commerce Committee and Senate Judiciary Committee held hearings on consecutive days with Mark Zuckerberg to discuss Russia's influence campaigns on Facebook and its countermeasures to combat them…. The Senate committees also used this as an opportunity to hold Facebook accountable for its actions and *exert pressure for positive change*." Chan Ex. 1, at 50 (emphasis added). "On July 17, 2018, the House Judiciary Committee held a hearing with senior executives from Facebook, Google, and Twitter so they could provide updates on their companies' efforts for

AMERICAN OVERSIGHT

content filtering to stop foreign influence campaigns on their platforms." *Id.* On September 5, 2018, the Senate Intelligence Committee held a hearing with senior executives from Facebook and Twitter to discuss their companies' efforts to stop foreign influence campaigns and illegal transactions on their platforms." *Id.*

949. Chan links these Congressional hearings to "constructive change," *i.e.*, more aggressive censorship policies by the platforms: "On October 31, 2017, the Senate Judiciary Committee held a hearing with senior executives from Facebook, Google, and Twitter to discuss the extent of the Russian disinformation campaigns on their respective platforms." Chan Ex. 1, at 48. "This public hearing … provided politicians with the occasion to exert pressure on the companies to make constructive changes to their platforms." *Id.* at 48-49. According to Chan, this "constructive change" means the adoption of more restrictive censorship policies. Chan Dep. 133:9-23.

950. In addition, Congress put pressure on the platforms to adopt and enforce more aggressive censorship policies and practices by sending high-level congressional staff from HPSCI and SSCI to meet with the social-media platforms directly and threaten them with adverse legislation. According to Chan, "staffers from both of those committees have visited with … those [social-media] companies," and after these meetings with congressional staffers, employees of the social-media platforms "would indicate that they had to prepare very thoroughly for these types of meetings … and they indicated that it felt like a lot of pressure." *Id.* 117:19-119:2.

951. The Congressional staffers had such meetings with "Facebook, Google, and Twitter." Employees from those three companies "experienced these visits from congressional staffers as exercising a lot of pressure on them." *Id.* 118:12-16.

AMERICAN OVERSIGHT

952. In those meetings, the Congressional staffers discussed potential legislation with the social-media platforms, and before or after they met with those three companies, the Congressional staffers "discussed with [Chan] … legislation that they were thinking about doing." *Id.* 118:17-120:3.

953. It is Chan's opinion that the social-media platforms' "changes in takedown policies" to make them more restrictive "resulted from that kind of pressure from Congress." *Id.* 118:17-20.

954. Chan's opinion is the result of discussing these meetings with participants on both sides—both the Congressional staffers and employees of Facebook, Twitter, and Google. Chan "and FBI San Francisco personnel would meet with the congressional staffers, typically before they met or after they met with the social media companies," because "they wanted an FBI opinion about what they had heard from the social media companies." *Id.* 119:23-120:3.

955. To the best of Chan's recollection, these meetings between Congressional staffers and social-media platforms were an "annual occurrence" that began in 2017 and recurred annually after 2017. *Id.* 120:7-8. "The staffers had separate meetings with each of the companies." *Id.* 121:4-5. "[A]fter those meetings, the staffers would come to [Chan] and ask [his] opinion of potential legislation." *Id.* 121:6-9.

956. Chan also discussed these meetings with the social-media platform employees who participated, as he "talk[s] with the social media platform personnel regularly," and he understood from them that "the congressional staffers put a lot of pressure on them" in the meetings. *Id.* 122:18-25. He spoke directly to the personnel who participated in the meetings. *Id.* 123:21-24. Senior officials from the social-media platforms, including Yoel Roth of Twitter, Steven Siegel of

AMERICAN OVERSIGHT

Facebook, and Richard Salgado of Google, participated in the meetings with Congressional staffers. *Id.* 123:25-125:7.

957. The Congressional staffers involved in the meetings were "senior-level staffers," including "a director-level" staffer, "the committee counsel or a senior counsel for the committee," and "one or two other … line-level staffers." *Id.* 123:6-13.

958. According to Chan, "intense pressure from U.S. lawmakers and the media … eventually force[d] the social media companies to examine what had taken place on their platforms [in 2016] and strive to ensure that it did not happen in the future." *Id.* 127:3-23; Chan Ex. 1, at 42.

959. These steps included actions by the social-media platforms to take more aggressive enforcement against violations of their terms of service, but also policy changes to the terms of service themselves to make their policies more restrictive: "the policy changes specifically to their terms of service or community standards." Chan Dep. 129:17-19. These involved "more robust or more aggressive content-modulation policies," that "clarify that certain things actually violate their policies and can be taken down." *Id.* 130:4-18.

960. Chan notes that "Facebook and Twitter faced more Congressional scrutiny … as their senior executives testified before Congress on three separate occasions before the midterm elections," Chan Ex. 1, at 46, and he concludes that "political pressure from Congress was a contributing factor" leading social-media platforms to adopt more restrictive content-moderation policies. Chan Dep. 132:7-9. Chan believes that these more restrictive censorship policies that include "account takedowns" are "constructive change," *id.* 133:2-23.

961. These policy changes, induced by "political pressure from Congress," resulted in a dramatic increase in censorship on social-media platforms, including for example that "zero [Twitter] accounts were taken down during the 2016 cycle but 3,613 Twitter accounts were taken

AMERICAN OVERSIGHT

down during the 2018 cycle." *Id.* 133:24-134:5. Likewise, 825 accounts were removed from Facebook and Instagram based on publicly available reports, but according to Chan, the actual number was much higher. *Id.* 147:8-148:18. In 2019, Twitter announced the takedown of "422 accounts which made 929,000 tweets." *Id.* 149:9-12. "[S]ome subset of that amount was due to information [the FBI] provided." *Id.* 150:12-14.

962. When meeting with social-media platforms, Chan "typically meet[s] with the trust and safety individuals and then their associated attorneys." *Id.* 135:16-18.

963. Samaruddin K. Stewart ("Sam") of the State Department's Global Engagement Center "would meet with social media companies … primarily with policy individuals." *Id.* 135:2-15.

964. Sam Stewart would offer "different types of software made by vendors that they would pilot to see if they could detect malign foreign influence on social media platforms." *Id.* 135:25-136:3. Chan believed that the Global Engagement Center's products "might accidently pick up U.S. people information." *Id.* 138:10-12.

965. Elvis Chan knows and has worked with Peter Strzok and Lisa Page. *Id.* 234:19-240:5. He also knows and has worked with James Baker, the former general counsel of the FBI who went on to become deputy general counsel of Twitter and encouraged Twitter to keep censoring the Hunter Biden laptop story. *Id.* 239:13-16.

H. The FBI's Censorship Activities Are Ongoing.

966. Chan urges the public to report supposed misinformation on social media directly to the platforms, or else report it to the FBI or DOJ so that they can report it to the platforms, and boasts that the platforms are "very aggressive" in taking down misinformation. As he stated in a public podcast just before the 2020 election: "If you're also seeing something related to the election

AMERICAN OVERSIGHT

on your social media platform, all of them have portals where you can report that sort of information. They're being very aggressive in trying to take down any disinformation or misinformation, and then, lastly, if they 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." Chan Ex. 13, at 3, 9:9-19. FBI San Francisco, when it receives such reports, "would then relay those to social media platforms," so that "the social media platforms will assess those in connection with their terms of service." Chan Dep. 267:13-23. Chan characterizes the platforms as "very aggressive" in taking down disinformation because they "[adjusted] their policies to be able to handle foreign-malign-influence operations." *Id.* 270:23-25.

967. The FBI continues the same efforts in 2022 and later election cycles that it pursued in 2020. As Chan publicly stated, "post 2020, we've never stopped … as soon as November 3rd happened in 2020, we just pretty much rolled into preparing for 2022." Chan Ex. 15, at 2, 8:2-4. Chan stated: "[W]e are also really engaged with the technology companies that are out here … We're also working with the social media companies to make sure that any foreign disinformation that's coming out … if we can identify them, we can share that information with them so they can knock down accounts, knock down disinformation content," and he noted that they are "having conversations with all of those organizations as they're building up to November of [2022]." Chan Ex. 15, at 2-3, 8:15-9:4.

VII. CISA's Censorship: Pressure, "Switchboarding," and Working Through Nonprofits.

968. CISA, the Cybersecurity and Infrastructure Security Agency within the Department of Homeland Security, serves as a "nerve center" for federal censorship efforts. CISA meets routinely with social-media platforms about censorship in at least five different sets of standing meetings, CISA pressures platforms to increase censorship of speech that federal officials disfavor,

AMERICAN OVERSIGHT

and CISA serves as a "switchboard" by "routing disinformation concerns to social-media platforms" for censorship. CISA also seeks to evade the First Amendment by outsourcing many of its censorship activities to nonprofit agencies that it collaborates closely with, including the CISA-funded Center for Internet Security and its "EI-ISAC" ("Election Infrastructure – Information Sharing & Analysis Center") for state officials, and the massive censorship cartel calling itself the "Election Integrity Partnership."

969. Brian Scully is the chief of the so-called "Mis, Dis, and Malinformation Team" or "MDM Team" within the Cybersecurity and Infrastructure Security Agency (CISA) in the Department of Homeland Security (DHS). Scully Depo. 15:14-20. Before the Biden Administration, the MDM Team was known as the "Countering Foreign Influence Task Force," or CFITF.

970. Lauren 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," including "social media platforms." Scully Depo. 18:2-18. During relevant periods in both 2020 and 2022, however, Protentis was on maternity leave, and during those times, Scully performs her role as chief engagement officer for communicating with other federal agencies, private-sector entities, and social-media platforms about misinformation and disinformation. Scully Depo. 18:19-20:10.

971. Both Scully and Protentis have done or are doing extended details at the National Security Council where they work on misinformation and disinformation issues. Protentis began a one-year detail at the NSC in January 2023, as soon as she came back from maternity leave, and she will deal with mis- and disinformation issues for the NSC as part of her detail. Scully Depo. 19:15:20:5.

AMERICAN OVERSIGHT

A. CISA "Switchboards" by Flagging Government-Reported "Misinformation."

972. Scully admits that, during 2020, the MDM team "did some switchboard work on behalf of election officials." Scully Depo. 16:23-25. "Switchboard work" or "switchboarding" is a disinformation-reporting system that CISA provides that allows state and local election officials (who are government officials subject to the First Amendment) "to identify something on social media they deemed to be disinformation aimed at their jurisdiction. They could forward that to CISA and CISA would share that with the appropriate social media companies." Scully Depo. 17:3-8.

973. In reporting perceived misinformation to the platforms, CISA and the state and local officials have "an understanding that if the social media platforms were aware of disinformation that they might apply their content moderation policies to it," and "the idea was that they would make decisions on the content that was forwarded to them based on their policies." Scully Depo. 17:15-21.

974. CISA's "switchboarding" activity causes social-media speech to be censored that otherwise would not have been censored: Scully agrees that "if it hadn't been brought to their attention then they obviously wouldn't have moderated it." Scully Depo. 17:22-18:1.

975. Scully contends that "we didn't do switchboarding in 2022." Scully Depo. 21:24-25. But he admits that this decision was made in late April or early May 2022. Scully Depo. 22:15-23. This lawsuit was filed, specifically challenging CISA's "switchboarding" activity, on May 5, 2022. Doc. 1.

976. Throughout the 2022 election cycle and through the present date, CISA continues to publicly state on its website that the MDM Team "serves as a switchboard for routing disinformation concerns to appropriate social media platforms": "The MDM team serves as a

AMERICAN OVERSIGHT

switchboard for routing disinformation concerns to appropriate social media platforms and law enforcement. This activity began in 2018, supporting state and local election officials to mitigate disinformation about the time, place, and manner of voting. For the 2020 election, CISA expanded the breadth of reporting to include other state and local officials and more social media platforms." Scully Ex. 24, at 3; *see also* Cybersecurity and Infrastructure Security Agency, "Mis, Dis, Malinformation," https://www.cisa.gov/mdm (visited Feb. 4, 2023).

977. According to Scully, "switchboarding is CISA's role in forwarding reporting received from election officials, state/local election officials, to social media platforms." Scully Depo. 23:24-24:2.

B. CISA Organizes the "USG-Industry Meetings" on Misinformation.

978. The MDM Team continues to communicate regularly and extensively with social-media platforms about misinformation and disinformation, including during the 2022 election cycle. These communications include at least "two general types of communications, one, we did regular sync meetings between government and industry, so federal partners and different social media platforms." Scully Depo. 21:2-6. This is "a coordinated meeting. Facebook was the industry lead, so [Scully] would have coordination calls with them prior to the meetings, just to set the agenda for meetings…" Scully Depo. 21:6-10. These meetings are described in CISA's interrogatory responses as "USG-Industry" meetings. Scully Ex. 12, at 38-40.

979. In addition, the MDM Team received regular reports from social-media platforms about any changes to their censorship policies or their enforcement actions on censorship: "if a platform was putting out a … public report on policies or activities" relating to disinformation and censorship," CISA would "get a briefing on that or at least get an awareness that it was going out." Scully Depo. 21:11-16.

AMERICAN OVERSIGHT

980. The USG-Industry meetings increase in frequency as each election nears. In 2022, they were "monthly" as the election approached, and then in October, they became "biweekly," so that there were two "biweekly meetings … prior to the [2022] election." Scully Depo. 24:16-21.

981. "DOJ, FBI, ODNI, and … DHS" participate in these meetings on the federal government's side. Scully Depo. 25:23. DHS's participation includes at least two components: CISA, typically represented by Scully and Geoff Hale, Scully's supervisor; and the Office of Intelligence and Analysis ("I&A"). Scully Depo. 25:11-26:13. Scully's role is to "oversee" and "facilitate the meetings." Scully Depo. 25:14-16. On behalf of CISA, Kim Wyman, Allison Snell, and Lauren Protentis also participate in the meetings. Scully Depo. 28:4-13.

982. On behalf of FBI, FITF Chief Laura Dehmlow and Elvis Chan participate in these "USG-Industry" meetings, and "periodically other people would be on from different parts of FBI," while "Laura [Dehmlow] was usually who [CISA] coordinated through." Scully Depo. 29:14-30:12.

983. These "USG-Industry" meetings have been occurring "for years," and "the first meeting we had … between federal and … industry was in 2018." Scully Depo. 31:10-16.

984. In addition, prior to each "USG-Industry" meeting, CISA hosts at least two planning meetings before the main meeting: a bilateral planning meeting between CISA and Facebook, and an interagency meeting with the federal agencies that participate. Scully Depo. 36:21-37:13.

985. Even though the 2022 meetings were still quite recent at the time of his deposition, Scully professed that "I don't recall specifics, so I'll just say that upfront" about the discussions at these meetings. Scully Depo. 37:19-20; *see also* Scully Depo. 39:23-25.

AMERICAN OVERSIGHT

986. The social-media platforms attending these meetings include "Facebook, Twitter, Microsoft, Google, Reddit, … [and] LinkedIn," as well as "others." Scully Depo. 38:15-20. For example, Wikimedia Foundation participated in "some." Scully Depo. 39:2-6.

987. Scully agrees that "concerns about misinformation and disinformation on social media platforms [were] discussed in these meetings in the 2022 timeframe." Scully Depo. 39:7-11. This includes federal officials reporting on disinformation concerns that they believe will affect speech on social media; for example, the "intelligence community" would report on "information operations": "the intelligence community, if their reporting included foreign actors who were potentially going to use information operations, they might mention that in their briefings." Scully Depo. 39:19-23.

988. The social-media platforms, likewise, would report back to federal officials about disinformation "trends" on their platforms, and provide additional information to the federal government not included in their public reports about such trends: "the platforms, they might share some high-level trend information from public reporting that they put out. So a lot of the platforms do their own regular reports on what they're seeing on their platforms and … what actions they're taking. And so the platforms, themselves, would share that type of information…. they would share essentially what they were getting ready to make public or what they had already made public… and then potentially provide some additional context around that." Scully Depo. 40:4-22. The government would ask for additional information about their observations of disinformation trends on social media, and the platforms would provide it: "they would share that, and if the government had questions or was looking for additional context they would often talk about that, they would generally talk about any new tactics that they were seeing." Scully Depo. 41:1-5.

AMERICAN OVERSIGHT

989. Scully admits that the discussion of foreign-originated misinformation is ultimately targeted at preventing domestic actors' from engaging in certain government-disfavored speech. He states that "my recollections for the time period we're talking about here, from September 2022 to the election in 2022, I recall most of it was foreign based. But … often what you see overseas essentially makes its way to the United States." Scully Depo. 41:6-12.

990. At the various meetings, the platforms discuss misinformation and disinformation as "coordinated inauthentic behavior," which is subject to removal under their terms of service, but Scully admits that "coordinated inauthentic behavior" concerns CISA because it "could lead to mis and disinformation, for sure." Scully Depo. 42:12-14.

C. CISA Is Deeply Embedded in the Election Integrity Partnership.

991. Scully admits that CISA has established relationships with researchers at "Stanford" and the "University of Washington," as well as "Graphika." Scully Depo. 46:23, 48:1-4. CISA's coordination with these researchers has continued since before the 2020 election cycle. Scully Depo. 47:22-25. Detailed additional information about these entities and their collaboration with CISA in the "Election Integrity Partnership" (or "EIP") is provided below. *See infra*.

992. Stanford Internet Observatory, University of Washington, the Atlantic Council, and Graphika are all involved in the EIP. Scully Depo. 48:1-22.

993. When EIP was starting up, Scully admits that CISA's "involvement" with the EIP included at least the following collaborations: (1) "a couple of our [CISA] interns came up with the idea and … [CISA] had some communications with" the EIP. Scully Depo. 49:8-10. (2) CISA "received some briefings on the work that they were doing." Scully Depo. 49:13-14. (3) CISA "had some communications early on in the process, when they were making decisions, when Stanford was trying to figure out what the gap was." Scully Depo. 49:18-21. (4) CISA "connected

AMERICAN OVERSIGHT

them [EIP] with the Center For Internet Security," which is a CISA-funded nonprofit that channels reports of disinformation from state and local government officials to social-media platforms. Scully Depo. 50:5-6. (5) CISA also "connected them [EIP] with some of the election official groups," *i.e.*, "the National Association of Secretaries of State [NASS] and the National Association of State Election Directors [NASED]," both of which are groups of state and local government officials. Scully Depo. 50:6-10. (6) And CISA "facilitated some meetings between those three." Scully Depo. 50:10-11.

994. The CISA interns who originated the idea of the EIP "worked for the Stanford Internet Observatory, as well … which was part of the [Election Integrity] Partnership." Scully Depo. 51:7-8, 22-24.

995. According to Scully, the "gap" that the EIP was designed to fill, was that state and local election officials lack the resources to monitor and report on disinformation that affects their jurisdictions: "One of the gaps that we identified from 2018 is, as you know, most election officials their offices are fairly low staff, low resourced, and so there was no – they didn't have capabilities to try to identify disinformation targeting their jurisdictions, and so was essentially the gap is that most election offices throughout the country just didn't have that capacity or capability to be monitoring so that they could identify anything that would be potentially target their jurisdictions, so that was the gap." Scully Depo. 57:6-17.

996. Scully and other CISA officials identified the "gap" as a problem to CISA interns who were simultaneously working for the Stanford Internet Observatory: "So we had a conversation with the interns, and they were asking questions about kind of needs that the election officials have, generally. One of the gaps that we identified from 2018 is, as you know, most

AMERICAN OVERSIGHT

election officials their offices are fairly low staff, low resourced, and so … they didn't have the capabilities to try to identify disinformation targeting their jurisdictions." Scully Depo. 57:2-11.

997. Thus, Scully and other CISA officials were involved in originating and brainstorming about the creation of the EIP in the first place, as they "had some initial conversation with the interns" about this "gap," and then they also "had a conversation with the Stanford Internet Observatory folks about the gap." Scully Depo. 52:3-6. Then, CISA "received a briefing from them [EIP], or two, on kind of what they were putting together." Scully Depo. 52:7-9. Scully and other CISA officials then "facilitated some meetings between Stanford folks, the Center For Internet Security, and election officials, where they had discussions about how they would work together." Scully Depo. 52:10-13. And CISA's involvement did not end there, as Scully admits that "we had some conversations, kind of throughout, when they were -- particularly when they were putting out public reporting about what they were seeing." Scully Depo. 52:14-17. In addition, Scully "wouldn't be surprised if there were some other kind of brief conversations in there." Scully Depo. 52:18-20.

998. The EIP continued to operate during the 2022 election cycle. Scully Depo. 53:4-5. At the beginning of the 2022 election cycle, the EIP "gave us [CISA] a briefing, early on, about what they were thinking about," which occurred in "May/June of 2022." Scully Depo. 53:14-19. Scully and Geoff Hale of CISA received the briefing from Renee DiResta and another EIP official. Scully Depo. 53:22-54:7. In that briefing, the EIP officials "walked through what their plans were for 2022, [and] some of the lessons learned from 2020." Scully Depo. 54:11-13. Their plans for 2022 were that "they were going to do something similar to what they did in 2020 in terms of trying to support election officials." Scully Depo. 54:16-18. They planned to "work with state and local election officials." Scully Depo. 54:22-25.

AMERICAN OVERSIGHT

999. CISA followed EIP's public reporting during the 2022 election cycle, and in particular, Scully relied on "at least one public report … that I thought was pretty good," which was "about specific disinformation" and "was basically how to think about whether or not a narrative poses risks." Scully Depo. 56:12-17.

1000. Scully admits that CISA has "an established relationship" with the EIP and the Stanford Internet Observatory personnel who lead it. Scully Depo. 55:24-25.

1001. The Center for Internet Security is a "non-profit that oversees the multi-state ISAC and the election infrastructure subsector information sharing and analysis center, that's what ISAC stands for." Scully Depo. 59:13-16. In other words, CIS oversees the "Multi-State Information Sharing and Analysis Center," or "MS-ISAC," and the "Election Infrastructure Information Sharing and Analysis Center," or "EI-ISAC." Scully Depo. 60:9-20. Both of these are organizations of state and/or local government officials, organized for information sharing. Scully Depo. 60:3-11, 60:25-61:6.

1002. CISA funds the Center for Internet Security in its activity of overseeing the EI-ISAC, which is an organization for information-sharing among state and local government election officials. Scully Depo. 61:9-10, 62:1 ("CISA provides funding for the EI-ISAC").

1003. CISA directed election officials to the Center for Internet Security, which CISA funds, as an alternative route for reporting misinformation to social-media platforms, because CISA found the "switchboarding" role to be resource-intensive. Scully Depo. 62:16-24.

1004. CISA connected the Center for Internet Security with the EIP because "the EIP was working on the same mission," so "we wanted to make sure that they were all connected." Scully Depo. 62:24-63:1. Thus, CISA originated and set up the collaborations between local government officials and the CIS, and between the EIP and the CIS. *Id.*

AMERICAN OVERSIGHT

1005. The Center for Internet Security worked closely with CISA in reporting misinformation to social-media platforms, as CISA served as a pass-through for reports from CIS to the platforms: CIS officials "were receiving reporting directly from election officials. In the early part of 2020, they would forward what they were receiving election officials to us at CISA, and then we would push that to the social media platform; as 2021 moved along, CIS more frequently provided that directly to the platforms, themselves. And so I would say early on in the process, the switchboarding generally came through CISA. Later on in the process, it was more of a mixed bag of how the switchboarding worked." Scully Depo. 63:23-64:10.

1006. In addition to CIS and CISA, EIP also reported supposed misinformation to social-media platforms. Scully Depo. 64:13-14. CISA and CIS coordinated directly with each other on reporting misinformation. Scully Depo. 64:18-20.

1007. CISA served a mediating role between CIS and the EIP, and the platforms, to coordinate their efforts in reporting misinformation to the platforms: "There was a point where one of the platforms was concerned about too much kind of duplicate reporting coming in, and so we did have some conversations with EIP and CIS on how to kind of better manage that activity to make sure we weren't overwhelming the platforms." Scully Depo. 64:21-65:1.

1008. There was also direct email communication between EIP and CISA about misinformation reporting. Scully Depo. 66:9-12.

1009. When CISA reported misinformation to platforms, CISA would "generally copy the Center for Internet Security," which was coordinating with EIP. Scully Depo. 67:20-68:6.

1010. Alex Stamos and Renee DiResta of the Stanford Internet Observatory briefed Scully about the EIP's report, "The Long Fuse," in "late spring, early summer 2021." Scully Depo. 70:1-10. Scully also reviewed portions of the report. *See id.*; Scully Ex. 1 (EIP Report).

AMERICAN OVERSIGHT

1011. Dr. Kate Starbird of the University of Washington, who works with the EIP, is also on the MDM Subcommittee for CISA. Scully Depo. 72:19-73:4. Kate Starbird of the University of Washington serves on CISA's CSAC MDM Subcommittee, as well as working with the EIP. Scully Ex. 59, at 1.

1012. Alex Stamos and Renee DiResta, who quarterback the EIP, also have roles in CISA. Renee DiResta of the Stanford Internet Observatory—a key player in the EIP—also serves as a "Subject Matter Expert (SME)" for the CISA's Cybersecurity Advisory Committee's MDM Subcommittee. *Id.*; Scully Depo. 361:19-362:6. Alex Stamos, the director of the Stanford Internet Observatory who launched the EIP, serves on the CISA Cybersecurity Advisory Committee, along with Kate Starbird. Jones Decl., Ex. FF, at 3, 12-13.

1013. CISA had extensive communications to coordinate with the EIP when it was starting up during the 2020 election cycle: "we had conversations with Stanford about the gap. They gave us some briefings on what they were doing, how they were doing it. Prior to the election, we had some conversations with them to facilitate and coordinate meetings, as I mentioned. And then when they put public reporting out, if we had questions about it, we would probably have conversations with them around that, as well." Scully Depo. 74:17-75:1.

1014. In addition to Scully, Matt Masterson was involved in communicating with the EIP. Scully Depo. 75:6-11. In addition, Scully "wouldn't be surprised" if Geoff Hale participated in some conversations with EIP. Scully Depo. 76:1-2.

1015. The then-Director of CISA, Director Krebs, "had a relationship with Alex Stamos," the head of the Stanford Internet Observatory, while CISA was coordinating with the EIP, and Director Krebs "may have had conversations in that context" about the EIP. Scully Depo. 76:8-

AMERICAN OVERSIGHT

10. In fact, when he left CISA in late 2020, Director Krebs "joined Alex Stamos," and "they started a business together," called the "Krebs/Stamos Group." Scully Depo. 76:5-23.

1016. Scully believes that "Director Krebs may have participated in a couple of meetings that I'm aware of, that Stamos was also in." Scully Depo. 77:20-22, 78:3-11.

1017. According to Scully, "generally speaking, the reporting that CISA received came through the Center for Internet Security." Scully Depo. 79:19-21.

1018. Matt Masterson and Scully presented questions to the EIP about their "public reporting," which consisted of "regular blog posts on what they were seeing" about supposed election-related misinformation. Scully Depo. 81:19-82:16. Masterson was also involved in at least one of the initial discussions with the Stanford Internet Observatory about starting up the EIP. Scully Depo. 81:24-82:4. Masterson spoke to Stanford about "clarifying the gap that election officials faced for the folks at the Stanford Internet Observatory early on in the process." Scully Depo. 83:22-25.

1019. The idea of the "gap" came from Scully and CISA, which he "shared with the interns." Scully Depo. 84:8-22.

1020. Matt Masterson "was in the meeting where we talked about the gap with [Alex] Stamos, in particular. And I believe Stamos mentioned that [*i.e.*, the collaboration that became the Election Integrity Partnership] as an option during that call." Scully Depo. 85:21-24.

1021. Matt Masterson left CISA in January 2021. He started at Microsoft in early 2022. In the intervening year, immediately after leaving CISA, Masterson "was a fellow at the Stanford Internet Observatory." Scully Depo. 88:21-89:8. Thus, both the CISA Director (Krebs) and the political appointee directly involved in the establishment of the EIP (Masterson) went to work with Alex Stamos of Stanford Internet Observatory immediately after the 2020 election cycle.

AMERICAN OVERSIGHT

1022. Alex Stamos consulted with CISA in part because "he knew he would need us helping him connect with election officials." Scully Depo. 100:17-18.

1023. Scully believes that there was at least "a fifth call" between CISA and Alex Stamos in 2020. Scully Depo. 101:4.

1024. Scully put Stamos in touch with NASED and NASS, and "facilitated some meetings between … them [EIP] and election officials." Scully Depo. 101:15-102:10. Scully "facilitated meetings … some meetings between EIP and CIS" because "they didn't have relationship" and "didn't know each other. So [CISA] just facilitated getting them together to talk and figure out how they were going to work together." Scully Depo. 102:14-20. The purpose of these meetings was "to set up a direct line of communication between CIS and EIP." Scully Depo. 103:7-10.

1025. Scully also put EIP in contact and facilitated meetings between EIP (*i.e.*, folks at the Stanford Internet Observatory, which organized EIP) and representatives of NASED and NASS, the organizations of state and local election officials. Scully Depo. 103:11-104:19. These occurred in July or August 2020. Scully Depo. 104:24-25.

1026. Scully believes that the Center for Internet Security, which CISA funds, "forward[ed] messages that election officials sent them" reporting misinformation "to EIP." Scully Depo. 106:10-16.

1027. Scully agrees that "EI-ISAC is a part of CIS and we do fund the EI-ISAC." Scully Depo. 110:20-23.

1028. Scully agrees that CISA collaborated with the EIP. Scully Depo. 111:15-18.

1029. CISA probably had "between two and four" conversations with the EIP about its public reports on disinformation trends on social media. Scully Depo. 113:20-24. "[I]f we had a question about jurisdiction[s] being targeted or a new [disinformation] tactic or things like that,

AMERICAN OVERSIGHT

we would just ask them … questions about that sort of thing." Scully Depo. 114:17-21. Scully "was following the public reports" from the EIP during 2020. Scully Depo. 115:16-17.

1030. CISA received misinformation reports principally from three sources: first, from the Center for Internet Security; and second, "sometimes election officials would send them in to CISA central, which is CISA's kind of ops center block room type setup. And then the third way was they would just send direct to a CISA employee, … often Matt Masterson, who had relationships with many of the election officials." Scully Depo 119:7-11, 119:22-120:5.

1031. CISA coordinated with the Center for Internet Security on reporting misinformation to platforms: "we would let them know when we reported something to a platform … to avoid duplication," and "most of the reporting that I recall in 2020 came through CIS. And so we just wanted to let them know that we were acting on what they sent us. For reporting that didn't come through CIS, we would often let them know after we had shared it with the platforms that we had shared something with the platforms for their arrangement." Scully Depo. 120:23-121:9.

1032. CIS and EIP also "had a relationship. They shared information." Scully Depo. 121:20-21.

1033. According to Scully, "CISA does not do attribution. We didn't do analysis of what we received from election officials. So we would not know what percentage" of misinformation reports "were foreign derived." Scully Depo. 122:25-123:3. CISA thus forwards reports of "misinformation" to social-media platforms "without assessing whether they were originated from foreign or domestics sources." CISA would not "take steps to see whether this came from foreign or domestic sources," but "would just pass it along to the social-media platforms." Scully Depo. 123:4-18.

AMERICAN OVERSIGHT

1034. Scully was aware that social-media platforms changed their content-moderation policies to be more restrictive of election-related "misinformation" during the 2020 election cycle, because the platforms reported on those changes to federal officials "in our regular sync meetings," *i.e.*, the "USG-Industry" meetings. Scully Depo. 127:18-19. In those meetings, "that would be one of their briefing points, that they were making significant changes" to policies for censoring election-related speech. Scully Depo. 128:4-6.

1035. During 2020, Matt Masterson was "a senior election security person at CISA," and he was a "political appointee." Scully Depo. 129:23-130:4. Masterson was "familiar with the switchboarding work that we were doing." Scully Depo. 131:8-10. And "when he would receive emails" reporting misinformation, "he forwarded them to us." Scully Depo. 131:13-14.

1036. Scully understands that the Virality Project was "Stanford's attempt to mimic the EIP for COVID." Scully Depo. 134:10-11.

1037. The Virality Project "sent [Scully] some of their public reports." Scully Depo. 134:13-14.

1038. Scully was aware that Alex Stamos and Renee DiResta of the Stanford Internet Observatory were involved in the Virality Project. Scully Depo. 134:21-22.

1039. Scully "did have some conversations where they were … asking me … for any connections I had with HHS or CDC." Scully Depo. 135:10-12.

1040. In addition, Scully recalls "some informal … conversations that I may have had with Alex, in particular, and maybe Renée, as well," about the Virality Project. Scully Depo. 136:3-6.

1041. Alex Stamos gave Scully an "overview what they planned to do in the Virality Project" that "was similar to what they did … with the EIP." Scully Depo. 136:19-22.

AMERICAN OVERSIGHT

1042. Scully also had conversations with Renee DiResta about commencing the Virality Project. Scully Depo. 139:5-14.

1043. With respect to the EIP, Alex Stamos and Renee DiResta "shared … lessons learned," and "what some of their big takeaways were" with Scully. Scully Depo. 141:6-8.

1044. CrowdTangle is a "Facebook-owned social media monitoring service." Scully Depo. 144:23-24.

1045. According to the Virality Project report, "as voting-related mis-and disinformation arose in the 2020 presidential election, the Election Infrastructure Information Sharing and Analysis Center (EI-ISAC) served a critical role in sharing information with the Election Integrity Partnership and pushing its rapid response analysis back out to election stakeholders across all states." Scully Ex. 2, at 150. Scully understands that this refers to the Center for Internet Security, which operates the EI-ISAC through CISA-provided funding, and that "it was Center for Internet Security" that engaged in direct communications with the EIP and played a critical role in sharing information with the EIP. Scully Depo. 147:17-25.

1046. During the summer of 2020, CISA was "piloting a capability that would allow us to monitor narratives online," Scully Depo. 151:13-15—*i.e.*, the work that the EIP eventually did and does.

1047. In his public statements, Alex Stamos has identified the EIP's "partners in government" as "most particularly those in CISA and DHS, but also in all of the local and state governments with whom we operated with." Scully Ex. 6, at 4. Scully agrees that "CISA and DHS were partners of the EIP." Scully Depo. 369:1-11.

1048. According to Stamos, "[t]he Election Integrity Partnership started with our team in Stanford sending a group of interns to go work with the cyber security and infrastructure security

AMERICAN OVERSIGHT

agency at the DHS to work election security. And what these interns found is, there's a lot of opportunity for them to contribute to the technical components of election security. They also found that there was a lack of capability around election disinformation. This is not because CISA didn't care about disinformation, but at the time they lacked both kind of the funding and the legal authorizations to go do the kinds of work that would be necessary to truly understand how election disinformation was operated." Scully Ex. 6, at 4.

1049. Stamos says that the EIP is "a project between four different institutions to try to fill the gap of the things that the government cannot do themselves." Scully Ex. 6, at 4.

1050. Stamos states that CISA was one of "four major stakeholders" in the EIP: "There are kind of four major stakeholders that we operated with that we worked beside at EIP. Our partners in government, most particularly those in CISA and DHS, but also in all of the local and state governments with whom we operated with." Scully Ex. 6, at 4.

1051. EIP had access to data for monitoring social-media speech that the federal government does not have: The EIP "also worked with the major platforms, Facebook, Twitter, YouTube, TikTok, Reddit, NextDoor and the like. … [S]ome of those cases we had agreements for access of data. In other cases, we had to have individual analysts go work with them." Scully Ex. 6, at 5.

1052. According to Stamos, there was very little foreign disinformation in 2020: "We find very little evidence that there's any foreign involvement at all. In fact, the vast majority of election disinformation in 2020 came from Americans who had verified accounts and very large follower accounts." Scully Ex. 6, at 6.

1053. According to Stamos, its founder, the EIP targeted "large follower account political partisans who are spreading misinformation intentionally, doing so in a multi-media context. So

AMERICAN OVERSIGHT

they're doing so online, on social media, but they're also doing so on cable news, doing so on the radio, through a variety of different outlets and are able to amplify their message and to motivate their followers to go try find evidence of the incorrect claims that they're making." Scully Ex. 6, at 7.

1054. According to Renee DiResta, "in August 2020, students from the Stanford Internet Observatory were doing an internship with CISA and they identified a massive gap in the capability of federal, state, and local governments to become aware of, to analyze, and to rapidly respond to mis and disinformation, both foreign and domestic, targeting the 2020 election." Scully Ex. 7, at 4. The EIP was designed to fill that "gap" in the governments' capability to "rapidly respond to mis- and disinformation … targeting the 2020 election." *Id.*

1055. As DiResta notes, 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 misinformation for censorship on social media. Scully Ex. 7, at 4. As she states, "that gap had several components. The federal government wasn't prepared to identify and analyze election mis- and disinfo. …There were unclear legal authorities, including very real First Amendment questions." *Id.*

1056. DiResta agrees that "the vast majority of voting related misinformation in the 2020 election was domestic." Scully Ex. 7, at 6.

1057. The Virality Project was immediately established on the heels of the EIP: "Following the success of EIP and the certification of the 2020 election, SIO [Stanford Internet Observatory] … almost immediately we recognized the need to ramp back up. This time to support government health officials' efforts to combat misinformation and targeting the COVID-19 vaccines. In February 2021, we formally established the Virality Project drawing on the same

AMERICAN OVERSIGHT

partners from EIP and adding a few more, and much like EIP, it focused on realtime observation, analysis, and understanding of cross platform vaccine-related misinformation." Scully Ex. 7, at 7.

1058. The CISA-funded Center for Internet Security coordinated with EIP regarding online misinformation and reported it to CISA. For example, on October 1, 2020, CIS emailed Scully about alleged misinformation, noting that "the impact seems to be escalating. Our hope is the platforms can do more to take down the misinformation. The EIP has been tracking this spread under ticket EIP-243 and has more examples." Scully Ex. 9, at 1. Scully forwarded this report to social media platforms. *Id.*

1059. EIP had advised Scully that it was using a ticketing system to track misinformation narratives. Scully Depo. 159:1-5.

1060. Scully forwarded this report tracked under EIP-243 to Twitter, as well as Facebook and YouTube, because "people generate traffic … by posting it across platforms," and he "would sometimes share across other platforms that we thought there might be … relevant content showing up on their platforms." Scully Depo. 160:2-5; Scully Ex. 9, at 1, 7, 12.

1061. Scully asked social-media platforms to report back how they were handling reports of misinformation and disinformation received from CISA. *See* Scully Ex. 9, at 11 (asking Twitter "to see if there's anything you can share about how you're approaching" misinformation reported by CISA). According to Scully, "periodically … we would ask if the decision was made and if we can share back." Scully Depo. 164:15-17.

1062. CISA maintained a "tracking spreadsheet" of its misinformation reports to social-media platforms during the 2020 election cycle. Scully Depo. 165:14-166:13. After Scully's deposition, CISA produced this "tracking spreadsheet" in response to Plaintiffs' Motion to Compel. Jones Decl., Ex. GG.

AMERICAN OVERSIGHT

1063. At least six members of the MDM team "took shifts" in reporting supposed misinformation to social-media platforms, including Scully, Chad Josiah, Rob Schaul, Alex Zaheer, John Stafford, and Pierce Lowary. Scully Depo. 166:9-168:11, 183:14-16.

1064. At the time, Pierce Lowary and Alex Zaheer were simultaneously serving as interns for CISA and working for the Stanford Internet Observatory, which was then operating the Election Integrity Partnership. Scully Depo. 168:22-171:16, 183:20-22. Thus, Zaheer and Lowary were simultaneously engaged in reporting misinformation to social-media platforms on behalf of CISA, and in reporting misinformation to social-media platforms on behalf of the EIP. *Id.*

1065. Zaheer and Lowary were also two of the four Stanford interns who originated the idea of the EIP. Scully Depo. 171:14-16, 184:22-24, 185:12-14.

1066. Zaheer "was one of the people that were working the ticketing system" for EIP. Scully Depo. 181:21-23. Likewise, Lowary "did both SIO and CISA push forwarding" at the same time during the fall of 2020. Scully Depo. 183:14-16.

1067. CISA's misinformation reporting to platforms "ramped up as we got closer to the election." Scully Depo. 174:1-2. On election night, they "were up until at least midnight," and "if we received anything we would push it forward." Scully Depo. 175:12-14. Close to the election, they would "monitor their phones" for disinformation reports even during "off hours." Scully Depo. 175:16-17. "[T]he expectation [was] … that they would be responsible for forwarding something" to the platforms. Scully Depo. 175:19-21.

1068. Alex Zaheer, when switchboarding for CISA, forwarded detailed a report of supposed "misinformation" from the Election Integrity Partnership (EIP) to CISA's reporting system, which called for "swift removal of … posts and continued monitoring of the user's account" because that user had "claimed (1) that mail-in voting is insecure, [and] (2) conspiracy

AMERICAN OVERSIGHT

theories about election fraud are hard to discount." Scully Ex. 9, at 62. Scully forwarded this report to Twitter, which reported back that it had taken action pursuant to its civic integrity policy. *Id.* at 61; *see also* Scully Depo. 199:6-200:17.

1069. According to Scully, forwarding such reports of misinformation from the EIP to social-media platforms "was our standard practice." Scully Depo. 200:25. In fact, CISA's tracking spreadsheet contains at least eleven entries of "switchboarded" reports of misinformation that CISA received directly from "EIP" and forwarded to social-media platforms for review under their policies. Jones Decl., Ex. GG, at 4-5, Column C ("From"), Lines 86-96, 115, 123 (all listing "EIP"). CISA also used EIP tracking numbers for those reports. *See id.* Column D. One of these notes that content was reported to Twitter for censorship because "EIP … saw article on The Gateway Pundit." *Id.* at 4 (Column F, Line 94).

1070. CIS routinely reported misinformation by sending the notice simultaneously to both CISA and to the EIP, using the EIP's misinformation-reporting email "tips@2020partnership.atlassian.net." Scully Ex. 9, at 33, 52, 58; Scully Ex. 10, at 1. Scully Ex. 11, at 1-2 (indicating that "tips@2020partnership.atlassian.net" is the reporting email for the EIP); Scully Depo. 229:18-230:25 (Scully admitting that this email is the EIP reporting email).

1071. State officials, likewise, simultaneously reported supposed "misinformation" to CISA, CIS, and the EIP. *See, e.g.,* Scully Ex. 9, at 59 (Colorado state official reporting misinformation to "EI-ISAC, CISA and Stanford Partners").

1072. State officials sometimes indicated that they were reporting misinformation to platforms for censorship precisely *because* federal officials at FBI and CISA had warned them about it. *See, e.g.,* Scully Ex. 9, at 59 (noting that Colorado was reporting two Twitter accounts, one with 14 followers and one with 2 followers, because "[t]hese are concerning to us here in

AMERICAN OVERSIGHT

Colorado because of recent FBI/CISA warnings about impersonation accounts spreading false information about the election").

1073. One platform complained to Scully that it was receiving duplicate reports of misinformation from the EIP and Center for Internet Security, and asked if CISA could be designated reporter for the group: "Hey Brian, can we talk about CIS Misinformation reporting duplicate reports to EIP? Possible to have just you escalate?" Scully Ex. 9, at 63. Scully coordinated with CIS and EIP to set forth a coordinated reporting process involving agreed roles for all three of them—CISA, CIS, and EIP. *Id.*; Scully Depo. 209:14-212:12. Scully admits that there was "an agreement for EIP and CIS and CISA to coordinate and let each other know what they were reporting to platforms like Twitter." Scully Depo. 212:7-12.

1074. State and local officials reported misinformation to the FBI in parallel with their reports to CIS and CISA. *See, e.g.,* Scully Ex. 10, at 10. This is because CISA "tell[s] election officials to report what they saw to either DHS or the FBI, and it would end up where it needed to be." Scully Depo. 215:8-14.

1075. The Center for Internet Security, likewise, sometimes used EIP ticket numbers on the misinformation reports it sent to CISA for forwarding to platforms. *See, e.g.*, Scully Ex. 10, at 27 (reporting supposed misinformation in Pennsylvania under ticket number "EIP-664"); Scully Depo. 217:16-218:19. As noted, CISA's "tracking spreadsheet" used similar EIP ticket numbers at least 13 times for misinformation reports sent to platforms. Jones Decl., Ex. GG, at 4-5.

D. CISA Uses Switchboarding to Pressure Platforms to Censor Speech.

1076. CISA and Scully did not just forward misinformation reports to platforms; in addition, they also engaged in fact-checking for the platforms. For example, regarding a report about election security in Pennsylvania, Facebook asked Scully if he could please "confirm" two

AMERICAN OVERSIGHT

factual aspects of the report, and Scully responded with an explanation of why the government believed that the report was misinformation violating Facebook's terms of service. Scully Depo. 218:22-219:24; Scully Ex. 10, at 25-27; Scully Depo. 222:20-224:20; Scully Ex. 10, at 35-37 (Scully engaging in his own research to debunk an election-integrity claim on Twitter and reporting to Twitter, which relied on his research to label the Tweet).

1077. Scully admits that CISA commonly engaged in such informal fact-checking for the platforms: "if social media platforms needed additional information from an election official we would try to support that. … "[G]enerally speaking, we would do what we did here, which is if the -- if the jurisdiction made a public statement or if there was additional information the jurisdiction could provide, and the platforms asked for it, that we would try to facilitate getting the information they asked for." Scully Depo. 220:6-20. CISA would do its own research as well as relaying statements from public officials to help debunk postings for social-media platforms. Scully Depo. 221:1-4 ("If it was a public statement, I'm sure we pulled it ourselves. If there was not a public statement, I would imagine we would go back to the election official."); Scully Depo. 221:23-222:19.

1078. In presenting such "debunking" information to platforms to urge them to remove content, CISA always assumed—without any independent research—that the *government* official was a reliable source, and that the social-media user was unreliable, even for first-hand accounts: "if there was a public statement that was put out by the jurisdiction, we would … defer to that." Scully Depo. 221:9-12. CISA would not "take any steps to find out" if the private citizen's account might actually be truthful, and CISA would not "do further research to figure out who was telling the truth," but would simply "relay … the official statement from the jurisdiction" to the platforms for censorship. Scully Depo. 221:13-22.

AMERICAN OVERSIGHT

1079. CISA's fact-checking activity included both relaying "debunking" information from state and local officials—always assuming without question that the state and local officials were truthful, not the social-media speakers—and performing its own fact-checking when the claim related to federal activities. For example, "[t]here was also one time when I believe it was Facebook had a question about DHS immigration and customs enforcement having agents going places where we also provided a response back on a specific piece." Scully Depo. 220:8-13.

1080. CIS and CISA's "switchboarding" activities reached, not just public postings, but private postings on social-media platforms. *See, e.g.,* Scully Ex. 10, at 45-46 (reporting a "post on a private FB page," *i.e.*, a "(private) Facebook post that Trump already won AZ").

1081. Social-media platforms treated CISA as a privileged reporter of misinformation, frequently responding with great promptness to CISA's reports of misinformation, immediately "escalating" the content for moderation, and reporting back the censorship action taken. For example, on November 10, 2020, at 7:23 pm, Scully reported offending Tweets, and Twitter responded within two minutes, "Thanks Brian. We will escalate." Shortly after midnight the same night, at 12:11 a.m., Twitter followed up with a report on censoring the Tweets. Scully Ex. 10, at 59. On November 13, 2020, Scully reported an offending tweet at 11:20 pm, and Twitter responded at 11:21 pm, "Thanks Brian. We will escalate." Scully Ex. 18, at 26; Scully Depo. 291:15-294:3.

1082. CISA's censorship partners also originated their own reports for censorship. CIS and the EIP sometimes reached out to state and local officials to invite them to debunk and report speech that CIS and EIP had observed on social media. For example, on December 1, 2020, the Center for Internet Security emailed local government officials stating, "The EI-ISAC, and our partners at the Election Integrity Partnership (EIP), are tracking a social-media post that is gaining

AMERICAN OVERSIGHT

traction very quickly." Scully Ex. 11, at 4. The CIS asked the local officials to debunk the post so that "we can work with the social media platforms to have the posts removed as misinformation. Please let us know as soon as possible." *Id.* The local officials responded with information disputing the posts, and CIS promptly forwarded the dispute to CISA and EIP: "Brian [Scully] and EIP, misinformation tweet … a [local official] confirmed the misinformation." *Id.* at 2. Scully then forwarded the report to Twitter, which responded within three hours, "We have labeled the tweet and are taking steps to limit trending on this." *Id.* at 1; Scully Depo. 228:5-231:7.

E. CISA's Many Misinformation Meetings with Platforms.

1083. In its interrogatory responses, CISA disclosed five sets of recurring meetings with social-media platforms that involve discussions of misinformation, disinformation, and/or censorship of speech on social media. Scully Ex. 12, at 38-40.

1084. Scully provided the information in the interrogatory responses regarding CISA's meetings with social-media platforms regarding misinformation and censorship. Scully Depo. 232:24-233:3. In doing so, Scully failed to disclose a long series of *bilateral* meetings between CISA and social-media platforms. *See, e.g.,* Scully Depo. 238:11-13 ("we had some Twitter-only calls, as well, that [Yoel Roth] participated in"); Scully Depo. 238:21-22 ("we had some briefings from [Twitter] on some of their public reports" about misinformation); Scully Depo. 239:8-12 (agreeing that there were "briefings in those bilateral meetings with Twitter as relating to misinformation and disinformation on social media"); Scully Depo. 239:20-240:3 (admitting that CISA conducted "bilateral meetings with other social media platforms, like this, where misinformation was discussed"); Scully Depo. 241:4-22 (admitting to a series of bilateral meetings with social-media platforms beginning in 2018 and continuing through 2020); Scully Depo. 241:7-14 (testifying that "in 2018 … in our initial stages of trying to build those relationships, we would

AMERICAN OVERSIGHT

go meet with each platform one-on-one"); Scully Depo. 241:20-22 (admitting that, "prior to starting the switchboarding work, in 2020, we had conversations with each platform individually").

1085. None of these many bilateral meetings with social-media platforms about misinformation was disclosed in CISA's interrogatory responses. Scully Ex. 12, at 38-40; Scully Depo. 243:6-21.

1086. In its interrogatory responses, CISA describes the "USG-Industry" meetings as follows: "A recurring meeting usually entitled USG – Industry meeting, which has generally had a monthly cadence, and is between government agencies and private industry. Government participants have included CISA's Election Security and Resilience subdivision, DHS's Office of Intelligence and Analysis, the FBI's foreign influence task force, the Justice Department's national security division, and the Office of the Director of National Intelligence. Industry participants generally include Google, Facebook, Twitter, Reddit, [and] Microsoft but, have also included Verizon Media, Pinterest, LinkedIn, and the Wikimedia Foundation as well. The topics discussed include, but are not limited to: information sharing around elections risk, briefs from industry, threat updates, and highlights and upcoming watch outs." Scully Ex. 12, at 38-39.

1087. In fact, the CISA's description of the "USG-Industry" meeting as having "a monthly cadence" is misleading. The meetings became biweekly and weekly close to elections, when they were most needed: "from summer of 2018 … to early 2020 they were quarterly. Sometime in 2020 they became monthly and then as we got closer to the election in 2020 they became weekly." Scully Depo. 234:7-11.

F. CISA Worked with FBI to Suppress the Hunter Biden Laptop Story.

1088. Scully claims that he does not recall whether or not "hack and leak" or "hack and dump" operations were raised at the USG-Industry meetings, but he does not dispute that they may

AMERICAN OVERSIGHT

have been raised: "I don't recall a specific incident of that [*i.e.*, discussions of "hack and dump" or "hack and leak" operations], but it's definitely possible. It's a tactic that had been used in the past." Scully Depo. 236:6-12. Scully does not dispute that he may have raised it: "Me, personally, I don't recall myself raising that, but it's possible." Scully Depo. 236:15-16. He does not dispute that Laura Dehmlow of FBI's FITF may have raised the concern: "Again, I don't know. It was a tactic that had been used globally, previously. So it wouldn't surprise me if there was some discussion of that somewhere in these meetings." Scully Depo. 236:20-23. He does not dispute that Elvis Chan and/or Matt Masterson may have raised the concern. Scully Depo. 237:10-22.

1089. Scully also does not dispute Yoel Roth's account of the communications to social-media platforms from federal officials about hack-and-leak operations and the possibility of a hack-and-leak operation involving Hunter Biden in Paragraphs 10-11 of Yoel Roth's Declaration dated December 17, 2020. Scully Ex. 13, at 2-3; Scully Depo. 245:23-248:11. Scully does not dispute that federal officials repeatedly raised the concern that they "expected hack and leak operations by state actors" in the USG-Industry meetings, Scully Depo. 245:23-247:17 ("it's certainly possible, because it was a common tactic … I would definitely not be surprised if these were included in the conversations"); and Scully does not dispute Roth's statement that Roth learned in these meetings that "there were rumors that a hack and leak operation would involve Hunter Biden," Scully Depo. 247:18-248:7.

1090. Contemporaneous emails confirm that CISA officials were warning of "hack and leak" operations during the USG-Industry and other meetings with social-media platforms during 2020. For example, on September 16, 2020, Facebook employees emailed Scully and other CISA officials a draft of a joint industry statement, which stated: "For several years, tech companies have worked together with … U.S. government agencies … to counter election threats across our

AMERICAN OVERSIGHT

platforms…. At today's meeting, we specifically discussed: … (2) Ways to counter targeted attempts to undermine the election conversation before, during, and after the election. This includes *preparing for so-called 'hack and leak' operations* attempting to use platforms and traditional media for unauthorized information drops." Scully Ex. 16, at 1 (emphasis added). This email confirms that "preparing for so-called 'hack and leak' operations" was discussed at the USG-Industry meeting on Sept. 16, 2020, which included CISA, FBI's FITF, DOJ's National Security Division, ODNI, and Google, Microsoft, Facebook, Twitter, Reddit, Verizon Media, Pinterest, LinkedIn, and Wikimedia Foundation. Scully Ex. 16, at 1; *see also* Scully Depo. 253:14-255:13.

1091. Likewise, the agenda for the July 15, 2020 USG-Industry meeting included, as a "Deep Dive Topic," a 40-minute discussion of "Hack/Leak and USG Attribution Speed/Process." Scully Ex. 17, at 16. According to Scully, "attribution" in this context means identifying the hacker and leaker, and "USG" means "United States Government." Scully Depo. 274:4-275:10.

1092. Like Elvis Chan, Scully was not aware of any "pending investigations, at that time, into possible hack and leak operations." Scully Depo. 255:9-13.

1093. At the USG-Industry meeting, CISA asked platforms to report back on "Themes / narratives / approaches you anticipate for races you think will be targeted." Scully Ex. 15, at 1.

G. CISA's Ongoing and Expanding Censorship Efforts.

1094. In the spring and summer of 2022, Lauren Protentis requested the social-media platforms to prepare "one-pagers" for state and local election officials to address their content moderation rules. *See* Scully Ex. 17, at 1 (including "One-Pager Reminder" on the agenda for the April 2020 USG-Industry meeting); Scully Depo. 260:3-261:11 ("we had asked industry to provide a one-page summary of their content moderation rules that we could share with election officials").

AMERICAN OVERSIGHT

1095. The purpose of these "one-pagers" was to provide a summary of the platforms' content moderation rules to state and local government officials who would be reporting misinformation to the platforms. Scully Depo. 260:3-261:11.

1096. Lauren Protentis of CISA repeatedly lobbied the social-media platforms to include in their "one-pagers" for state and local officials a description of how to report perceived misinformation to the platform for censorship. *See, e.g.,* Scully Ex. 18, at 41 (Protentis requesting that Facebook update its one-pager to include its "steps for flagging or escalating MDM content" to "make this a comprehensive product on both the critical needs for officials—account security and MDM concerns"); *id.* at 44 (Protentis asking Microsoft to create a one-pager for election officials to "provide steps to … report MDM"); *id.* at 45 (Protentis requesting that Twitter update its one-pager for government officials to include information about "how to report disinformation"). Scully agrees that Protentis was "trying to make sure that election officials have the information they need if they want to report" disinformation. Scully Depo. 300:23-25.

1097. CISA also set up an "operation center" on and around Election Day that engaged in "switchboarding" reports of election-day misinformation to platforms: "CISA regularly set up an operation center on election day, around the election. And the platforms and some of the other agencies do the same." Scully Depo. 262:16-19. This "operation center" received "switchboard reporting" in 2018 and 2020. Scully Depo. 263:15-18. It was also communicating with platforms and other federal agencies, including "connectivity with FBI, DOJ, NEI, I&A." Scully Depo. 264:18. When these reports came in, CISA would "perform the same misinformation routing function and pass that along to the platforms." Scully Depo. 265:1-7.

1098. The CISA-funded Center for Internet Security continued to report misinformation and disinformation to platforms for censorship in 2022: "CIS was up and running [in 2022]."

AMERICAN OVERSIGHT

Scully Depo. 266:2. Scully understands that "CIS continued to receive disinformation/misinformation reports from state and local election officials during the 2022 election cycle, and relay them directly to social media platforms." Scully Depo. 266:5-13.

1099. Scully also believes that NASS and NASED routed disinformation concerns directly to social-media platforms in 2022. Scully Depo. 268:25-269:3.

1100. Scully agrees that foreign-originated social-media content typically becomes repeated from domestic sources: "We often see what happens overseas send up showing up domestically." Scully Depo. 279:9-11.

1101. CISA has also teamed up directly with the State Department's Global Engagement Center (GEC) to seek removal of social-media content; for example, on one occasion, the GEC enlisted CISA's aid to seek the removal of "a YouTube channel run by Americans falsely claiming" that a certain State Department special envoy was "Patient Zero" for COVID-19. Scully Ex. 18, at 2. Scully forwarded the report to Facebook, which reported within minutes that it had "flagged for our internal teams." Scully Ex. 18, at 1.

1102. CISA flagged obvious parody and joke accounts for censorship, including a Colorado parody account with 56 followers whose handle stated, "dm us your weed store location (hoes be mad, but this is a parody account)," and one with 27 followers whose handle stated, "Smoke weed erry day." Scully Ex. 18, at 11-12. The government official who reported these stated that "these are concerning to us … because of recent FBI/CISA warnings about impersonation accounts spreading false information about the election." Scully Ex. 18, at 11. In other words, the government official sought to censor these accounts *before* they posted any election-related speech, because (according to "FBI/CISA"), they *might* engage in misleading

AMERICAN OVERSIGHT

election-related speech. *See id.* Scully forwarded these reports to Twitter for censorship. Scully Ex. 18, at 10.

1103. Platforms report to CISA when they update their content-moderation policies to make them more restrictive. On September 10, 2020, for example, Twitter reported to Masterson and Scully that it was "updating our Civic Integrity Policy" to "label or remove false or misleading information intended to undermine public confidence in an election or other civic process." Scully Ex. 18, at 9. This includes censorship of "Disputed claims that could undermine faith in the process itself, e.g. unverified information about election rigging, ballot tampering, vote tallying, or certification of election results." Scully Ex. 18, at 9. The EIP had successfully lobbied platforms to adopt such changes ahead of the 2020 election. *See infra.*

1104. CISA pushed for the censorship of content that CISA's Director particularly disfavored, including supposed disinformation about CISA itself, and about the so-called "Hammer and Scorecard" narrative that attributed election interference to federal intelligence agencies. For example, Scully requested censorship of a "disinfo report about CISA and Director Krebs." Scully Ex. 18, at 19. And on November 10, 2022, Scully reported to platforms that "Director Krebs is particularly concerned about the hammer and scorecard narrative that is making the rounds," and asked for information about their tracking and "amplification" of the narrative. Scully Ex. 18, at 22, 24. Twitter and Facebook promptly reported back on their efforts to censor the narrative. Scully Ex. 18, at 21 (Facebook reporting that "our teams are labelling and downranking the content as identified"); *id.* at 24 (Yoel Roth of Twitter explaining Twitter's attempts to censor the narrative, and asking CISA "Let us know if there are especially high-profile examples of tweets sharing the conspiracy that *haven't* been labeled" so Twitter can censor them). *See also* Scully Depo. 286:3-289:25.

AMERICAN OVERSIGHT

1105. CISA also purposely debunks online narratives, knowing that the social-media platforms will use its debunks as censorship. For example, Yoel Roth emailed CISA about the Hammer and Scorecard narrative stating: "We've tracking the Hammer/Scorecard issue closely, particularly since Director Krebs' tweet on the subject (which was pretty unambiguous as far as debunks go)." Scully Ex. 18, at 24. Scully admits that CISA was aware that "social-media platforms were following the rumor page posted by CISA and using that as a debunking method for content on their platforms." Scully Depo. 290:13-17 ("We had a sense they were doing that, yeah.").

1106. CISA publicly states that it is expanding its efforts to fight disinformation heading into the 2024 election cycle. Scully Ex. 27, at 1. On August 12, 2022, Director Easterly was reported to be "beef[ing] up [CISA's] efforts to fight falsehoods," and "has taken several specific steps to fight the problem." *Id.*

1107. In January 2022, Director Easterly asked Facebook for a "briefing from us on 2022 election approach." Scully Ex. 28, at 2. Easterly responded to an email by Facebook and directed her staff to set up the meeting. *Id.* Scully does not know what was discussed at the meeting. Scully Depo. 309:12-19.

1108. Director Easterly also exchanged text messages with Matt Masterson on February 26, 2022, when he was recently employed by Microsoft. Scully Ex. 29, at 2-3. In those texts, referring to a previous unidentified group call, Easterly told Masterson that she is "Just 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." Scully Ex. 29, at 2. She stated that CISA is "looking to play a coord role so not every D/A [*i.e.*, department and agency] is independently reaching out to platforms which could cause a lot of chaos." Scully Ex. 29, at 2. Masterson

AMERICAN OVERSIGHT

responded, agreeing with Easterly, and stating, "Platforms have got to get comfortable with gov't. It's really interesting how hesitant they remain." Scully Ex. 29, at 3. (Scully notes that "D/A" is "one of our common abbreviations for department and agency." Scully Depo. 316:23-24.)

1109. Scully agrees with Director Easterly that, when multiple federal agencies contact platforms independently, "it does create challenges and provides the platforms opportunities to play departments off each other." Scully Depo. 317:6-9. For CISA to play a "coordinating" role among the agencies, therefore, allows federal officials to keep better influence and control over the platforms.

1110. According to a September 2022 leaked draft copy of DHS's "Quadrennial Homeland Security Review, DHS's capstone report outlining the department's strategy and priorities in the coming years, the department plans to target 'inaccurate information' on a wide range of topics, including "the origins of the COVID-19 pandemic and the efficacy of COVID-19 vaccines, racial justice, U.S. withdrawal from Afghanistan, and the nature of U.S. support to Ukraine." Scully Ex. 30, at 4.

1111. Scully agrees that DHS has discussions about targeting misinformation regarding the efficacy of COVID-19 vaccines, Scully Depo. 322:9-21 ("our building critical infrastructure help in public health is one of the sectors of critical infrastructure, so we engage with CDC and HHS to help them"); about the origins of the COVID-19 pandemic, Scully Depo. 323:16-17 ("We did some work on the … bio-lab narratives"); and regarding Ukraine, Scully Depo. 324:5-10 ("We saw this with COVID. … We saw this around Ukraine. And so, again, just helping people understand … these disinformation narratives…."). In particular, CISA participated in a "Unified Coordination Group" regarding Russia's invasion of Ukraine, which addressed misinformation: "there was a … Unified Coordination Group, when Russia invaded Ukraine, to coordinate DHS

AMERICAN OVERSIGHT

activities related to the crisis. As a part of that there was an MDM component, and a member of the MDM team was detailed to lead the MDM component of the Russian/Ukraine work." Scully Depo. 325:5-12. Scully believes that this group communicated with social-media platforms as well (again, not disclosed in CISA's interrogatory responses). Scully Depo. 327:1-18.

1112. As of August 12, 2022, DHS's Office of Inspector General continued to call for a more aggressive, not less aggressive, approach to combating disinformation. Scully Ex. 31, at 1 (OIG calling for DHS to adopt a "Unified Strategy to Counter Disinformation Campaigns").

1113. DHS's OIG reports that CISA is expanding, not contracting, its efforts to fight disinformation. OIG reports that CISA's "MDM team focuses on disinformation activities targeting elections and critical infrastructure. According to a CISA official, the MDM team counters all types of disinformation, to be responsive to current events." Scully Ex. 31, at 9. "An official from the MDM team stated that, through this work, CISA is building national resilience to MDM, such as COVID-19 vaccine hesitancy and foreign influence activities." *Id.* at 10. OIG further reports that, "[a]ccording to selected Intelligence Community officials, the Office of the Director of National Intelligence and the U.S. Department of Justice worked with CISA and I&A to counter disinformation related to the November 2020 elections. For example, according to an Office of the Director of National Intelligence official, prior to the November 2020 elections, CISA and I&A joined in weekly teleconferences to coordinate Intelligence Community activities to counter election-related disinformation. The Office of the Director of National Intelligence official stated the teleconferences continued to occur every 2 weeks after the 2020 elections and were still taking place as of the time of this audit." *Id.* at 11. Further, OIG reports that "CISA and I&A also work with the U.S. Department of State's (State Department) Global Engagement Center on countering disinformation." *Id.* at 11.

AMERICAN OVERSIGHT

1114. On November 21, 2021, Director Easterly reported that CISA is "beefing up its misinformation and disinformation team in the wake of a divisive presidential election that saw a proliferation of misleading information online." Scully Ex. 23, at 1. "I am actually going to grow and strengthen my misinformation and disinformation team," Easterly stated publicly. *Id.* She stated that she "had a meeting with 'six of the nation's experts' in the misinformation and disinformation space." *Id.* And she "stressed her concerns around this being a top threat for CISA … to confront." *Id.* "One could argue that we're in the business of protecting critical infrastructure, and the most critical infrastructure is our cognitive infrastructure," Easterly said. *Id.* "We now 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," Easterly said. *Id.* at 2. Evidently, Easterly thinks that *government officials* should help Americans "pick their own facts" for them. *Id.*

1115. According to Scully, CISA has an expansive mandate to address all kinds of misinformation that may affect "critical infrastructure" indirectly: "mis, mal-information threatens critical infrastructure in a number of ways, it could be operational impact, so in the case of the elections, disrupting election operations …. So a multitude of ways that disinformation could impact critical infrastructure, like I said … there's financial, there's reputational, there's just a multitude of ways that this disinformation could affect critical infrastructure." Scully Depo. 340:10-341:1. This could include, for example, "misinformation" that undermines confidence in any kind of national institution, including banks and financial services industry: "from mis, dis and mal-information, a reputational risk could come about if the integrity or the public confidence in a particular sector was critical to that sector's functioning. So I think the financial services would probably be a good example. So if there's a loss of confidence by the American public in

AMERICAN OVERSIGHT

financial services, financial systems of the United States, that could create national security concerns." Scully Depo. 341:17-342:2. This is a breathtakingly broad—even limitless—interpretation of CISA's mandate to protect "critical infrastructure," which would allow CISA to target virtually any kind of core political speech as "mis, dis and mal-information" that "create national security concerns" by undermining "public confidence in a particular sector." *Id.*

1116. In fact, CISA is "working with Treasury to develop a product to help the financial services sector understand MDM risks to the sector." Scully Depo. 355:22-24.

1117. Scully has publicly stated that CISA is "trying to reduce the amount that Americans engage with disinformation," where "engaging with disinformation" means "amplifying it, re-tweeting it, resending it, things like that." Scully Depo. 346:7-24; Scully Ex. 49.

1118. On June 22, 2022, CISA's Cybersecurity Advisory Committee issued a "Draft Report to the Director" calling for an extremely broad view of CISA's mandate. The report states that "[t]he spread of false and misleading information poses a significant risk to critical functions like elections, public health, financial services, and emergency response." Scully Ex. 46, at 1. "Pervasive MDM diminishes trust in information, in government, and in democratic processes more generally." *Id.* The report states that "CISA should consider MD across the information ecosystem," including "social media platforms of all sizes, mainstream media, cable news, hyper partisan media, talk radio, and other online resources." *Id.* at 2. Scully agrees with this report that CISA is trying to make its "resilience activity … as broad as possible so it's applicable anywhere that someone may come across MDM." Scully Depo. 358:7-11.

1119. In September 2022, the Center for Internet Security is still working on a "portal" for government officials to report election-related misinformation to social-media platforms. Scully Ex. 19, 21. "[W]ork on the online 'portal' for election officials to flag misinformation to

AMERICAN OVERSIGHT

social-media platforms … continues today." Scully Ex. 21, at 4. Scully states that "my understanding is that [CIS] did do something along those lines, I just don't know the extent of it." Scully Depo. 365: 3-6.

1120. As of January 2023 and today, CISA's website continues to proclaim, "[t]he MDM team serves as a switchboard for routing disinformation concerns to appropriate social media platforms and law enforcement. This activity began in 2018, supporting state and local election officials to mitigate disinformation about the time, place, and manner of voting. For the 2020 election, CISA expanded the breadth of reporting to include other state and local officials and more social media platforms. This activity leverages the rapport the MDM team has with the social media platforms to enable shared situational awareness." Scully Ex. 24, at 3; *see also* www.cisa.gov/mdm (visited Feb. 10, 2023). CISA thus proclaims that it is "expand[ing] the breadth of reporting," not retreating from it. *Id.*

1121. Regarding misinformation reports, CISA "would generally share whatever we received from the election officials with the FBI, in case there was an ongoing investigation related to whatever it was that we forwarded to them." Scully Depo. 366:17-20.

1122. CISA engaged in switchboarding and colluding with social-media platforms to promote censorship in other ways as well.

VIII. The State Department's Global Engagement Center's Censorship Efforts.

1123. The State Department's Global Engagement Center ("GEC") also conducts numerous meetings with social-media platforms about disinformation.

1124. The GEC's "front office and senior leadership engage with social media companies." Kimmage Dep. 29:12-13. These senior leadership meet with social-media platforms "[e]very few months, can be quarterly, but sometimes less than quarterly." *Id.* at 32:9-10.

AMERICAN OVERSIGHT

According to Daniel Kimmage, Principal Deputy Coordinator of the GEC, these meetings focus on the "tools and techniques" of spreading disinformation on social media, and it "would be rare" for them to discuss specific "content that's posted on social media that might be of concern to the GEC." *Id.* at 30:9-31:3.

1125. In addition, the GEC's "Technology Engagement Team does engage with social media companies" as well. *Id.* at 29:11-12. The Technology Engagement Team meets with social media companies "[m]ore frequently" than the senior leadership, which meets with them "every few months." *Id.* at 37:9-15.

1126. Kimmage recalls at least two meetings with Twitter. *Id.* at 129:22-25. At such meetings, the GEC would bring "between five and ten" people, including "the acting coordinator, me, in that capacity, then one or more of the deputy coordinators, team chiefs from the Global Engagement Center, and working-level staff with relevant subject matter expertise." *Id.* 130:24-131:13. These GEC staff meet with the platforms' content-moderation teams, *i.e.*, the people responsible for censorship on the platforms. *Id.* at 133:1-20, 135:1-11.

1127. In such a meeting, "the GEC would provide an overview of what it was seeing in terms of foreign propaganda and disinformation. And Twitter would, to the extent that they felt comfortable sharing information, would discuss similar topics." 136:8-13.

1128. In addition to meeting with Twitter, the GEC's senior leadership had similar meetings with Facebook and Google as well during the same time frames. *Id.* at 139:22-140:6. These meetings were also with Facebook and Google's content-moderation or trust and safety teams, *i.e.*, the people responsible for censoring content on their platforms. *Id.* at 141:17-143:3.

1129. The GEC brought similar numbers of people to the meetings with Facebook and Google. *Id.* at 143:16-17 ("I believe the lineup would have been similar.").

AMERICAN OVERSIGHT

1130. In addition to the senior-leadership and TET meetings, the GEC also maintained a Senior Advisor as a permanent liaison in Silicon Valley, Samaruddin K. Stewart, for the purpose of meeting with social-media platforms about disinformation. *Id.* at 159:24-160:13; Kimmage Ex. 9, at 2. 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." Kimmage Ex. 9, at 2. Like the senior-leadership meetings, Stewart scheduled these meetings with the head of the trust and safety team, *i.e.*, the person responsible for censorship on the platform. *See id.* at 7 (meeting with the "Head of Threat Prevention, Trust & Safety" at LinkedIn). Kimmage confirms that Stewart set up similar meetings with other social-media platforms. Kimmage Dep. 160:12-13.

1131. On March 25, 2021, the GEC set an email to Rob Schaul of CISA flagging "a disinfo campaign on YouTube targeting a [diplomatic security] officer" on a "Youtube channel run by Americans." Kimmage Ex. 11, at 2. Brian Scully of CISA forwarded the disinformation report to Twitter, Facebook, and YouTube. *Id.* at 1, 3, 7. Facebook responded, "Thank you so much for this! Have flagged for our internal teams." *Id.* at 1.

1132. The GEC also coordinated with the Election Integrity Partnership. George Beebe of the GEC was in contact with the EIP. Kimmage Dep. 202:10-24. Kimmage admits that the GEC had "a general engagement with the EIP. … the GEC was engaging with the partnership." *Id.* at 214:11-19. In addition to Mr. Beebe, Adele Ruppe, who "liaised on election-related issues," may have engaged with the EIP. *Id.* 214:23-215:5.

1133. Kimmage states that the GEC's work against disinformation "equips … technology companies to better understand" disinformation "so that they can take whatever actions they would take to stop the spread." *Id.* 280:24-281:3.

AMERICAN OVERSIGHT

1134. On October 17, 2022, at an event at Stanford University, Secretary of State Blinken was asked, "Stanford is one of the leading institutions to combat misinformation research and pointing out propaganda narratives and how they spread. How do you envision the cooperation between the State Department and institutions like Stanford in combatting the spread of propaganda?" Kimmage Ex. 16, at 5. Secretary Blinken responded, mentioning the GEC and noting that State is engaging in "collaborations" and "build[ing] out … partnerships" with Stanford: "Stanford is doing remarkable work on that, and it's one of the things that we want to make sure that we're benefitting from, because this is a day-in, day-out battle for us, combating misinformation and disinformation around the world. We have at the State Department itself a big focus on this. We have something called the Global Engagement Center that's working on this every single day. But that work is both inspired by work that's being done in academia, including here at Stanford, as well as where appropriate collaborations. …So we're trying to build out these kinds of partnerships to make sure that we're looking at every place that is actually developing answers, including Stanford, and then integrating that into what we do." *Id.*

IX. The Election Integrity Partnership and Virality Project – Federal Collaborators.

1135. Federal officials also work through nonprofit organizations to achieve their censorship goals. Most notably, federal officials at CISA and the GEC, and state officials through the CISA-funded EI-ISAC, work in close collaboration with the Stanford Internet Observatory and other nonprofit organizations to achieve censorship and attempt to evade the First Amendment. Moreover, the Surgeon General's Office and other federal officials collaborate closely with the Stanford Internet Observatory and the same entities under the aegis of the "Virality Project."

A. The Election Integrity Project Is a Formidable Censorship Cartel.

AMERICAN OVERSIGHT

1136. According to its website, "[t]he Election Integrity Partnership (EIP) was formed in July 2020 as a coalition of research entities focused on supporting real-time information exchange between the research community, election officials, *government agencies*, civil society organizations, and *social media platforms*." *The 2020 Election Integrity Partnership*, Election Integrity Partnership (last visited Feb. 22, 2023) (emphasis added), https://www.eipartnership.net/2020. The EIP's "objective was to detect and *mitigate the impact* of attempts to prevent or deter people from voting or to delegitimize election results." *Id.* (emphasis added). As discussed further herein, "mitigate[ing] the impact" means pushing social-media platforms to censor supposed "misinformation."

1137. "In March 2021 [the EIP] published [its] final report. This page displays an archive of the work carried out by the EIP and its partners during the 2020 U.S. election." *Id.* The EIP report is publicly available, it provides a detailed account of the EIP's activities in the 2020 election, and it is Exhibit 1 to the deposition of Brian Scully. Scully Ex. 1 (containing Stanford Internet Observatory et al., Election Integrity P'Ship, *The Long Fuse: Misinformation and the 2020 Election* (v1.3.0 2021), https://www.eipartnership.net/report [https://purl.stanford.edu/tr171zs0069]).

1138. The EIP was created "in consultation with CISA [the Cybersecurity and Infrastructure Security Agency at the Department of Homeland Security] and other stakeholders." *Id.* at 20 (2).[1] After "consultation with CISA," the EIP "assembled" a "coalition … with like-minded partner institutions." *Id.*

1139. CISA interns originated the EIP: "The initial idea for the Partnership came from four students that the Stanford Internet Observatory (SIO) funded to complete volunteer

[1] Citations of this exhibit are formatted "Scully Ex. 1, at [page of exhibit] ([page of report])."

AMERICAN OVERSIGHT

internships at the Cybersecurity and Infrastructure Security Agency (CISA) at the Department of Homeland Security." *Id.*

1140. The EIP agrees with Scully that the EIP was formed to fill in a perceived "gap" in the ability of the government to "monitor and correct" misinformation: "Responsibility for election information security is divided across government offices: CISA has authority to coordinate on cybersecurity issues related to the election, the FBI to investigate cyber incidents and enforce election laws, and intelligence agencies to monitor for foreign interference. Yet, no government agency in the United States has the explicit mandate to monitor and correct election mis- and disinformation." *Id.*

1141. The EIP acknowledges that the federal government directly targeting misinformation posted Americans would "likely" violate the First Amendment and exceed agencies' lawful authority: "This is especially true for election disinformation that originates from within the United States, which would likely be excluded from law enforcement action under the First Amendment and not appropriate for study by intelligence agencies restricted from operating inside the United States." *Id.* As noted below, the EIP's founders publicly admit that virtually all the misinformation targeted by the EIP was domestic in origin, not foreign, and thus subject to the First Amendment.

1142. The EIP specifically notes CISA and the FBI in discussing the need to fill this "gap" in their ability to police "election misinformation originating from domestic sources": "none of these federal agencies has a focus on, or authority regarding, election misinformation originating from domestic sources within the United States. This limited federal role reveals a critical gap for non-governmental entities to fill. Increasingly pervasive mis- and disinformation, both foreign and

AMERICAN OVERSIGHT

domestic, creates an urgent need for collaboration across government, civil society, media, and social media platforms." *Id.* at 9 (v).

1143. "As a result" of the First Amendment and lack of legal authority, according to the EIP, "during the 2020 election, local and state election officials, who had a strong partner on election-system and overall cybersecurity efforts in CISA, were without a clearinghouse for assessing mis- and disinformation targeting their voting operations." *Id.* at 20 (2). The EIP was deliberately formed to fill this "gap."

1144. The EIP "was formed between four of the nation's leading institutions focused on understanding misinformation and disinformation in the social media landscape: the Stanford Internet Observatory, the University of Washington's Center for an Informed Public, Graphika, and the Atlantic Council's Digital Forensic Research Lab." *Id.*

1145. The EIP makes clear that its "aim" was not just to observe but to "defend[]" the public from misinformation: "With the narrow aim of defending the 2020 election against voting-related mis- and disinformation, it bridged the gap between government and civil society, helped to strengthen platform standards for combating election-related misinformation, and shared its findings with its stakeholders, media, and the American public." *Id.* at 9 (v).

1146. The EIP's statement that it "helped to strengthen platform standards for combating election-related misinformation" refers to the fact that the EIP successfully pushed virtually all major social-media platforms to adopt or increase censorship policies targeted at election-related "misinformation" during the 2020 election cycle. *See id.*

1147. The EIP notes that its efforts to push social-media platforms to adopt more restrictive censorship policies were highly effective, both in procuring changes in policies and censoring speech: "Many platforms expanded their election-related policies during the 2020

AMERICAN OVERSIGHT

election cycle. … Platforms took action against policy violations by suspending users or removing content, downranking or preventing content sharing, and applying informational labels." *Id.* at 12 (viii).

1148. Alex Stamos, the director of the Stanford Internet Observatory who founded the EIP, has publicly stated that the EIP successfully pushed social-media platforms to adopt more restrictive policies about election-related speech in 2020: "My suggestion, if people want to get the platforms to do stuff is, first, you've got to push for written policies that are specific and that give you predictability; right? And so this is something we started in the summer, in August, is as Kate [Starbird] talked about Carly Miller led a team from all four institutions to look at the detailed policies of the big platforms and to measure them against situations that we expected to happen. Now we're not going to take credit for all of the changes they made, but there -- we had to update this thing, like, eight or nine times; right? And so like putting these people in a grid to say, you're not handling this, you're not handling this, you're not handling this, creates a lot of pressure inside of the companies and forces them to kind of grapple with these issues, because you want specific policies that you can hold them accountable for." Scully Ex. 4, at 7 (Audio Tr. 4).

1149. Alex Stamos notes that the EIP then pressured the platforms to aggressively enforce the new policies that the EIP had pushed them to adopt: "The second is, when you report stuff to them, report how it's violating those written policies; right? So there's two steps here. Get good policies, and then say, this is how it's violated it." *Id.*

1150. Other EIP participants have also publicly stated that the EIP induced social-media platforms to adopt much more aggressive censorship policies on election-related speech. On March 3, 2021, at an EIP-hosted conference on the release of the EIP report, Emerson Brooking of the Atlantic Council's DRFLab, an EIP participant, stated: "I think the EIP really helped push

AMERICAN OVERSIGHT

the envelope with things like just the notion that … this delegitimization of electoral processes that we were seeing in the summer and early fall that this should be against content moderation policies on these platforms, and begin to take proactive steps there…." Scully Ex. 5, at 6 (Audio Tr. 2). He also stated, "after November 3rd, we saw that market shift where content moderation actions that … we could hardly contemplate a few weeks before began to be taken. There was a much stronger emphasis on cracking down on the sort of content we've been tracking from the beginning." *Id.*

1151. The EIP treats "Government" and Social-Media "Platforms" as two of its "Four Major Stakeholders," providing input to the EIP and receiving feedback from the EIP. Scully Ex. 1, at 26 (8) & fig.1.2 (graphic showing "Government" as the EIP's first "Major Stakeholder," submitting information to EIP's "Intake Queue" and receiving feedback on the EIP's "Mitigation"—*i.e.*, censorship—efforts).

1152. The EIP organizes its misinformation reports under groups called "tickets," and it notes that "[t]ickets were submitted by … trusted external stakeholders…" *Id.* at 26 (8). "Trusted external stakeholders" include "government": "External stakeholders included government, civil society, social media companies, and news media entities." *Id.* at 30 (12). Thus, it is clear that "government" submitted "tickets," *i.e.*, reports of misinformation to be processed for censorship on social media, to the EIP. *See id.* at 26, 30 (8, 12).

1153. And it is clear that the "government" partners who submit tips to the EIP are CISA, the State Department's Global Engagement Center (GEC), and the Elections Infrastructure Information Sharing & Analysis Center (EI-ISAC), an organization of state and local government officials coordinated by the Center for Internet Security (CIS) pursuant to funding from CISA, *see EI-SAC*, Center for Internet Security (last visited Fed. 22, 2023)

AMERICAN OVERSIGHT

("The EI-ISAC is federally funded by CISA."), https://www.cisecurity.org/ei-isac. Specifically, the "Government" "stakeholders" listed under the EIP's "Four Major Stakeholder Groups" are CISA, GEC, and the EI-ISAC. Scully Ex. 1, at 30 (12).

1154. These "Government" stakeholders report misinformation to the EIP: "Government and civil society partners could create tickets or send notes to EIP analysts, and they used these procedures to flag incidents or emerging narratives to be assessed by EIP analysts." *Id.*

1155. The CISA-funded EI-ISAC and CISA itself worked in collaboration with the EIP to report misinformation to social-media platforms: "[T]he EI-ISAC served as a singular conduit for election officials to report false or misleading information to platforms. By serving as a one-stop reporting interface, the EI-ISAC allowed election officials to focus on detecting and countering election misinformation while CIS and its partners reported content to the proper social media platforms. Additionally, the Countering Foreign Influence Task Force (CFITF), a subcomponent of CISA, aided in the reporting process and in implementing resilience efforts to counter election misinformation." *Id.* at 31 (13).

1156. The EIP report mentions *The Gateway Pundit*, the website operated by Plaintiff Jim Hoft, 47 times. *See 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, 226-27.[2]

1157. The EIP boasts that it "used an innovative internal research structure that leveraged the capabilities of the partner organizations through a tiered analysis model based on 'tickets' collected internally and from our external stakeholders. Of the tickets we processed, 72% were related to delegitimization of the election," *i.e.*, core political speech. *Id.* at 10 (vi).

[2] Report pages 33, 56, 58, 83, 85, 92, 94, 127, 132-33, 135, 137-38, 154, 157, 165, 176-77, 188-91, 193-94, 196-98, 208-09.

AMERICAN OVERSIGHT

1158. The EIP admits that the speech it targets for censorship is domestic, grassroots speech by American citizens: "The production and spread of misinformation was multidirectional and participatory. Individuals participated in the creation and spread of narratives. Bottom-up false and misleading narratives started with individuals identifying real-world or one-off incidents and posting them to social media. Influencers and hyperpartisan media leveraged this grassroots content, assembling it into overarching narratives about fraud, and disseminating it across platforms to their large audiences. Mass media often picked up these stories after they had reached a critical mass of engagement. Top-down mis- and disinformation moved in the opposite direction, with claims first made by prominent political operatives and influencers, often on mass media, which were then discussed and shared by people across social media properties." *Id.* at 11 (vii). In other words, virtually everything it targets is quintessential First Amendment-protected political speech.

1159. This included censorship of highly visible political figures: "The primary repeat spreaders of false and misleading narratives were verified, blue-check accounts belonging to partisan media outlets, social media influencers, and political figures, including President Trump and his family." *Id.* at 12 (viii).

1160. One key point that the EIP emphasizes is that it wants greater "access" to platforms' internal data to achieve greater monitoring of Americans' speech on social media. The EIP complains that "***Lack of transparency and access to platform APIs hindered external research into the effectiveness of platform policies and interventions***." *Id.* (emphasis added). "API" stands for "Application Programming Interface," so the EIP wants greater direct access to platforms' internal data about so-called "misinformation" on their platforms. *See id.* This directly echoes the repeated demands from the White House and the Surgeon General that social-media platforms

AMERICAN OVERSIGHT

provide access to their internal data about misinformation on their platforms, both to government and "researchers." The relevant "researchers" include Stanford Internet Observatory and the other constituents of the EIP and the Virality Project, who are working hand-in-glove with federal officials.

1161. The EIP contends that not enough censorship was achieved during 2020 as a result of their lack of direct access to platforms' APIs: "Many platforms expanded their election-related policies during the 2020 election cycle. However, application of moderation policies was inconsistent or unclear." *Id.*

1162. The EIP recommends that platforms increase enforcement of censorship policies: "Impose clear consequences for accounts that repeatedly violate platform policies. These accounts could be placed on explicit probationary status, facing a mixture of monitoring and sanctions." *Id.* at 14 (x).

1163. The EIP report acknowledges the contributions of Alex Stamos, Renee DiResta, Kate Starbird, Matt Masterson, Pierce Lowary, and Alex Zaheer. *Id.* at 16 (xii). All of these individuals have or had formal roles in CISA.

1164. The EIP is partially funded by the federal government: "Researchers who contributed to the EIP … receive partial support from the U.S. National Science Foundation (grants 1749815 and 1616720)." *Id.* at 17 (xiii).

1165. In addition, the Atlantic Council, one of the four nonprofit organizations in the EIP, is partially government-funded. Kimmage Dep. 294:8-18.

1166. "The initial idea for the Partnership came from four students that the Stanford Internet Observatory (SIO) funded to complete volunteer internships at the Cybersecurity and

AMERICAN OVERSIGHT

Infrastructure Security Agency (CISA) at the Department of Homeland Security." Scully Ex. 1, at 20 (2).

1167. "The students approached SIO leadership in the early summer, and, in consultation with CISA and other stakeholders, a coalition was assembled with like-minded partner institutions." *Id.*

1168. "The Election Integrity Partnership (EIP) was officially formed on July 26, 2020—100 days before the November election—as a coalition of research entities who would focus on supporting real-time information exchange between the research community, election officials, government agencies, civil society organizations, and social media platforms." *Id.*

1169. As a key point in its "Operational Timeline," the EIP lists a July 9, 2020, "Meeting with CISA to present EIP concept." *Id.* at 21 (3). In other words, the Stanford Internet Observatory "present[ed]" the "EIP concept" to CISA two weeks before the EIP was formed. *Id.*

1170. The SIO's EIP team was "led by … Research Manager Renee DiResta … and Director Alex Stamos." *Id.* at 22 (4). The University of Washington's "contributing team" was "led by … Kate Starbird." *Id.*

1171. Alex Stamos and Kate Starbird are members of CISA's Cybersecurity Advisory Committee. *See CISA Cybersecurity Advisory Committee*, Cybersecurity & Infrastructure Security Agency (last visited Feb. 24, 2023), https://www.cisa.gov/resources-tools/groups/cisa-cybersecurity-advisory-committee. Starbird chairs CISA's Subcommittee on "Protecting Critical Infrastructure from Misinformation and Disinformation." *See* CISA Cybersecurity Advisory Committee, Subcommittee Factsheet 1 (April 13, 2022), https://www.cisa.gov/sites/default/files/publications/CSAC%20Subcommittee%20Factsheet_April%2013%202022.pdf. Renee DiResta gives lectures on behalf of CISA. *See* CISA, *Cybersecurity*

AMERICAN OVERSIGHT

Summit 2021: Responding to Mis, Dis, and Malinformation, YouTube (Oct. 27, 2021), https://www.youtube.com/watch?v=yNe4MJ351wU.

1172. One of the EIP's goals was to "flag policy violations to platforms." Scully Ex. 1, at 24 (6).

1173. As noted above, the EIP describes "Government" as one of "four major stakeholders," who both provided input into the "intake queue" for "tickets" (*i.e.*, reporting misinformation) and received feedback on "mitigation" (*i.e.*, censorship). *Id.* at 26 (8).

1174. The EIP tracked misinformation using "tickets," which tracked "informational event[s]" that could encompass many social-media postings: "The EIP tracked its analysis topics and engaged with outside stakeholder organizations using an internal ticketing workflow management system. Each identified informational event was filed as a unique ticket in the system." *Id.*

1175. "Tickets were submitted by both trusted external stakeholders (detailed in Section 1.4 on page 11) and internal EIP analysts." *Id.* "Section 1.4" on pages 11-12 of the report identifies government as a trusted external stakeholder: "Trusted external stakeholders" include "government, civil society, social media companies, and news media entities." *Id.* at 29-30 (11-12). Page 12 specifically identifies CISA, the EI-ISAC, and the State Department's GEC as the EIP's "Government" stakeholders. *Id.* at 30 (12) fig.1.3.

1176. A "ticket" could encompass many individual postings: "A single ticket could map to one piece of content, an idea or narrative, or hundreds of URLs pulled in a data dump." *Id.* at 27 (9).

1177. The EIP's managers both report misinformation to platforms and communicate with government partners about their misinformation reports: "The manager had the ability to tag

AMERICAN OVERSIGHT

platform partners on a ticket for action. They also communicated with the EIP's partners in government, and could request further information from election officials if necessary," thus serving as a conduit for a back-and-forth about misinformation reports between government officials and platforms. *Id.* at 27-28 (9-10).

1178. The scope of the EIP's monitoring of Americans' speech on social media is enormous: "Team members from each of these tiers were divided into on-call shifts. Each shift was four hours long and led by one on-call manager. It was staffed by a mix of Tier 1 and Tier 2 analysts in a 3:1 ratio, ranging from five to 20 people. Analysts were expected to complete between two to five shifts per week. The scheduled shifts ran from 8:00 am to 8:00 pm PT for most of the nine weeks of the partnership, ramping up only in the last week before the election from 12-hour to 16- to 20-hour days with all 120 analysts on deck." *Id.* at 28 (10).

1179. The "Government" stakeholders flag misinformation to the EIP for censorship: "Government and civil society partners could create tickets or send notes to EIP analysts, and they used these procedures to flag incidents or emerging narratives to be assessed by EIP analysts." *Id.* at 30 (12).

1180. Of the "Four Major Stakeholder Groups" who participated in the EIP, the first listed is "Government," which includes three government entities: the Elections Infrastructure ISAC, CISA, and the State Department's GEC. *Id.*

1181. The EIP reports that CISA, CIS, and the EI-ISAC collaborated with the EIP in reporting misinformation: "In this election cycle, the EI-ISAC served as a singular conduit for election officials to report false or misleading information to platforms. By serving as a one-stop reporting interface, the EI-ISAC allowed election officials to focus on detecting and countering election misinformation while CIS and its partners reported content to the proper social media

AMERICAN OVERSIGHT

platforms. Additionally, the Countering Foreign Influence Task Force (CFITF), a subcomponent of CISA, aided in the reporting process and in implementing resilience efforts to counter election misinformation." *Id.* at 31 (13).

1182. The EI-ISAC jointly reports misinformation flagged by state and local election officials to CISA and to the EIP: "Content reported by election officials to the EI-ISAC was also routed to the EIP ticketing system. This allowed analysts to find similar content, ascribe individual content pieces to broader narratives, and determine virality and cross-platform spread if applicable. This analysis was then passed back to election officials via the EI-ISAC for their situational awareness, as well as to inform potential counter-narratives. Additionally, if an internally generated EIP ticket targeted a particular region, analysts sent a short write-up to the EI-ISAC to share with the relevant election official. This allowed the state or local official to verify or refute the claim, and enabled analysts to properly assess whether or not the content violated a platform's civic integrity policies. In this way, the EIP demonstrated the upside of using the EI-ISAC coordinating body to connect platforms with authoritative voices to determine truth on the ground and help election officials effectively counter viral falsehoods about election infrastructure." *Id.*

1183. The EIP created established channels for reporting misinformation to platforms for censorship: "The EIP established relationships with social media platforms to facilitate flagging of incidents for evaluation when content or behavior appeared to violate platform policies." *Id.* at 35 (17).

1184. The EIP receives real-time reports on censorship actions from the platforms, who communicate directly with EIP managers about censorship through the EIP's system: "Analysts conducted their initial assessment on all tickets, and, if content in a ticket appeared to be a violation of a platform's published content policies, an analyst or manager added the platform representative

AMERICAN OVERSIGHT

to the ticket. If questions arose, a manager communicated with the platform representative in the ticket comments. Analysts put the ticket back in the queue and updated the ticket to note if the content in question received a moderation action." *Id.*

1185. Virtually all major social-media platforms participate directly in the EIP: "The EIP onboarded the following social media companies: Facebook and Instagram, Google and YouTube, Twitter, TikTok, Reddit, Nextdoor, Discord, and Pinterest." *Id.*

1186. In the 2020 election cycle, the EIP "processed 639 in-scope tickets. 72% of these tickets were related to delegitimizing the election results." *Id.* at 45 (27).

1187. The EIP had a high level of success in pushing the platforms to censor speech: "35% of the URLs we shared with Facebook, Instagram, Twitter, TikTok, and YouTube were either labeled, removed, or soft blocked." *Id.* "In total, we believe the four major platforms we worked with all had high response rates to our tickets." *Id.* at 55 (37). "We find, overall, that platforms took action on 35% of URLs that we reported to them." *Id.* at 58 (40).

1188. The Center for Internet Security, which runs the EI-ISAC using funding from CISA, is a major reporter of misinformation to the EIP: "16% of tickets were filed by the Center for Internet Security (CIS), an election official community partner, in the form of tips." *Id.* at 46 (28); *see also* Center for Internet Security, *EI-ISAC* (last visited Feb. 24, 2023), https://www.cisecurity.org/ei-isac.

1189. The EIP "prioritize[es] … swing states over non-swing states." Scully Ex. 1, at 46 (28).

1190. The EIP's "dataset included 639 distinct, in-scope tickets." *Id.* A "ticket" could be extremely broad, "map[ping] to" and entire "idea or narrative." *Id.* at 27 (9). For example, the "SHARPIEGATE" ticket was submitted on November 4, 2020, to "try and consolidate all the

AMERICAN OVERSIGHT

content" regarding the Sharpiegate story from "a variety of different states across Twitter, FB, TikTok, and Youtube." *Id.* at 47 (29) fig.2.1.

1191. The EIP includes extensive collaboration with a "government partner" in its Sharpiegate ticket. *Id.* at 48 (30). Its internal ticket-management software ("Jira") simultaneously allowed the "government partner" to communicate directly with the "platform partner" to debunk the online claim. *Id.* at 48 (30) fig.2.2.

1192. The EIP reports that it repeatedly flagged *The Gateway Pundit*, Plaintiff Jim Hoft's website, as a purveyor of social-media misinformation: "The top misinformation-spreading websites in our dataset were … thegatewaypundit[.]com, a far-right news website. 65% of these tickets involved an exaggeration of the impact of an issue within the election process." *Id.* at 51 (33) (alteration in original).

1193. The EIP does not claim that most of *The Gateway Pundit*'s content was false, only that it involved the "exaggeration of the impact of an issue within the election process." *Id.*

1194. As noted above, the EIP Report cites *The Gateway Pundit* 47 times. *See supra* paragraph 1156 and accompanying citation.

1195. The EIP "coded tickets based on whether they … had an element of foreign interference. Interestingly … less than 1% related to foreign interference." Scully Ex. 1, at 53 (35). Thus, virtually all the speech targeted for censorship comes from American speakers.

1196. The EIP targeted speech for censorship or debunking in most tickets: "Of our 639 tickets, 363 tickets tagged an external partner organization to either report the content, provide situational awareness, or suggest a possible need for fact-checking or a counter-narrative." *Id.* at 55 (37).

AMERICAN OVERSIGHT

1197. "[G]roups that reported tickets include the State Department's Global Engagement Center…" *Id.* at 60 (42). Daniel Kimmage testified that George Beebe of the GEC was in contact with the EIP. Kimmage Dep. 202:10-24. Kimmage attests that the GEC had "a general engagement with the EIP. … the GEC was engaging with the partnership." *Id.* at 214:11-19. In addition to Mr. Beebe, Adele Ruppe, who "liaised on election-related issues," may have engaged with the EIP. *Id.* 214:23-215:5.

1198. In addition, left-wing advocacy groups like "MITRE, Common Cause, the DNC, the Defending Digital Democracy Project, and the NAACP" submitted tickets to the EIP. Scully Ex. 1, at 60 (42).

1199. The EIP indicates that the "misinformation" it targeted during the 2020 election cycle was core political speech of American citizens protected by the First Amendment: "Our analysis demonstrates that the production and spread of misinformation and disinformation about Election 2020 … was participatory. In other words, these dynamics were not simply top-down from elites to their audiences, but were bottom-up as well, with members of the 'crowd' contributing in diverse ways—from posting raw content, to providing frames for that content, to amplifying aligned messages from both everyday members of the crowd and media (including social media) elites. Repeatedly, our data reveal politically motivated people sincerely introducing content they mistakenly believed demonstrated real issues with election integrity…" *Id.* at 181 (163). "Well-meaning, though often politically motivated, individuals repeatedly introduced this content into the broader information sphere, often via social media…" *Id.* at 182 (164).

1200. EIP analysts collected data from Twitter "contemporaneously," and they also have access to "CrowdTangle and Facebook search functionality." *Id.* at 199-200 (181-82).

AMERICAN OVERSIGHT

1201. The EIP's tickets encompassed almost 5,000 URLs: "Through our live ticketing process, analysts identified social media posts and other web-based content related to each ticket, capturing original URLs (as well as screenshots and URLs to archived content). In total, the EIP processed 639 unique tickets and recorded 4,784 unique original URLs." *Id.* at 200 (182).

1202. These tickets and URLs encompass millions of social media posts, including almost 22 million posts on Twitter alone: "In total, our incident-related tweet data included 5,888,771 tweets and retweets from ticket status IDs directly, 1,094,115 tweets and retweets collected first from ticket URLs, and 14,914,478 from keyword searches, for a total of 21,897,364 tweets." *Id.* at 201 (183).

1203. The EIP "collected data from Twitter in real time from August 15 through December 12, 2020," and did so "[u]sing the Twitter Streaming API" to "track[] a variety of election-related terms …. The collection resulted in 859 million total tweets." *Id.* at 200-01 (182-83). Thus, the EIP had privileged access to Twitter's internal data about speech on its own platform.

1204. The EIP did not have privileged access to Facebook's internal data, however: "To understand how the information ecosystem looks from the perspective of Facebook and Instagram, we collected public posts through the CrowdTangle API from Facebook Groups, Facebook Pages, Facebook verified profiles and public Instagram accounts." *Id.* at 201 (183). This explains the White House's and Surgeon General's insistence in 2021 that Facebook grant "researchers" such as Renee Diresta access to Facebook's internal data.

1205. The EIP treats as "misinformation" truthful reports that the EIP believes "lack[] broader context." *Id.* at 203 (185).

AMERICAN OVERSIGHT

1206. The EIP admits that it focuses on speech from the "political right" because it believes that the right spreads misinformation: "Influential accounts on the political right … were responsible for the most widely spread of false or misleading information in our dataset. Right-leaning accounts also more frequently augmented their misinformation posts with narrative-related hashtags … which persisted across multiple incidents and were shared millions of times in our dataset." *Id.* at 204-05 (186-87).

B. The EIP Targets Plaintiff Jim Hoft and *The Gateway Pundit.*

1207. According to the EIP, "[t]he 21 most prominent repeat spreaders on Twitter … include political figures and organizations, partisan media outlets, and social media all-stars. … [A]ll 21 of the repeat spreaders were associated with conservative or right-wing political views and support of President Trump." *Id.* at 205 (187).

1208. The EIP lists *The Gateway Pundit* as the second-ranked "Repeat Spreader[] of Election Misinformation" on Twitter, ranking it above Donald Trump, Eric Trump, Breitbart News, and Sean Hannity. *Id.* at 206 (188) tbl.5.2. In the 2020 election cycle, the EIP flagged *The Gateway Pundit*'s speech in 25 incidents with over 200,000 retweets. *Id.*

1209. The EIP claims that "[f]ar-right hyperpartisan media outlets also participated in a wide range of [Twitter] incidents, including The Gateway Pundit, which ranked #2 in the dataset." *Id.* at 206 (188).

1210. In addition, the EIP lists *The Gateway Pundit*'s website as the domain cited in the most "incidents"—its website content was tweeted by others in 29,207 original tweets and 840,740 retweets. *Id.* at 207 (189) tbl.5.3. *The Gateway Pundit* ranks above Fox News, the New York Post, the New York Times, and the Washington Post on this list. *Id.*

AMERICAN OVERSIGHT

1211. In fact, the EIP dedicates an entire subsection of its report to *The Gateway Pundit*. *Id.* at 214-16 (196-98). The EIP reports that "The Gateway Pundit was among the most active spreaders of election-related misinformation in our analyses. … It appeared as a top repeat spreader through its website, its Twitter account, its YouTube channel, and its Instagram account." *Id.* at 214 (196).

1212. The EIP report notes that "Twitter suspended [*The Gateway Pundit*'s] account on February 6, 2021," indicating that *The Gateway Pundit*'s deplatforming on Twitter was the result of the EIP's efforts. *Id.*

1213. The EIP states that "The Gateway Pundit was highly active throughout the election lifecycle, including during the weeks leading up to the election, when it repeatedly spread content—in distinct information incidents—that sought to undermine trust in mail-in voting specifically and the eventual election results more generally." *Id.*

1214. According to the EIP, "[o]n Twitter, The Gateway Pundit's account was highly retweeted across 26 different incidents (#2 among repeat spreaders). Evidence from our data suggest that its prominence was due both to production of its own material and to amplification (via original and quote tweets) of other partisan content." *Id.* at 215 (197).

1215. According to the EIP, "[o]f all the domains linked to in our Twitter data, The Gateway Pundit's website was connected to the largest number of incidents (46) while also garnering the most related original tweets (29,207) and retweets (840,750). Their YouTube channel appeared in five incidents, and their 13 incident-related videos had more than 4 million views on YouTube." *Id.* at 215-16 (197-98).

AMERICAN OVERSIGHT

1216. According to the EIP, "[t]he Gateway Pundit['s] … Instagram account was tied for #2 among repeat spreaders, appearing in 10 incidents for 20 posts that received more than 132,000 engagements." *Id.* at 216 (198).

C. The EIP Induces Major Changes in Platform Censorship Policies.

1217. The EIP notes that "during the 2020 election, all of the major platforms made significant changes to election integrity policies, both as the campaigns kicked off and through the weeks after Election Day—policies that attempted to slow the spread of specific narratives and tactics that could potentially mislead or deceive the public…." *Id.* at 229 (211).

1218. The EIP notes that "[m]ajor social media platforms such as Facebook, Twitter, YouTube, Pinterest, and TikTok introduced changes to their community standards in the months leading up to the election and in the aftermath." *Id.* at 230 (212).

1219. In particular, starting just over a month after the EIP launched, in "September 2020," "[a] number of platforms announced the first updates to election-specific policies: making large additions; adding more clarity and specificity; or stating clearly that they will label or remove content that delegitimizes the integrity of the election." *Id.*

1220. The policy changes reflected that the EIP and the platforms anticipated that they would have to target speech by *domestic* speakers, not supposed "foreign disinformation," during the 2020 election: "[M]uch of the misinformation in the 2020 election was pushed by authentic, domestic actors, and platforms shifted their focus to address downstream harms related to the content itself. As a result, most subsequent updates introduced policies related to specific content categories." *Id.* at 231 (213).

1221. The EIP lobbies platforms to "remove" so-called "repeat spreaders" like *The Gateway Pundit*, and complains that they are not removed often enough: "Despite what appeared

AMERICAN OVERSIGHT

to be clear policy to penalize or remove repeat spreaders and high-profile disinformation actors, platforms appeared to shy away from using this particular intervention. In some cases, this was a result of a variety of 'newsworthiness' exceptions, which allowed some high-profile repeat spreaders, including politicians, to evade bans. Yet many of the repeat spreaders we saw were not politicians"—including *The Gateway Pundit*, among many others. *Id.* at 233 (215).

1222. The EIP indicates that it will continue its censorship activities in future elections: "The next election will have its own unique set of misinformation narratives, yet many of the tactics, dynamics, and basic structures of these narratives will likely remain the same." *Id.* at 243-44 (225-26).

1223. The EIP reinforces this intention by calling for even more aggressive, more expansive censorship of social-media speech, including into other areas such as "public health": "Doing nothing is not an option. … Not pursuing structural policy change will accelerate our country's slide toward extremism, erode our shared national and inclusive identity, and propel yet more individuals toward radicalization via mis- and disinformation. The problem is larger than elections: it spans politics, self-governance, and critical policy areas, including public health." *Id.* at 251 (233). The EIP acted on this statement promptly by forming the "Virality Project" in 2021. *See infra*.

1224. The EIP proclaims that the "EIP's novel structure, enabling rapid-response analysis and a multistakeholder reporting infrastructure, could prove effective to many information spaces blighted by pervasive misinformation," in addition to election-related speech. *Id.* at 259 (241).

1225. The EIP calls for more aggressive penalties to enforce censorship on social media, in language that was copied and parroted by the demands of Jen Psaki and the Surgeon General: "Establish clear consequences for accounts that repeatedly violate platform policies." *Id.* at 256

AMERICAN OVERSIGHT

(238). "Prioritize quicker action on verified or influential accounts if they have already violated platform policies in the past." *Id.* at 257 (239).

1226. The EIP even advocates for an express system of pre-publication approval for disfavored speakers—the ultimate prior restraint: "Consider implementing holding areas for content from high-visibility repeat spreaders, where content can be evaluated against policy before posting." *Id.*

1227. The EIP proclaims that it offers "a whole-of-society response," in words parroted by the Surgeon General's Health Advisory. *Id.* at 259 (241).

1228. The EIP boasts that "[t]he EIP, in its structure and its operations … *united government, academia, civil society, and industry*, analyzing across platforms, to address misinformation in real time." *Id.* (emphasis added).

1229. The EIP states that "[t]he lessons from EIP should be both learned and applied. The fight against misinformation is only beginning. The collective effort must continue." *Id.* at 259-60 (241-42).

1230. The EIP specifically advocates for a broader role for CISA in federal efforts to combat election-related "misinformation." *Id.* at 252-53 (234-35).

1231. Alex Stamos, the director of the Stanford Internet Observatory who launched the EIP, publicly states that virtually all the speech targeted by the EIP is by domestic speakers engaging in core political speech. He has publicly stated: "almost all of this is domestic: right? … It is all domestic, and the second point on the domestic, a huge part of the problem is well-known influencers …. 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." Scully Ex. 4, at 5 (Audio Tr. 2).

AMERICAN OVERSIGHT

1232. Likewise, on October 3, 2020, at a CISA-hosted cybersecurity conference, Clint Watts of the EIP stated that election misinformation "is overwhelmingly more domestic than foreign this time around in 2020." Scully Ex. 3, at 4 (Audio Tr. 2).

1233. At the same conference, Alex Stamos stated: "The bigger issue in 2020, is going to be domestic … we have set up this thing called the [E]lection [I]ntegrity [P]artnership, so we went and hired a bunch of students. We're working with the University of Washington, Graphika, and DFRLab, and the vast, vast majority of the contact we see we believe is domestic. You know, some of it you can't tell, but a lot of it is coming from domestic blue checkmark verified elites; right? And so I think a much bigger issue for the platforms is elite disinformation. The stuff that is being driven by people who are verified that are Americans who are using their real identities." *Id.* at 5 (Audio Tr. 3). He also stated, "the truth is, that the vast majority of these problems or the kind of problems in the information environment are domestic problems." *Id.* at 6 (Audio Tr. 4).

1234. Alex Stamos has noted that the fear of government regulation pushes the platforms to respond to government pressure and increase censorship. On November 10, 2020, at a conference hosted by the Atlantic Council, Alex Stamos stated: "So, you know, on effectively pushing the platforms to do stuff … they will always be more responsive in the places that are both economically highly important and that have *huge potential regulatory impact*, most notably right now that would be the United States and Europe." Scully Ex. 4, at 6 (Audio Tr. 3) (emphasis added).

1235. On November 17, 2021, at a conference hosted by the Digital Publics Symposium, Kate Starbird of CISA's Subcommittee and the University of Washington's Center for an Informed Public, an EIP participant, stated: "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.

AMERICAN OVERSIGHT

… 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 the 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." Scully Ex. 8, at 4 (Audio Tr. 2). She also stated: "So we see this – the disinformation campaign was top down … but this campaign was also bottom up with everyday people sharing their own experiences, their own misperceptions of being disenfranchised or finding what they thought to be evidence of voter fraud." *Id.* at 5 (Audio Tr. 3). These are the voices that the EIP silenced.

D. The Virality Project Expands EIP's Censorship Work with Federal Officials.

1236. Soon after the 2020 election cycle, beginning in early 2021, the same four entities that launched the Election Integrity Partnership established a similar program to address COVID-19-vaccine-related "misinformation" on social media, which they called the "Virality Project." *See* Scully Ex. 2 (containing Stanford Internet Observatory, et al., The Virality Project, *Memes, Magnets, and Microchips: Narrative Dynamics Around COVID-19 Vaccines* (v.1.0.1 2022), https://purl.stanford.edu/mx395xj8490).

1237. The Virality Project's final report, dated April 26, 2022, lists Renee DiResta as the principal Executive Editor, and lists Renee DiResta, Kate Starbird, and Matt Masterson as contributors. Scully Ex. 2, at 4 (i).[3] Current and former CISA interns Jack Cable, Isabella Garcia-Camargo, Pierce Lowary, and Alex Zaheer are listed as "researchers and analysts" who participated in social-media "monitoring" for the project. *Id.*

[3] Citations of this exhibit are formatted "Scully Ex. 2, at [page of exhibit] ([page of report]).

AMERICAN OVERSIGHT

1238. The same four entities that operated the EIP launched the Virality Project ("VP") in 2021: Stanford Internet Observatory, University of Washington's Center for an Informed Public, Graphika, and the Atlantic Council's Digital Forensics Research lab. *Id.* at 8-9 (1-2). Three new nonprofit entities were added as well. *Id.*

1239. According to its report, "[t]he VP team developed technology to identify emerging narratives, to understand what communities they appeared within, and to gauge their scope, speed, and spread. In addition, the analysts assessed social media platforms' published policies to understand how (if at all) platforms might limit or action the spread of misleading vaccine-related content." *Id.* at 9 (2). As discussed below, like the EIP, the VP took action to push "platforms [to] limit or action the spread of misleading vaccine-related content." *Id.*

1240. According to the VP, "[v]accine mis- and disinformation was largely driven by a cast of recurring actors," including "long-standing anti-vaccine influencers and activists, wellness and lifestyle influencers, pseudomedical influencers, conspiracy theory influencers, right-leaning political influencers, and medical freedom influencers." *Id.*

1241. Like the EIP, the VP admits that the speech it targets is heavily speech by "domestic actors," *i.e.*, American citizens: "Foreign … actors' reach appeared to be far less than that of domestic actors." *Id.*

1242. Like the EIP, the VP indicates that it pushes platforms to adopt more aggressive censorship policies on COVID vaccine-related content: "While online platforms have made progress in creating and enforcing vaccine related policies, gaps still exist." *Id.* at 10 (3).

1243. Like the EIP, the VP notes that it did not only observe and report on misinformation but took action to stop the spread of misinformation: "Detection, however, was only part of the

AMERICAN OVERSIGHT

work. The Virality Project also sought to relate its findings to the public and to stakeholders in public health, government, and civil society." *Id.*

1244. The VP indicates that it should increase the efficiency of having "government partners" share "tips" of misinformation with entities like the VP, stating that "[r]esearch institutions" should "[s]treamline a tip line process to make it easy for civil society and government partners to share observations. Establish a feedback loop to discuss what types of analysis or tips are most relevant." *Id.*

1245. The VP strives to "[d]evelop and maintain clear channels of communication that enable federal, state, and local agencies to understand and learn from what might be happening in other regions. Federal Information Sharing and Analysis Centers (ISAC) are one path forward." *Id.* at 11 (4).

1246. The VP recommends that the federal government "[i]mplement a Misinformation and Disinformation Center of Excellence housed within the Cybersecurity and Infrastructure Security Agency." *Id.*

1247. The VP states that social-media "[p]latforms owe the public *transparency and accountability* as they face the challenges of deciding what to surface, what to curate, and how to minimize the virality of harmful false claims. Tech platform policies against public health misinformation should be clear and precise, and their enforcement should be consistently applied." *Id.* (emphasis added). The Surgeon General copied this messaging verbatim in his Health Advisory, which he launched at the VP.

1248. The VP calls for more aggressive censorship of COVID-19 "misinformation," stating: "To these ends, platforms should: Consistently enforce policies, particularly against recurring actors," and "Continue to improve data sharing relationships with researchers." *Id.* The

AMERICAN OVERSIGHT

emphasis on "data sharing relationships" is directly echoed in the White House's and the Surgeon General's demands that platforms share their internal data with researchers.

1249. The VP boasts that the "Office of the Surgeon General incorporated VP's research and perspectives into its own vaccine misinformation strategy," and specifically cites the Surgeon General's Health Advisory on this point. *Id.* at 11 (4) & 13 (6) n.5 (citing Off. U.S. Surgeon Gen., *Confronting Health Misinformation: The U.S. Surgeon General's Advisory on Building a Healthy Information Environment* (July 15, 2021), https://hhs.gov.sites.default.files.surgeon.general-misinformation-advisory.pdf).

1250. "Over the course of its seven months of work, the Virality Project observed narratives that questioned the safety, distribution, and effectiveness of the vaccines." *Id.* at 11 (4).

1251. Like the EIP, the VP states that "[t]he enormity of the challenge demands a *whole-of-society response*," *id.* at 12 (5) (emphasis added), and calls for more federal agencies to be involved through "cross-agency collaboration," *id.* The Surgeon General adopted and echoed the VP's call for a "whole-of-society" response.

1252. The VP admits that "it was not always clear what *was* misinformation; in the case of the novel coronavirus, it was often simply not yet clear what was true or where scientific consensus lay," *id.* at 14 (7), and that "[g]round truth about COVID-19 was rapidly evolving, and even institutional experts were not always aligned on the facts," *id.* at 15 (8).

1253. According to the VP, "[v]iral posts that claimed to have the answers to the public's most pressing questions appeared online; fact-checkers struggled to evaluate them, and platforms wrestled with whether to leave them up or take them down. Social media influencers of varying backgrounds debated the merits and efficacy of masking, providing detailed breakdowns of their analyses in public posts." *Id.*

AMERICAN OVERSIGHT

1254. The VP attributes opposition to mask mandates and lockdowns to right-wing political ideology: "In the months before vaccines or treatments emerged, governments worldwide turned to preventative measures such as masking requirements and lockdowns. In the US, these measures were quickly framed as affronts to liberty by facets of the US right-wing political spectrum, turning individual responses to the virus into a function of political identity." *Id.*

1255. The VP suggests that it flagged for censorship COVID-related posts with enormous engagement on social media, reporting for example that "[b]efore the major social media platforms began to take down [one] video—which was in violation of their COVID-19 misinformation policies—[it] amassed tens of millions of views and was shared into a wide variety of communities." *Id.* at 16 (9).

1256. The speech that the VP decries is all quintessential First Amendment–protected speech. *See, e.g., id.* ("Several prominent anti-vaccine activists began to post regularly about COVID-19; their followings began to increase, despite prior platform efforts to reduce the spread of false and misleading claims from anti-vaccine figures. As the possibility of a vaccine became more of a reality as 2020 progressed, anti-vaccine activists focused on preemptively undermining uptake. Several of the vaccines in development used relatively novel mRNA technology, which afforded an opportunity to present them as untested, unsafe, rushed, or risky, even to audiences who had taken all previously recommended vaccines.").

1257. "It was against this backdrop" of widespread First Amendment–protected speech on social media "that the Virality Project (VP) came together. A collection of research institutions had previously collaborated through the Election Integrity Partnership (EIP) to identify and understand the spread of election mis- and disinformation in the US during the 2020 presidential campaign. In December 2020, these partners jointly observed that the same tactics used to great

AMERICAN OVERSIGHT

effect during the 2020 election were already in use to expand the spread of COVID-19 vaccine mis- and disinformation." *Id.*. The VP used the same tactics as the EIP to engage in "rapid response" to misinformation: "The Project's broad array of institutions enabled information sharing and *rapid response* when false and misleading information percolated across social platforms." *Id.* (emphasis added).

1258. The VP was overtly biased against "anti-vaccine" viewpoints from the beginning: "The Project's original framing document articulated the threat: **A surge of anti-vaccine disinformation will pose significant challenges to the rollout and public adoption of COVID-19 vaccines in the United States**." *Id.* (bold in original).

1259. Just like the EIP, the VP boasts that it is a "multistakeholder collaboration" that includes "government entities" among its key stakeholders: "The Virality Project adopted *a multistakeholder collaboration with civil society organizations, social media platforms, and government entities* to respond to misand disinformation around the novel vaccines." *Id.* at 17 (10) (emphasis added).

1260. "The research institutions that comprised the Election Integrity Partnership—the Stanford Internet Observatory, the University of Washington's Center for an Informed Public, the Atlantic Council's Digital Forensic Research Lab, and Graphika—along with new partners the National Conference on Citizenship (NCoC)'s Algorithmic Transparency Institute and New York University's Center for Social Media and Politics and Tandon School of Engineering—all elected to participate in this new initiative: the Virality Project." *Id.*

1261. The VP report complains that "the internet has no editorial gatekeepers." *Id.* at 18 (11).

AMERICAN OVERSIGHT

1262. The VP decries the influence of "social media influencers" such as "Doctors" and "Mommy Bloggers." *Id.* at 19 (12).

1263. According to the VP, "[t]hese influencers have adopted the best practices of communication in the internet age, and their effectiveness in drawing in online users is made evident by the mass followings they have acquired across social media sites: platforms as varied as Pinterest, Instagram, and YouTube…" *Id.*

1264. The VP targets misinformation "tactics" that involve speech that the VP does not contend is false or even falsifiable. It states that speakers "use tactics that have persisted over time, many of which have been used in service of spreading mis- and disinformation in contexts beyond the vaccine conversation; for example, the Election Integrity Partnership observed several of these tactics during the lead-up to the 2020 US election." *Id.*

1265. These "tactics" include such things as "**Hard-to-Verify Content:** Using content that is difficult to fact-check or verify, such as personal anecdotes"; "**Alleged Authoritative Sources:** Using or pointing to information from an alleged public health official, doctor, or other authoritative source"; "**Organized Outrage:** Creating events or in-person gatherings, or using or co-opting hashtags"; and "**Sensationalized/Misleading Headlines:** Using exaggerated, attention-grabbing, or emotionally charged headlines or click-bait." *Id.* (bold in original). Notably, none of these "tactics" involves false speech, and all are protected by the First Amendment.

E. The Virality Project Targets Plaintiff Jill Hines and Health-Freedom Groups.

1266. According to the VP report's taxonomy, Plaintiff Jill Hines, the founder of Health Freedom Louisiana, constitutes a "medical freedom influencer[]" who engages in the "tactic" of "**Organized Outrage**" simply because she "create[ed] events or in-person gatherings" to oppose

AMERICAN OVERSIGHT

mask and vaccine mandates in Louisiana. *See id.* at 9, 19 (2, 12) (bold in original). But this "tactic" is First Amendment–protected activity.

1267. Another "tactic" decried by the VP is "**Group super-spreader:** An individual account sharing posts into multiple online groups." Id. at 20 (13) (bold in original). This is also quintessential First Amendment expression.

1268. The VP report repeatedly emphasizes the problem of "health freedom" or "medical freedom influencers" like Plaintiff Jill Hines. It identifies "Liberty" as a "trope" of social-media disinformation: "*Liberty*: Individuals have the right to '**health freedom**'; no government or employer should be able to tell people what to put in their bodies." *Id.* (italics in original) (bold added).

1269. The VP also identifies political and religious opinions—including well-established and widespread views—as "themes" and "tropes" of anti-vaccine "misinformation," such as: "*Distrust of industry*: Vaccines are produced by profit-motivated pharmaceutical companies that have repeatedly concealed harm in pursuit of profit"; "*Religiosity*: Vaccines contain materials that are objectionable on religious grounds"; and "*Conspiracy*: … Governments have covered up information proving vaccines are dangerous, [and] Doctors and politicians who advocate for vaccines have been bought off by 'Big Pharma.'" *Id.*

1270. Like the EIP, the VP agrees that government pressure pushes social-media platforms to adopt more aggressive censorship policies: "Platforms had started adapting their policies to address vaccine misinformation in early 2019, spurred by public outcry, negative press coverage, and *government inquiries*…" *Id.* at 21 (14) (emphasis added).

AMERICAN OVERSIGHT

1271. The VP boasts that its "analysts had to develop a nuanced and nimble understanding of what content constituted policy violations"—evidently because it was flagging content to platforms for censorship in real time. *Id.* at 21-22 (14-15).

1272. The VP extensively monitored and tracked Americans' speech about COVID-19 and vaccines on social media: "To surface in-scope content, VP's team of analysts were divided into topical detection teams, referred to as pods…. These pods … enabled analysts to develop and ensure sustained familiarity with how the COVID-19 vaccine conversation was evolving within particular communities on public platforms." *Id.* at 22 (15).

1273. This monitoring involved VP analysts reading and searching Americans' social-media accounts in real time: "Analysts in each pod assessed emerging narratives that were within scope … , surfacing content both via qualitative observation of the pages and accounts, and by using lists of common terms associated with vaccine hesitancy and long-standing anti-vaccine rhetoric." *Id.*

1274. The VP states that "Anti-vaccine activists and influencers, including those discussed in the Center for Countering Digital Hate's 'Disinformation Dozen' Report … surfaced the greatest amount of content …" *Id.* at 23 (16).

1275. This covert monitoring of Americans' online speech about vaccine was extensive, sophisticated, and adaptive: "At the beginning of the project, analysts used broad search terms ("vaccine," "jab") to surface relevant content and incidents (specific events or stories), but gradually began to incorporate a combination of machine learning and hand coding to identify additional recurring narratives relevant to the four in-scope categories. This included terms related to medical freedom under "Vaccine Distribution," or severe adverse effects and death under

AMERICAN OVERSIGHT

"Vaccine Safety," among others. As narratives and new keywords emerged throughout the analysis period, analysts continually refined their searches." *Id.*

1276. This mass-social-media-surveillance project included federal agencies as key "stakeholders": "The Virality Project established a nonpartisan, multi-stakeholder model consisting of health sector leaders, federal health agencies, state and local public health officials, social media platforms, and civil society organizations. These stakeholders provided tips, feedback, and requests to assess specific incidents and narratives, and each entity type brought specific expertise to bear on understanding COVID-19 vaccine hesitancy." *Id.* at 24 (17).

1277. Thus, the VP's "multi-stakeholder model" included government agencies and officials, including "federal health agencies" and "state and local public health officials," working alongside "social media platforms" to combat vaccine-related "misinformation." *Id.*

1278. The government "stakeholders" such as "federal health agencies" and "state and local public health officials" were among those who "provided tips" and "requests to assess specific incidents and narratives," *i.e.*, flagging content for social-media censorship. *Id.*

1279. The VP emphasizes the role of "Federal government agencies" in the VP, including the CDC and the Office of Surgeon General: "**Federal government agencies** served as coordinators for national efforts. The Virality Project built strong ties with several federal government agencies, most notably the Office of the Surgeon General (OSG) and the CDC, to facilitate bidirectional situational awareness around emerging narratives. The CDC's biweekly "COVID-19 State of Vaccine Confidence Insights" reports provided visibility into widespread anti-vaccine and vaccine hesitancy narratives observed by other research efforts." *Id.* (bold in original).

AMERICAN OVERSIGHT

1280. Social media platforms served as stakeholders alongside federal and state officials: "**Platforms** were the final stakeholders in the VP effort. Six social media platforms engaged with VP tickets—Facebook (including Instagram), Twitter, Google (including YouTube), TikTok, Medium, and Pinterest—*acknowledging content flagged for review and acting on it in accordance with their policies*. On occasion, platforms also provided information on the reach of *narratives previously flagged by VP*, which provided a feedback loop leveraged to inform the Project's understanding of policies and ongoing research." *Id.* at 25 (18) (bold in original) (italics added).

1281. Thus, the VP openly proclaims that it "flagged" "content … for review" to platforms to "act[] on it in accordance with their policies." *Id.* Government officials provided "tips" to the VP about misinformation on social media, and the VP flagged it for platforms for censorship.

1282. The VP emphasizes the importance of federal officials and social-media platforms in its collaboration on censorship: "As the effort progressed, *input from these partners was crucial* in defining the VP's output formats and in surfacing where the impacts of vaccine mis- and disinformation were being felt offline." *Id.*

1283. The VP engaged in continuous, ongoing communication with federal officials, platforms, and other stakeholders: "The Virality Project delivered 31 weekly briefings focused on increasing situational awareness and enabling the stakeholders working on countering vaccine mis- and disinformation to develop the most effective possible response." *Id.*

1284. The VP boasts that it "provided strategic insights" to federal officials in combating misinformation: "Briefings directly informed counter-messaging efforts by public health stakeholders … and public health officials (for example, the CDPH), and *provided strategic*

AMERICAN OVERSIGHT

insights to government entities such as the OSG, CDC, and the Department of Health and Human Services." *Id.* (emphasis added).

1285. Further, the "Stanford Internet Observatory and the Virality Project also hosted Surgeon General Vivek Murthy for a seminar on vaccine mis- and disinformation, including the rollout of the Surgeon General's advisory on health misinformation." *Id.* at 27 (20).

1286. Like the EIP, the VP used "tickets" to track social-media narratives, where each "ticket" could encompass many postings: "As part of the Virality Project, analysts created tickets documenting URLs of in-scope content. In total, 911 tickets were created, tracking both specific pieces of misinformation and broader narratives. At the end of the monitoring period, analysts had created 845 tickets tracking specific vaccine misinformation incidents (events or pieces of content) and 66 tickets tracking broad narratives." *Id.* at 34 (27).

1287. The VP aimed, not just to track, but to "respond to" misinformation: "The Virality Project operated with a team of analysts drawn from across the partner organizations. Workflows were designed to detect, analyze, and *respond to* incidents of COVID-19 vaccine-related disinformation in online ecosystems." *Id.* (emphasis added).

1288. "From February to August 2021, VP analysts *systematically monitored activity across social media platforms* to document emerging narratives and trends in public discourse while also tracking the popularity and spread of older content." *Id.* (emphasis added).

1289. "The [VP] used the Jira Service Desk software to log mis- and disinformation incidents that were determined to be in scope for specific areas of the public COVID-19-related conversation. For each single incident of anti-vaccine mis- or disinformation surfaced during monitoring, an analyst filed a ticket that provided a brief description of the incident, including

AMERICAN OVERSIGHT

engagement numbers at the time of creation and links to relevant social media posts." *Id.* at 35 (28).

1290. The VP boasts that it targeted online speech for censorship before it could go viral, thus imposing massive prior restraints on the amplification of targeted content: "Tickets also enabled analysts to quickly tag platform or health sector partners to ensure their situational awareness of high-engagement material that appeared to be going viral, so that *these partners could determine whether something might merit a rapid public or on-platform response* (such as a label)." *Id.* at 37 (30) (emphasis added).

1291. The VP reported the content in 174 "tickets" to social-media platforms for censorship: "Managers gave all incident analyses a final review for quality-control purposes, to determine appropriate next steps and to make a final decision about whether tickets should be shared with external stakeholders. *Of the 911 incidents monitored, 174 were referred to platforms for potential action*." *Id.* (emphasis added).

1292. Like the EIP, the VP appears to have had direct access to Twitter's and YouTube's internal data about speech spreading on its platform, but not Facebook's: "The engagement data or video view data for links associated with each ticket was collected differently depending on the social media platform in question: Facebook and Instagram: CrowdTangle API; Twitter: Twitter API…" *Id.* at 38 (31).

1293. Like the Surgeon General and the White House, the VP complains that the platforms must make their internal data more available to VP: "Due to limited transparency from social media platforms, engagement is the closest proxy researchers can use to understand what content users are seeing on social media platforms. Metrics such as impression counts are generally unavailable to outside researchers." *Id.*

AMERICAN OVERSIGHT

1294. The VP's monitoring tracked content with about 6.7 million engagements on social media per week, or over 200 million over the seven months of the reported project: "Average weekly engagement with content tracked across all Virality Project tickets was 6.7 million." *Id.* at 39 (32).

1295. The vast majority of speech flagged and tracked by the VP was not false or incorrect speech: "The most commonly employed tactics were Hard-to-Verify Content and Alleged Authoritative Source." *Id.* at 41 (34); *see also id.* at 42 (35) fig.2.6 (showing predominance of these two "tactics").

1296. According to the VP, "[o]f the engagement captured by tickets, more than a third came from content primarily spread by accounts that demonstrated recurring success making content go viral; we refer to them here as 'recurring actors.'" *Id.* at 41 (34).

1297. The VP boasts that it induced "platform action" against such "recurring actors" in 2021: "Recurring actors drove a majority of engagement in the first half of the study period, but fell off in importance after that, most likely due to platform action against certain users beginning in the late spring of 2021." *Id.* at 43 (36).

1298. Like Jennifer Psaki at the White House, the VP repeatedly cites the Center for Countering Digital Hate's report on the "Disinformation Dozen." *Id.* at 23 & 32 n.43, 43 & 48 n.7, 111 & 129 n.179.[4]

1299. "Four distinct weeks during the monitoring period had incidents observed by Virality Project analysts that generated more than 10 million engagements." *Id.* at 43 (36).

1300. One of these "Viral Incidents" tracked by the VP was: "In July, posts went viral expressing outrage at attempts by the Biden administration to engage in vaccine outreach." *Id.* at

[4] Report pages 16 & 25 n.43, 36 & 41 n.7, 104 & 122 n.179.

AMERICAN OVERSIGHT

45 (38). This incident did not involve any vaccine-related misinformation at all, but core political speech: "the Biden administration used the phrase 'door-to-door' to describe a push for on-the-ground community-led efforts to persuade more Americans to get vaccinated. Prominent Republican politicians miscast this as a forced vaccination campaign by 'Needle Nazis' and a prelude to the government knocking on the door to take away guns." *Id.* at 46 (39).

1301. The VP boasts that censorship enforcement was effective, especially in "deplatforming" key actors: "The decline of content from recurring actors midway through the monitoring period potentially reflects a policy impact, as deplatforming these actors led to an apparent reduction in false or misleading content." *Id.* at 47 (40).

1302. The VP tracked and flagged "Claims that [supposedly] misrepresent … vaccine mandates," not just misinformation about the vaccines. *Id.* at 50 (43).

1303. According to the VP, "content" that "leveraged decontextualized statistics from the US Department of Health and Human Services' Vaccine Adverse Event Reporting System (VAERS) database" is misinformation. *Id.* at 51 (44).

1304. According to VP, it was also misinformation when true adverse health events from vaccines were "shared absent context": "Rare incidents documenting verified adverse health events, including blood clotting and heart inflammation, were shared absent context, often in an effort to present them as common and significant risks." *Id.*

1305. According to the VP, discussing "breakthrough" cases and "natural immunity" was also misinformation: "False and misleading narratives related to efficacy sought to undermine the perceived benefits of vaccines. These narratives included stories of people diagnosed with COVID-19 after being vaccinated—"breakthrough" cases, particularly in the time of the Delta variant—to promote the idea that the vaccines aren't effective. Later, the idea that natural

AMERICAN OVERSIGHT

immunity from infection is superior to immunity from vaccination became a political talking point raised repeatedly by right-leaning political influencers, despite inconclusive scientific evidence." *Id.*

1306. According to VP, misinformation also included "discussions of vaccine passports and mandates (including months before any state or federal officials began advocating for them)." *Id.*

1307. The VP also counts as misinformation "claims that the government was headed toward mandating an unsafe vaccine." *Id.* The government did, of course, eventually mandate the vaccines for most Americans.

1308. The VP also treated Americans' "long-standing mistrust of pharmaceutical companies' profit motives" as part of anti-vaccine misinformation. *Id.*

1309. "Conspiracy Theories" that "assign blame to … government" are also misinformation to be tracked and censored, according to VP. *Id.*

1310. According to VP, "personal anecdotes" about "vaccine injuries and severe side effects—ranging from rashes, to blood clots, to death" are also misinformation." *Id.* at 52 (45).

1311. "Personal anecdotes often made their way into mainstream media coverage after gaining traction online. Distortions of official government statistics—most often from VAERS, described in more depth later in this section—were used both to reinforce the personal anecdotes and for focused misinformation solely discussing the statistics." *Id.*

1312. According to VP, "stripp[ing] both individual stories and official statistics of important context" is misinformation. *Id.*

1313. According to VP, "adverse event stories" were objectionable because they were "employed to push back against vaccine mandates." *Id.* at 52-53 (45-46).

AMERICAN OVERSIGHT

1314. Like the White House and Dr. Fauci, the VP treats Alex Berenson as a major malefactor in spreading COVID-19 vaccine "misinformation." *See id.* at 54, 57 (47, 50).

1315. Like the White House and Rob Flaherty, the VP flagged and tracked Fox News host Tucker Carlson as a spreader of vaccine misinformation: "*In May 2021, Tucker Carlson misrepresented VAERS data on his talk show*, decontextualizing it while claiming that 3,362 Americans had died following COVID-19 vaccinations between December 2020 and April 2021, equating to roughly 30 people every day." *Id.* at 57 (50) (emphasis added).

1316. Health Freedom groups, like Plaintiff Jill Hines's group Health Freedom Louisiana, are particular targets of the VP's tracking and censorship activities.

1317. The VP report includes an entire section on such groups: "Section 3.2.2 – Government Overreach and Medical Freedom Narratives." *Id.* at 59 (52).

1318. According to the VP, "[o]ne of the primary long-standing themes of anti-vaccine distribution narratives is that mass vaccine distribution constitutes a government overreach. The movement sees vaccine mandates, including, historically, school vaccine requirements, as an assault on 'health freedom' or 'medical freedom.'" *Id.*

1319. According to the VP, "[i]n 2020, following the emergence of COVID-19, these same health freedom groups expanded their vaccine protests to social distancing, masks, and other prevention measures." *Id.* This includes Plaintiff Jill Hines.

1320. The VP describes the role of Facebook groups—also employed by Jill Hines—in organizing health freedom groups to oppose vaccine mandates: "groups emerged on platforms such as Facebook during the pandemic, with names specifically related to COVID-19 or mRNA vaccines, to assist in discoverability; some grew their numbers into the tens of thousands." *Id.*

AMERICAN OVERSIGHT

1321. The VP focused, not just on misinformation about vaccines, but political speech and political organizing against "vaccine passports and vaccine mandates": "During the VP's period of analysis, narratives about government overreach and medical freedom focused on two areas of controversy: vaccine passports and vaccine mandates." *Id.*

1322. The VP treats as misinformation political speech and political opinions on these topics: "This amplification hinged upon misleading framing that suggested the implementation of any form of vaccine passport would be compulsory. In reality, the plans for many programs were entirely optional. Other framing from domestic right-leaning political actors created a portrait of governments as prying or snooping into citizens' private matters." *Id.* at (60) 53.

1323. The VP views virtually all conservative speech opposing government-imposed COVID mandates as misinformation: "Activists pushed the idea that through a passport system, governments and 'Big Tech' were limiting the public's freedoms—situating the conversation within a larger set of narratives surrounding pandemic public health regulations like mask mandates, lockdowns, and social distancing." *Id.*

1324. Like the EIP, the VP specifically flagged Jim Hoft's *The Gateway Pundit* as a purveyor of misinformation and COVID "conspiracy theories: "Headlines sometimes hawked conspiracy theories: one Gateway Pundit headline, "The Great Reset: Big Tech and Big Pharma Join Forces to Build Digital COVID Vaccination Passport," was a nod to groups such as QAnon…. The article alleged collusion between Big Tech and Big Pharma that would threaten 'individual rights.'" *Id.* at 60-61 (53-54) & 68 (75) n.49 (citing Joe Hoft, *The Great Reset: Big Tech and Big Pharma Join Forces to Build Digital COVID Vaccination Passport*, Gateway Pundit (January 17, 2021), https://thegatewaypundit.com/great-reset-big-tech-big-pharma-joining-forces-build-digital-covid-vaccination-passport).

AMERICAN OVERSIGHT

1325. Other right-leaning speakers flagged by the VP include One America News Network, Breitbart News, and others. *Id.* at 60 (53).

1326. The VP attributes political successes such as state-level bans on vaccine passports to such supposed misinformation. *Id.* at 61 (54).

1327. The VP attributes opposition to vaccine mandates by employers to such supposed misinformation: "The backlash to COVID-19 vaccine requirements for employment and other activities parallels the conversation about vaccine passports. It, too, relies on and attempts to exacerbate distrust in public health officials and government institutions." *Id.*

1328. According to VP, even truthful information about vaccine effects on health that are still being studied constitutes misinformation: "In early 2021, users on Twitter, Facebook, and Reddit reported unverified reproductive side effects, ranging from abnormal menstrual cycles to miscarriages and infertility. … At the time there was no medical consensus on the vaccine's effect on reproductive health, yet anti-vaccine activists presented the theory as fact and evidence of harm. Research is ongoing…." *Id.* at 66-67 (59-60).

1329. According to VP, even "videos that appeared to be created satirically" are misinformation when they "were taken seriously." *Id.* at 68 (61).

1330. Alex Berenson is mentioned 49 times in the Virality Project report. *Id.* at 54, 57, 71, 73, 96-97, 122-23, 188-90, 195, 207-08.[5]

1331. "Health freedom" or "medical freedom" groups are discussed dozens of times in the VP report. The word "freedom" occurs 100 times, almost always in direct connection with a discussion of "health freedom" or "medical freedom" groups, influencers, or content. *See id.* at 6,

[5] Report pages 47, 50, 64, 66, 89-90, 115-16, 181-83, 188, 200-01.

AMERICAN OVERSIGHT

9, 20, 23, 59-62, 66, 70, 74, 77, 82, 84-86, 93-96, 105, 117-18, 121-22, 130-31, 137-38, 141, 143, 187, 197-98, 201, 204, 210, 220-22.[6]

1332. The VP defines "Medical freedom influencers" as actors who "are averse to government interference in individuals' personal lives. While they explicitly advocate for "health freedom" or "vaccine choice," these actors often propagate vaccine doubt by contextualizing the choice with misleading claims of vaccines' adverse medical consequences." *Id.* at 82 (75).

1333. Fox News host Tucker Carlson, who has wide audiences in Missouri and Louisiana, is cited 42 times in the Virality Project report. *See id.* at 57, 73, 87, 91-92, 98, 115, 119-20, 122-23, 193, 201, 208, 215-16, 218.[7]

1334. In fact, the VP report cites the entire Fox News channel as a source of vaccine misinformation: "Fox News has played a particularly pivotal role in spreading vaccine misinformation and anti-vaccine beliefs during the COVID-19 pandemic…. [B]etween June 28 and July 11, 2021, Fox News ran 129 segments about the COVID-19 vaccine on its cable broadcast; more than half of those segments included unverified claims that undermined vaccination efforts." *Id.* at 91 (84).

1335. According to VP, "Fox News television host Tucker Carlson has been one of the most prominent and sensationalist spreaders of false or misleading information about vaccines throughout the COVID-19 pandemic." *Id.*; *see also id.* at 91 (describing "Right-wing media personality Tucker Carlson" as part of a "cast of recurring characters" that influenced vaccine hesitancy in Spanish- and Chinese-speaking communities).

---

[6] Report pages iii, 2, 13, 16, 52-55, 59, 63, 67, 70, 75, 77-79, 86-89, 98, 110-11, 114-115, 123-24, 130-31, 134, 136, 180, 190-91, 194, 197, 203, 213-15.

[7] Report pages 50, 66, 80, 84-85, 91, 108, 112-13, 115-16, 186, 194, 201, 208-09, 211.

AMERICAN OVERSIGHT

1336. The VP also cites Candace Owens and The Daily Wire as purveyors of vaccine misinformation. *See, e.g., id.* at 86, 92 (79, 85).

1337. The VP cites Robert F. Kennedy, Jr., a well-known anti-vaccine activist with wide followings in Missouri and Louisiana, as one of the most influential purveyors of vaccine misinformation. *Id.* at 83 (76). The VP describes Kennedy as "especially pernicious" because he has a large audience: "RFK Jr.'s activism is especially pernicious because, like other long-standing influencers, he has a large and committed following and has become somewhat of a household name in the US." *Id.*

1338. The VP also cites America's Frontline Doctors and its founder, Dr. Simone Gold, as a source of vaccine misinformation. *Id.* at 87-88 (80-81).

1339. The VP notes that "Simone Gold, a licensed emergency room physician, was the second most prominent PMI across Virality Project's tickets. Gold is the leader of America's Frontline Doctors…. Gold has been influential since the summer of 2020, when the White Coat Summit, an event broadcast online in which members of America's Frontline Doctors spoke on the steps of the Supreme Court. The White Coat Summit promoted hydroxychloroquine both as a preventative measure and as a cure for COVID-19." *Id.*

1340. The VP treats Dr. Joseph Mercola, another anti-vaccine speaker with wide audiences in Missouri and Louisiana, as a purveyor of vaccine misinformation. *Id.* at 87 (80). Again, the VP criticizes Mercola precisely because his speech reaches wide audiences. *Id.*

1341. The VP asserts that Gold's "false and misleading claims about the COVID-19 vaccine" include core political speech like "encouraging her followers to boycott companies for their vaccine protocols" and "organizing a cross-country tour to fight back against 'censorship, chaos, and the undeniable slide towards communism that lurks beneath the tyrannical lockdowns

AMERICAN OVERSIGHT

for governmental 'public health' policy'." *Id.* at 88 (81). To the VP, political "organizing" to oppose vaccine mandates and lockdowns constitutes a "false and misleading claim[]." *Id.*

1342. The VP asserts that "the right-leaning media ecosystem differs from the rest of the media environment in ways that make it especially vulnerable to the spread of mis- and disinformation." *Id.* at 91 (84).

1343. The VP states that "[t]he newest iteration of medical freedom, adapted for COVID-19, challenges the legitimacy of government or corporate vaccine mandates and public health interventions specific to COVID-19, including vaccine passport systems and masking requirements." *Id.* at 93 (86).

1344. The VP states that "medical freedom" groups spread misinformation "across all 50 states": "Medical freedom influencers (MFIs) active in the anti-COVID-19-vaccine movement were fairly distinct from other categories of influencer in that rather than hinging on a handful of key (and often celebrity-status) individuals, they spread their narratives via a franchise model *across all 50 states*." *Id.* (emphasis added).

1345. The VP indicates that it tracked and flagged "medical freedom" groups "at a messaging and organizing level," *i.e.*, the level where Jill Hines was targeted: "As medical freedom activists have fought requirements imposed by states, cities, or private employers, they have learned from each others' successes and failures—at a messaging and an organizing level—and have brought those lessons to their local communities. What one state does, another state will often echo." *Id.* at 94 (87).

1346. Like Andrew Slavitt, the VP treats Alex Berenson as one of the "most significant influencer[s]" who opposes vaccines: "Alex Berenson is perhaps the most significant influencer who defies categorization. A former New York Times reporter and a bestselling novelist with no

AMERICAN OVERSIGHT

specific anti-vaccine background …, Berenson … over time evolved into a key player in repeatedly spreading false and misleading information about the COVID-19 pandemic and vaccines. He underplayed the danger of the virus and challenged the efficacy of vaccines and masks, even as evidence supported their value as life-saving public health measures." *Id.* at 96 (89) (providing an image of Berenson's tweets).

1347. The VP disfavors Berenson because he reaches wide audiences and criticizes the government: "Berenson's popular posts on Twitter notably claimed to be "digging up" or "uncovering" information that was hidden from the public about vaccine safety or effectiveness. In one incident in July 2021, Berenson amplified a conspiracy theory from a statement filed with a lawsuit from America's Frontline Doctors stating that the government was covering up more than 45,000 vaccine-related deaths. Berenson's 17-tweet thread, which received over 16,000 interactions on July 21, 2021, claimed that the CDC had "quietly more than DOUBLED" the number of deaths reported in VAERS, suggesting the CDC had misled the public." *Id.* at 96-97 (89-90).

1348. The VP notes that Berenson had wide audiences nationwide when he was censored: "Twitter permanently deplatformed Berenson in August 2021 for repeated violations of Twitter's COVID-19 falsehoods policy. At the time he lost his account, he had more than 200,000 followers." *Id.* at 97 (90).

1349. The VP states that the government pushed for "accountability" from platforms in successfully pressuring them to adopt vaccine-related censorship policies in the years leading up to COVID-19: "During and after the [2018-19 measles] outbreaks, scientists and congressional leaders sought accountability from the platforms, inquiring about the extent to which vaccine

AMERICAN OVERSIGHT

hesitancy among impacted communities had been exacerbated by misinformation on their products." *Id.* at 131 (124).

1350. The VP provides a timeline of policy changes becoming more restrictive of vaccine-related misinformation that shows repeated tightening of policies by Facebook, Twitter, and YouTube once President Biden had been elected. *Id.* at 133 (126) fig.5.1.

1351. The VP calls for more aggressive censorship policies to target speech that is not false or incorrect and that constitutes core political speech: "While progress has been made since platforms first developed vaccine-related policies in 2019, clear gaps in platform policy exist with respect to moderating vaccine-related content, including posts that employ personalized stories, medical freedom claims, and misleading headlines and statistics." *Id.* at 143 (136).

1352. The VP also calls for more aggressive action to "suppress content" and "deplatform accounts": "In addition, policies about the actions platforms can take to suppress content, promote trusted voices, and deplatform accounts vary widely from platform to platform and are still not enforced consistently, both within and across platforms." *Id.*

1353. Just like the Surgeon General, the VP demands "more transparency" for "external researchers" (like those at the VP, working closely with government) to oversee the platforms' censorship efforts: "It should be noted that understanding the impact of platform policy is limited by what information is publicly available. It is crucial that platforms provide more transparency on each moderation approach and allow external researchers the ability to independently verify the success and impacts of these interventions." *Id.*

1354. Like the Surgeon General, the VP argues that "a whole-of-society effort is needed" to stop the spread of so-called misinformation: "[A] whole-of-society effort is needed in which

AMERICAN OVERSIGHT

stakeholders build robust and persistent partnerships to ensure that significant high-harm claims can be addressed as they arise." *Id.* 147 (140).

1355. This "whole-of-society" effort includes an active role for the government in censoring disfavored speech: "The Virality Project sought to do just that by bringing together four types of stakeholders: (1) research institutions, (2) public health partners, (3) government partners, and (4) platforms. Our recommendations recognize the collective responsibility that all stakeholders have in mitigating the spread of mis- and disinformation…" *Id.*

1356. According to the VP, "The Virality Project offers an early template for structuring interaction between research institutions and nonacademic stakeholders (including government entities, health practitioners, and private companies)." *Id.*

1357. According to the VP, it used "ingenuity" to facilitate "the *intake* of tips from … government partners": "An area that required ingenuity was creating a framework for facilitating the *intake* of tips from civil society and government partners…. However, their tips are often highly valuable, so overcoming this challenge is a priority for future efforts." *Id.* at 148 (141) (emphasis added).

1358. The VP recommends an even more "streamlined" process for "government partners" to provide "tips" of misinformation to be reported for censorship, and it notes that it received tips through "informal exchanges, such as Zoom meetings or calls with our partners": "Streamline tip line processes for civil society and government partners. Set up an efficient channel for intaking external tips…. The Virality Project often had to leverage informal exchanges, such as Zoom meetings or calls with our partners, to receive the tips verbally or encourage additional reporting. In future projects, external reporting channels should be strengthened via an easier

AMERICAN OVERSIGHT

means of reporting and increased access to the reporting channels, especially for partners on the ground (such as health practitioners or government health officials)." *Id.*

1359. The VP repeatedly cites the work of Surgeon General Murthy, noting that "[d]uring a July 15, 2021, panel with the Virality Project, US Surgeon General Vivek Murthy discussed the importance of vaccination by sharing his own story about COVID-19 … alongside data around the effectiveness of the vaccines." *Id.* at 149 (142). "In the context of vaccine misinformation specifically, some examples of engagement best practices can be found in the Virality Project's July 15, 2021, hosted discussion with Surgeon General Vivek Murthy…" *Id.* at 150 (143).

1360. According to VP, "While the federal government (through DHHS, the CDC, and the Surgeon General) has ramped up its engagement and communications, more can be done moving forward. There are several areas where government officials can focus to improve their ongoing response to mis- and disinformation surrounding the COVID-19 vaccines." Id. at 149-50 (142-43).

1361. These include "real-time response" to misinformation on the model provided by CIS and the EI-ISAC for election speech: "Federal, state, and local government officials should coordinate real-time response to emerging mis- and disinformation. … For example, as voting-related mis- and disinformation arose in the 2020 presidential election, the Election Infrastructure Information Sharing and Analysis Center (EI-ISAC) served a critical role in sharing information with the Election Integrity Partnership and pushing its rapid response analysis back out to election stakeholders across all states… Moving forward, the government should support the establishment of such an information-sharing mechanism." *Id.* at 150 (143).

1362. The VP recommends that the federal government "[i]mplement a Misinformation and Disinformation Center of Excellence (CoE) housed within the federal government," which

AMERICAN OVERSIGHT

"would centralize expertise on mis- and disinformation within the federal government at the Cybersecurity & Infrastructure Security Agency (CISA) with its existing mis- and disinformation team," *i.e.*, Brian Scully's group. *Id.*

1363. The VP's "Recommendations to Platforms" reflect near-verbatim language used by the Surgeon General's Health Advisory: "Consistently enforce policies against recurrent actors. … While many platforms have improved transparency around content moderation, there is still inconsistent enforcement of policies, notably in the case of recurring actors. More consistency and transparency is needed around enforcement practices, particularly when prominent or verified accounts are involved. While past policy environments have been slower to enforce policies against prominent accounts, these are the accounts with the greatest potential for impact. If anything, they may merit closer scrutiny." *Id.* at 152 (145).

1364. Likewise, the VP recommends that platforms "[c]ontinue to prioritize and improve data sharing. The Virality Project's research would not have been possible without access to public platform data. For privacy reasons, some data understandably may be limited, but in general, establishing standardized guidelines about how platforms can share data with research institutions is needed." *Id.* at 153 (146).

1365. "Notably, engagement numbers are the closest proxy that researchers have to understand what content users see on social media platforms. However, engagement is not the same thing as impressions, or user views—how many times a piece of content is seen by users. Ideally, access to user impression data would be available, allowing researchers to directly measure when and how content is surfaced to users by social media platforms. Unfortunately, social media platforms often do not make impression data available to researchers; as a result of this chronic

AMERICAN OVERSIGHT

gap, assessing impact and reach, or the dynamics of platform curation, remains a significant challenge." *Id.*

X. Federal Censorship Inflicts Grave, Imminent, and Ongoing Injuries on Plaintiffs.

1366. The foregoing conduct has inflicted and continues to inflict ongoing and imminent injuries on both the private Plaintiffs and the States of Louisiana and Missouri.

A. Defendants Gravely Injure the Individual Plaintiffs.

1367. The individual Plaintiffs provide undisputed evidence of how they have suffered from federally-induced censorship. Docs. 10-3 (Declaration of Dr. Jayanta Bhattacharya), 10-4 (Declaration of Dr. Martin Kulldorff), 10-5 (Declaration of Jim Hoft), 10-7 (Declaration of Dr. Aaron Kheriaty), 10-12 (Declaration of Jill Hines). The Government does not dispute this evidence.

1368. Dr. Bhattacharya attests that, "Because of my views on COVID-19 restrictions, I have been specifically targeted for censorship by federal government officials." Doc. 10-3, ¶ 5. He notes that "[t]he Great Barrington Declaration received an immediate backlash from senior government officials who were the architects of the lockdown policies, such as Dr. Anthony Fauci…" *Id.* ¶ 13. "Because it contradicted the government's preferred response to COVID-19, the Great Barrington Declaration was immediately targeted for suppression by federal officials." *Id.* ¶ 14. "Instead, what followed was a relentless *covert* campaign of social-media censorship of our dissenting view from the government's preferred message." *Id.* ¶ 15.

1369. As a result of this "covert campaign," Dr. Bhattacharya experiences ongoing injuries, including the de-boosting of search results in Google, *id.* ¶16; the removal of links to the Great Barrington Declaration in Reddit discussions, *id.*; the ongoing removal of a YouTube video discussing the Great Barrington Declaration and related issues with Governor DeSantis, *id.* ¶¶ 17-

AMERICAN OVERSIGHT

18; the removal of personal Tweets, *id.* ¶¶ 25-26; the removal of LinkedIn posts, *id.* ¶¶ 28-29; and account termination by LinkedIn, *id.* ¶ 30.

1370. Dr. Bhattacharya observes that he lacks access to his colleagues' speech and viewpoints as well, because "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.* ¶ 31.

1371. As Dr. Bhattacharya observers, "[t]hese censorship policies have driven scientists and others to self-censorship, as scientists … restrict what they say on social-media platforms to avoid suspension and other penalties." *Id. ¶ 31.*

1372. Dr. Bhattacharya attests based on personal experience: "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. … One of the motivations for that was a motivation to create … an illusion of consensus within the public that there was no scientific dissent against lockdowns. [T]he Great Barrington Declaration … 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." *Id.* ¶ 32.

1373. Dr. Kulldorff likewise attests that there is "an organized campaign against the Great Barrington Declaration," Doc. 10-4, ¶ 14. He notes that the GBD "was censored on social media in an apparent attempt to prevent it from … 'getting a lot of attention,'" *id.* ¶ 15; including Google deboosting search results, *id*., and Facebook removing content related to it, *id. ¶ 16.*

1374. Dr. Kulldorff also identifies an ongoing campaign of censorship against his personal social-media accounts, including censored personal Tweets on Twitter, *id. ¶¶ 17-18;*

AMERICAN OVERSIGHT

censored posts criticizing mask mandates, *id.* ¶ *19;* ongoing self-censorship to avoid further censorship penalties, *id.* ¶¶ 20, 27; removal of YouTube content, *id.* ¶ 21; removal of LinkedIn posts, *id.* ¶¶ 22-25; and the ongoing permanent suspension of his LinkedIn account, *id.* ¶ 26.

1375. Dr. Kulldorff has experienced direct censorship of his social-media speech in addition to the Great Barrington Declaration. For example, his Tweets questioning the efficacy of masking and criticizing government mask mandates have been censored and caused him to be suspended from Twitter. *Id.* ¶¶ 18-19.

1376. Dr. Kulldorff has also engaged in self-censorship to avoid being suspended or removed from social media: "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." *Id.* ¶ 20.

1377. Dr. Bhattacharya and Dr. Kulldorff's roundtable discussion with Governor Ron DeSantis—which featured all three co-authors of the Great Barrington Declaration—was removed from YouTube. The roundtable discussion addressed the Great Barrington Declaration and its premises in detail. As Dr. Kulldorff recounts, "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. 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

AMERICAN OVERSIGHT

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." *Id.* ¶ 21.

1378. Dr. Kulldorff also experiences ongoing censorship on "LinkedIn, which is a popular communications platform among scientists and other professionals." *Id.* ¶ 22-26. LinkedIn has blocked and removed his posts opposing vaccine mandates and promoting the benefits of natural immunity. *Id.* These included posts in which he and Dr. Bhattacharya "criticized the official Covid-19 response as formulated by Dr. Anthony Fauci." *Id.* ¶ 25.

1379. Dr. Kulldorff states that he and other scientists engage in self-censorship to avoid being terminated from social-media platforms: "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." *Id.* ¶ 27.

1380. Dr. Kulldorff notes that social-media censorship directly affects him as a *reader* of other scientists' speech on social media, on an ongoing basis, by reducing his access to the thoughts and views of scientists who dissent from the government-mandated orthodoxy: "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." *Id.* ¶ 28.

AMERICAN OVERSIGHT

1381. Dr. Kheriaty, also, describes ongoing injuries from social-media censorship of views dissenting from the government-preferred narratives about COVID-19. He experiences an ongoing pattern of censorship and removals lasting over years: "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 vaccine mandates." Doc. 10-7, ¶ 11.

1382. As Dr. Kheriaty notes, "[t]he Twitter censorship took several forms." *Id.* He describes suffering artificial limitations on the number of followers on his social-media accounts, *id.* ¶¶ 12-13; "shadow banning" of social-media posts that "challenge[] the federal government's preferred covid policies," *id.* ¶¶ 14-15; self-censorship to avoid further adverse consequences or permanent bans, *id.* ¶ 16; and removal of content from YouTube, *id.* ¶ 17. Dr. Kheriaty specifically notes that the problem of "shadow banning" his social-media posts is ongoing and increasing, as it "intensified in 2022." *Id.* ¶ 15. Further, he notes that "[t]he pattern of content censored on these social media platforms mirrors closely the CDC and Biden administration policies." *Id.* ¶ 18.

1383. Dr. Kheriaty describes the ongoing experience of shadow-banning: "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." *Id.* ¶ 15.

1384. Dr. Kheriaty also experiences ongoing injury as a *reader* of other speakers' content on social media, as government policies cause censorship and self-censorship of their content as

AMERICAN OVERSIGHT

well: "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." *Id.* ¶ 16.

1385. Dr. Kheriaty also engages in self-censorship to avoid more severe penalties from the platforms: "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." *Id.* ¶ 16.

1386. Dr. Kheriaty observes a close link between this ongoing pattern of social-media censorship and speech that criticizes government policies: "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." *Id.* ¶ 18.

1387. Plaintiff Jim Hoft attests both ongoing injuries and the imminent expectation of future injuries. Doc. 10-5. Hoft is the "founder, owner, and operator of the popular news website The Gateway Pundit ('GP'), gatewaypundit.com. … 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." *Id.* ¶ 2. The Gateway Pundit has large social-media followings on multiple platforms: "In particular, GP's Twitter account had over 400,000 followers before it was suspended. GP's

AMERICAN OVERSIGHT

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." *Id.* ¶ 3.

1388. Hoft notes that The Gateway Pundit's "social media accounts have experienced censorship on all major social-media platforms," which "has followed and reflected the calls for censorship from federal government officials, including in the Biden Administration." *Id.* ¶ 4. These acts of censorship include suspensions from his Twitter account and another personal Twitter account, *id.* ¶¶ 6-7, 10; a permanent ban from his Twitter account, *id.* ¶ 8; labels applied to Twitter posts on personal accounts, *id.* ¶ 9; warning labels imposed on Facebook posts and other restrictions on his Facebook account, *id.* ¶ 12; permanent removal of content posted on Facebook, *id.* ¶ 13; prevention of sharing of Facebook-posted content, *id.*; removal of content from YouTube, *id.* ¶ 14; imposition of sanctions on Mr. Hoft's followers for re-posting or amplifying his speech, *id.* ¶ 15; engaging in self-censorship to avoid permanent bans or other more serious sanctions from the social-media platforms, *id.* ¶ 16; and demonetization by Google, *id.* ¶ 19; *see also id.* ¶¶ 18-20.

1389. Hoft observers that "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." *Id.* ¶ 4. "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." *Id.* ¶ 5.

AMERICAN OVERSIGHT

1390. Hoft has experienced censorship for COVID speech that is now widely acknowledged to be true, such as a suspension from Twitter for claiming that the vaccines do not prevent infection, and the claim that COVID deaths are overcounted by including deaths from other causes: "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?" *Id.* ¶ 6; *see also id.* ¶ 9.

1391. The Gateway Pundit also experienced censorship under Twitter's "hacked materials" policy by retweeting the contents of Hunter Biden's laptop. After a GP blogger "tweeted content related to Hunter Biden's laptop," "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.'" *Id.* ¶ 10.

1392. Hoft also experiences a long list of acts of censorship from Facebook: "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." *Id.* ¶ 11; *see also id.* ¶ 12. Facebook imposes labels on Hoft's content that require the reader, before viewing Hoft's content, to click-through a Facebook-imposed screen that states: "The Gateway Pundit is an American far-right news and opinion website. The website is known for publishing falsehoods, hoaxes, and conspiracy theories." *Id.* at 12. It also labels Hoft's postings as "Missing Context" even when their truth is undisputed. *Id.* at 20-23. And it labels expressions of core political opinion as "Partly False." *Id.* at 28; *see also id.* 29-58 (many other examples of such labeling and blocking from reposting on Facebook and Twitter).

AMERICAN OVERSIGHT

1393. As Hoft notes, Facebook also prevents Hoft's audiences from reposting or amplifying his content: "Facebook also [dis]courages (or otherwise outright prohibits) the public from sharing our content with their social networks." *Id.* ¶ 13. Hoft describes this second-order censorship in detail: "The social-media platforms have extended their censorship policies to our followers as well. We have received numerous reports from followers that they have received temporary suspensions or other adverse actions from social-media platforms (such as seven-day suspensions 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." *Id.* ¶ 15.

1394. Hoft also describes ongoing self-censorship to avoid more severe penalties on social media: "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." *Id.* ¶ 16.

1395. Hoft observes that the censorship of his content on social media closely tracks the censorship preferences of federal officials: "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." *Id.* ¶ 17. Hoft's posts that have faced censorship include posts criticizing the FBI, *id.* at 9; and criticizing the administration of the 2020 election, *id.* at 11;

AMERICAN OVERSIGHT

1396. Hoft continues to experience censorship, including up to the date he executed his declaration. For example, he received a strike on YouTube on May 14, 2022, and YouTube removed the video he had posted, for speech regarding election integrity that 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. *Id.* ¶ 14.

1397. Plaintiff Jill Hines is the "Co-Director of Health Freedom Louisiana, a consumer and human rights advocacy organization." Doc. 10-12, ¶ 2. Hines's "organization engages in public advocacy on behalf of Louisiana citizens on issues of health freedom and fundamental human rights. [Hines] ha[s] testified before the Louisiana legislature approximately 20 times on such issues." *Id.* ¶ 3. Hines attests that, "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." *Id.*¶ 2. Hines has "approximately 13,000 followers each on Health Freedom Louisiana and Reopen Louisiana." *Id.* ¶ 2. Among other things, Hines' organization "advocate[s] against the imposition of mask mandates on children, especially during prolonged periods, as in schools." *Id.*¶ 4. Hines also "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." *Id.* ¶ 6.

1398. Hines describes continuous and ongoing censorship on social media from pressure wielded by federal officials: "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

AMERICAN OVERSIGHT

press and media." *Id.* ¶ 5. Hines continues to suffer ongoing social-media censorship, and the acts of censorship include application of warnings on Facebook content, *id.* ¶ 8; the reduction of her reach to audiences on Facebook, *id.*; removal of content and sanctions, including 30-day suspensions, from Facebook, *id.* ¶ 9; 24-hour suspensions that prevented her from organizing people to advocate to the Louisiana legislature, *id.* ¶ 10; shadow-banning and dramatically restricting the reach of her speech to its audiences, id. ¶ 10; and the complete de-platforming of Facebook groups intended to organize Louisianans to petition their government, id. ¶¶ 13-14. Ms. Hines states that "[r]emoving our closed group at such a crucial time effectively stopped our ability to communicate with our representatives in the state legislature." Id. ¶ 14. "To say the cards are stacked against me is an understatement." Id. ¶ 16.

1399. Hines attests that the censorship campaign against her social-media speech is ongoing, noting that "[p]osts pointing to lack of safety of masking were and are targeted, as well as articles that mention adverse events of vaccinations, including VAERS data." Id. ¶ 9. She continues to suffer specific, new acts of censorship, including right up to the time when she executed her Declaration on June 9, 2022: "The most recent restriction [was] in late May 2022." *Id.* Ms. Hines notes that "[m]y 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." Id. ¶ 12.

1400. Hines reports that acts of censorship of her COVID-19-related speech have occurred continuously up to the present: "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." *Id.* ¶ 11.

AMERICAN OVERSIGHT

1401. Hines has observed a link between the censorship that her groups have experienced and the public demands for censorship from federal officials: "Many similar threats from federal officials followed … 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." *Id.* ¶ 5.

1402. Social-media censorship dramatically reduces the reach of Hines's speech: "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." *Id.* ¶ 8.

1403. Hines experiences an ongoing campaign of social-media censorship that extends to the present, the date she executed her declaration: "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." *Id.* ¶ 9.

1404. Censorship of Hines's social-media speech directly impairs her efforts to engage in political organization to petition her government to change its policies: "One post in particular that was hit with a 'community standards' warning on October 6, 2020, was a 'call to action' asking

AMERICAN OVERSIGHT

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 … 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 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." *Id.* ¶ 10.

1405. Hines suffers repeated censorship on individual posts as well, including undisputedly truthful information: "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 … as well as articles relating to pregnant women being vaccinated. … 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." *Id.* ¶ 11.

1406. Hines attests that she is under current and constant threat of more severe censorship penalties, including deplatforming: "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." *Id.* ¶12.

AMERICAN OVERSIGHT

1407. Hines engages in self-censorship to avoid more severe penalties: "On many occasions, I have altered the spelling of words, used emoji's, or placed links in comments to avoid censorship." *Id.* ¶ 12.

1408. Hines's health-freedom groups were completely deplatformed, inflicting a severe and direct injury on her ability to engage in political organization to amplify her message and petition the government: "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 had almost 2,000 people, and North Shore HFL had less than 500 before it was taken down." *Id.* ¶ 13.

1409. This censorship directly interfered with the core political speech and advocacy of Hines and thousands of Louisianans: "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." *Id.* ¶ 14.

1410. To this day, Hines's political message, and those of thousands of Louisianans, is greatly diminished from this censorship: "After North Shore was deplatformed, we looked for alternatives for daily communication. We were to the point of speaking in code on Facebook, so

AMERICAN OVERSIGHT

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." *Id.* ¶ 15.

1411. Censorship undercuts Hines's ability to "effectively communicate with people," including Louisiana state officials, about her political views: "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." *Id.*¶ 16.

B. Defendants Gravely Injure Similarly Situated Speakers and Listeners.

1412. Plaintiffs' unrebutted evidence demonstrates that other similarly situated speakers have suffered and are suffering similar, ongoing, and imminent injuries from government-induced censorship on social media.

1413. For example, Michael Senger had over 112,000 followers on Twitter, including in Missouri and Louisiana; he attests that he was twice suspended from Twitter and then permanently banned for posting Tweets critical of government policies for responding to COVID-19. Doc. 10-2, ¶¶ 4-8. He was temporarily suspended twice for tweets criticizing the FDA's emergency approval of COVID vaccines and for posting a video document public officials' statements on vaccine effectiveness. *Id.*¶ 4-6. On March 8, 2022, he was permanently suspended from Twitter for posting a statement of core political opinion criticizing government policy, stating that "every COVID policy—from the lockdowns and masks to the tests, death coding, and vaccine passes—has been one, giant fraud." *Id.*¶ 7-8. This permanent suspension was inconsistent with Twitter's own policies. *Id.*¶ 10. Senger attests that the censorship inflicts ongoing harm on him, both

AMERICAN OVERSIGHT

"personally and professionally": "I discovered a gift that I had for writing and developed a network of thousands of intelligent people from all over the world with whom I had a close relationship discussing these and other issues. Now I have been silenced and cut off from all of them, with no viable way of getting that network back or promoting my work, seemingly for the sole crime of being too articulate in vocalizing my beliefs." *Id.* ¶ 13.

1414. Jeff Allen is the proprietor of "NewsTalkSTL, a popular news talk radio station in the St. Louis, Missouri region," which "enjoys a substantial Missouri audience." Doc. 10-8, ¶¶ 2-3. His station posts content on YouTube, and he describes how the station "has been targeted by YouTube from the moment of its launch in July 2021" through the present, including flagging the station's first promotional video, and issuing "strikes" for "COVID-related and election-related 'misinformation.'" *Id.* ¶¶ 4-6. These include removing a video of a show that "featured discussion of timely COVID issues, including testing and vaccines and treatments," and issuing a strike for that posting. *Id.* ¶¶ 9-10. His station "continued to receive strikes" from YouTube "in the first week of January and into February, 2022" for COVID-related content, *id.* ¶ 12. On March 14, 2022, Allen's station aired a show on "election integrity" that did not claim any election was stolen, but discussed polling data indicating that many Americans have grave concerns about election integrity. *Id.* ¶¶ 13-14. On March 21, 2022, YouTube permanently removed the station's channel as a result of that posting. *Id.*¶ 15. "In so doing, YouTube deleted all of our content and prevented any more posts, silencing our voice and our expression from the platform entirely." *Id.*¶ 16.

1415. Allen has also experienced significant and ongoing censorship from Facebook: "Facebook has also targeted our content, pulling advertisements and issuing temporary suspensions, also for COVID and election-related 'misinformation.'" *Id.* ¶ 18.

AMERICAN OVERSIGHT

1416. Mark Changizi is a commentator on Twitter with 37,000 followers, including many in Missouri and Louisiana. Doc. 10-9, ¶ 7, 38. Changizi experiences longstanding and ongoing censorship on Twitter, including a first suspension on April 20, 2021 "for linking to an article on the safety and efficacy of face masks," *id.* ¶ 18; additional suspension on June 25, 2021, *id.*¶ 19; having his account secretly "heavily censored and deboosted," meaning that "the user's tweets are de-platformed—they appear in Twitter feeds much less frequently and replies to other posts may be hidden," *id.* ¶ 20; covert loss of followers, much like Dr. Kheriaty, ¶ 21; and a permanent Twitter suspension on December 18, 2021, for tweets comparing the danger of COVID-19 to the flu and promoting the benefits of natural immunity, *id.* ¶ 23. He experiences similar shadow-banning by YouTube, as his "follower-ships at YouTube also plateaued and reversed despite the fact that [he] was very active," *id.* ¶ 31. He observes that Twitter is also censoring his *private* direct messages to other Twitter users, *id.* ¶¶ 32-35. And two of his YouTube videos are also censored with their content removed from YouTube. *Id.* ¶ 36.

1417. Changizi engages in self-censorship on social media to avoid more severe penalties, *id.* ¶¶ 39-42, and he has "become very careful about what I say on Twitter and YouTube (and Facebook and Instagram) to avoid suspension." *Id.* ¶ 39.

1418. Changizi perceives a link between the censorship he experiences and pressure from federal officials, *id.*¶¶ 43-47. He observes: "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." *Id.*¶ 50. He also observes the pro-government bias in social-media censorship decisions: "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." *Id.*¶ 51.

AMERICAN OVERSIGHT

1419. Daniel Kotzin observes that his censorship at Twitter began in September 2021, after which he was suspended by Twitter four times, including a 24-hour suspension, two seven-day suspensions, and a permanent ban. Doc. 10-10, ¶¶ 11-12. He received these penalties for tweets questioning whether COVID vaccines reduce infection and transmission, referring to natural immunity, and criticizing government policies on lockdowns and mask mandates. *Id.* ¶¶ 13, 15, 17. He was permanently suspended on April 29, 2022, for a truthful tweet stating: "Myocarditis, pericarditis, blood clots, and strokes are known potential side effects of covid vaccination. That is not my idea of safe." *Id.* ¶ 19.

1420. Kotzin attests that "[p]ermanent expulsion from Twitter has been devastating for me. I had spent 2 years building my Twitter following. Two years ago, I had fewer than 100 followers, and at the time of my permanent suspension I had nearly 32,000. When my account is suspended, I am unable to communicate with my followers." *Id.* ¶¶ 21-23.

1421. Kotzin observes an increase in censorship on Twitter after the Surgeon General's Request for Information issued on March 3, 2022. "Based on my observations and extensive Twitter use, many more accounts than usual have been suspended since the Surgeon General's RFI on March 3." *Id.* ¶ 25. This increase in censorship affected Kotzin directly: "Since the Surgeon General's Request for "health misinformation" in March [2022] I have been suspended four times by Twitter, and have now been permanently banned." *Id.* ¶ 35.

1422. Kotzin notes that suspension results in loss of one's own prior expression: "When an account is permanently suspended, everything the person ever wrote is erased and cannot be accessed by anyone." *Id.* ¶ 27.

1423. Kotzin describes that he "methodically self-censored" to avoid permanent suspension: "Since the [Surgeon General's] RFI, many of us who are critical of government covid

AMERICAN OVERSIGHT

policies have been regulating our speech more carefully than ever, because we have noticed that more of us are getting suspended than ever before, and we don't want to risk losing our audience. I considered the possibility of 'permanent suspension' to be such a devastating prospect that I methodically self-censored." *Id.* ¶¶ 28-29; *see also id.* ¶¶ 31-32.

1424. Kotzin observes a close link between social-media censorship and the federal government's policies and preferred narratives: "Twitter suspends only those who question the wisdom and efficacy of government restrictions, or those who cast doubt on the necessity, safety or efficacy of the vaccines. If all or almost all suspensions are targeted at critics of the government and government policies, and no or almost no suspensions are targeted at purveyors of factually incorrect information, then it is not 'misinformation' that is being censored, but criticism of the government." *Id.* ¶¶ 34-35.

1425. Joshua McCollum is a concerned parent in a school district in Missouri. Doc. 10-14, ¶¶ 1-4. Like Hines, he has experienced censorship that directly interferes with his ability to organize, associate with like-minded people, and petition his local government: "On or about July 28, 2021, in the midst of discussing with others a recent school board meeting related to masks, and whether FHSD would keep its policy of optional masking versus change their policy to mandatory masking, [McCollum] decided to launch an online petition to encourage the board members to keep their optional masking policy and *not* change to mandatory masking." *Id.* ¶ 9. Through his account on Nextdoor (a Meta/Facebook platform), he posted this petition on change.org, and "[t]he posting of this petition on change.org was the beginning of the shadow-banning and blocking of my Nextdoor account." *Id.* ¶ 11. Comments were blocked from his Nextdoor account, and then his Nextdoor account was suspended for one month for "spreading misinformation." *Id.*¶¶ 12-14. This censorship prevented him from organizing, associating with

AMERICAN OVERSIGHT

others, and petitioning his local government, when those on the other side of the issue were allowed to do so: "Subsequently, on August 12, 2021, FHSD decided to reinstate their mandatory masking policy, shortly after the voice of myself and the 280 fellow petition signers was suppressed. There were petitions encouraging reinstatement of mandatory masking, but our contrary petition was suppressed by Nextdoor. I am a parent simply trying to have a voice in my local school district and its policies regarding my own children, but social media has stooped down to censor even my voice within my local community." *Id.*¶¶ 15-17.

1426. Jessica Marie Gulmire is a freelance journalist for the Epoch Times who resides in Missouri, and has readership in Missouri and Louisiana. Doc. 10-15, ¶¶ 1-3. Gulmire has "been censored numerous times by Facebook and Twitter even before I joined The Epoch Times in the summer of 2021," as her "personal posts regarding excessive COVID-19 measures and regarding the election were repeatedly flagged and taken down by Facebook and Twitter." *Id.* ¶¶ 7-8. Her journalism for the Epoch Times has also been censored by Facebook, including an article questioning the evidence for vaccinating pregnant women with COVID-19 vaccines that was later validated by Pfizer documents, *id.* ¶¶ 10-13; and an article in March 2022 for The Federalist about the People's Convoy of truckers in the United States supporting their Canadian counterparts, *id.* 18-19. She has also had eleven articles about "mask mandates, vaccines, lockdowns and mental health" censored on Pinterest, *id.* ¶ 17.

C. Defendants Gravely Injure the State Plaintiffs, Louisiana and Missouri.

1. Fundamental policies favoring freedom of speech for their citizens.

1427. Both Louisiana and Missouri have adopted fundamental policies favoring freedom of speech, without government-induced censorship, for their citizens. LA. CONST. art. I, § 7; MO. CONST. art. I, § 8.

AMERICAN OVERSIGHT

2. Direct censorship of the States and their political subdivisions.

1428. Both Louisiana and Missouri, and their political subdivisions, have experienced direct social-media censorship on COVID and related issues. 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—on August 18, 2021, just after the federal Defendants' most vociferous calls for censorship of COVID "misinformation." Bosch Decl., Doc. 10-13, ¶ 7.

1429. In addition, a Louisiana state legislator was censored by Facebook when he posted content addressing vaccinating children against COVID-19. Bosch Decl., Doc. 10-13, ¶ 9.

1430. 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., Doc. 10-6, ¶ 7. Missouri's open-meetings law required St. Louis County to post publicly the videos of those meetings, but YouTube censored the entire videos of four public meetings, removing the content, because some citizens publicly expressed views that masks are ineffective. *Id.*

3. The States' interest in following the uncensored discourse of their citizens.

1431. Patrick Flesch, Director of Constituent Services for the Missouri Attorney General's Office, explains that he is "personally involved in, receiving, reviewing, and responding to thousands of communications from Missouri constituents per year." Doc. 10-6, ¶ 3. He explains that being able to follow Missourians' uncensored speech on social media is essential for him to do his job effectively, as understanding Missourians' true thoughts and concerns on policy matters like election integrity and COVID-19 is necessary to craft policies and messages that are responsive to constituents' actual concerns. Doc. 10-6, ¶ 3-4. This "includes monitoring activity

AMERICAN OVERSIGHT

and mentions on multiple social media platforms, including Facebook, Twitter, and YouTube." *Id.* "I monitor these sorts of trends *on a daily or even hourly basis* when needed on behalf of the Office." *Id.* (emphasis added). For example, regarding the censorship of St. Louis County's video of its public meeting where citizens opposed mask mandates, Flesch notes: "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." *Id.*¶ 7. Likewise, regarding YouTube censoring Jeff Allen's radio station NewsTalkSTL, and Nextdoor censoring Joshua McCollum's online petition, Flesch observes: "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." *Id.* ¶¶ 9.

1432. As Flesch attests, "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 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." *Id.*¶ 10.

1433. As Mr. Flesch explains in detail: "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. … 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." *Id.* ¶ 5. "[O]nline censorship of

AMERICAN OVERSIGHT

free public discourse on social-media companies has hampered my ability to follow Missourians' speech on these issues." *Id.* ¶ 6.

1434. Ashley Bosch, Communications Officer for the Louisiana Department of Justice, attests on behalf of the State of Louisiana: "Part of my job is to gather and synthesize topical subject matters that are important to Louisiana citizens, on behalf of the Department." Doc. 10-13, ¶ 4. "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." *Id.* This "includes monitoring activity and mentions on social media platforms, including Facebook, Instagram, Twitter, and YouTube." *Id.* Doc. 10-13, ¶ 4. "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." *Id.* ¶ 5. "Online censorship of Louisiana citizens by social media companies interferes with my ability to follow Louisianans' speech on these issues." *Id.* ¶ 6. Bosch notes that it is particularly important for her to follow Louisianan's speech on topics of federally-induced censorship: "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." Doc. 10-13, ¶ 5. "Louisianans' 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." Doc. 10-13, ¶ 10.

1435. As noted above, Defendants' witness from the CDC, Carol Crawford, attests to exactly the same government interest in being able to read and follow the true, uncensored opinions of the government's constituents.

AMERICAN OVERSIGHT

1436. Crawford admits that government communicators have a strong interest in tracking what their constituents are saying on social media: "It's helpful for communicators to know what is being discussed because it helps improve our communication materials." Crawford Dep. 53:10-12. Crawford emphasized this point multiple times: "as I mentioned before, it does help … for communicators to know what conversations occurs on social media because it helps us identify gaps in knowledge, or confusion, or things that we're not communicating effectively that we need to adjust." *Id.* 54:15-20.

1437. Crawford said that CrowdTangle reports "would help us understand what was being discussed on social media about COVID, which helps us look for gaps in information, confusion about facts, things that we might need to adjust our communication materials for." *Id.* 57:24-58:3. Crawford specifically expressed the concern that, if content was censored or removed from social-media platforms, government communicators would not know what the citizens' true concerns were: She "was wondering if they delete the info will we know those myths or information so we could update communication activity. So if they were deleting content would we know what the themes were." *Id.* 75:14-18. Accordingly, Crawford wanted to know, "would [CDC] be able to see in CrowdTangle or other reports … what kind of themes were removed so we would still have the full picture of areas of confusion." *Id.* 75:23-76:1.

4. States' interest in fair, unbiased, open processes to petition state government.

1438. Social-media censorship directly interferes with the States' interest maintaining fair, even-handed, and open processes for petitioning their own governments and political subdivisions. When one side of a debate can organize on Facebook or Nextdoor and petition the government, and the other side cannot because of social-media censorship, that means that state officials never receive a fair, unbiased presentation of their constituents' views.

AMERICAN OVERSIGHT

1439. As noted above, 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., Doc. 10-12, ¶¶ 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., Doc. 10-14, ¶¶ 9-17; *see also* Doc. 10-12, ¶¶ 13-14; Doc. 10-14, ¶¶ 9-17; Doc. 10-15, ¶¶ 11-16, 18-19.

1440. Plaintiff Jill Hines explains that "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." Doc. 10-12, ¶ 13. She attests that "[t]he 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.." *Id.* ¶ 14. Suppressing these Facebook groups directly interfered with state officials' ability to receive free and fair communications of their constituents' concerns: "Removing our closed group at such crucial time effectively stopped our ability to communicate with our representatives in the state legislature." *Id.*

5. State quasi-sovereign interests.

1441. The States also assert quasi-sovereign interests in protecting the freedom of speech of a substantial segment of their population—*i.e.*, their citizens who are both speakers and audiences of speech on social media; and in ensuring that their citizens receive the full benefit of participation in the federal system—which includes, among other benefits, the full protection of the First Amendment.

AMERICAN OVERSIGHT

1442. Based on the foregoing evidence, social-media censorship afflicts a substantial segment of the populations of both Missouri and Louisiana.

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001989

Dated: March 6, 2023

Respectfully submitted,

ANDREW BAILEY
Attorney General of Missouri

/s/ Charles F. Capps
Joshua M. Divine, Mo. Bar No. 69875*
Solicitor General
Charles F. Capps, Mo. Bar No. 72734*
Deputy Solicitor General
Todd A. Scott, Mo. Bar No. 56614*
Senior Counsel
Kenneth C. Capps, Mo. Bar No. 70908*
Assistant Attorney General
Missouri Attorney General's Office
Post Office Box 899
Jefferson City, MO 65102
Tel: (573) 751-8870
charles.capps@ago.mo.gov
Counsel for State of Missouri

JEFFREY M. LANDRY
Attorney General of Louisiana

/s/ D. John Sauer
Elizabeth B. Murrill (La #20685)
Solicitor General
Tracy Short (La #23940)
Assistant Attorney General
D. John Sauer, Mo. Bar No. 58721*
Special Assistant Attorney General
Louisiana Department of Justice
1885 N. Third Street
Baton Rouge, Louisiana
Tel: (225) 326-6766
murrille@ag.louisiana.gov
Counsel for State of Louisiana

/s/ Jenin Younes
Jenin Younes *
John J. Vecchione *
New Civil Liberties Alliance
1225 19th Street N.W., Suite 450
Washington, DC 20036
Direct: (202) 918-6905
E-mail: jenin.younes@ncla.legal
Counsel for Plaintiffs Dr. Jayanta Bhattacharya, Dr. Martin Kulldorff, Dr. Aaron Kheriaty, and Jill Hines

/s/ John C. Burns
John C. Burns
Burns Law Firm
P.O. Box 191250
St. Louis, Missouri 63119
P: 314-329-5040
E-mail: john@burns-law-firm.com
Counsel for Plaintiff Jim Hoft

* admitted *pro hac vice*

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001990

CERTIFICATE OF SERVICE

I hereby certify that, on March 6, 2023, I caused a true and correct copy of the foregoing to be filed by the Court's electronic filing system, to be served by operation of the Court's electronic filing system on counsel for all parties who have entered in the case.

/s/ D. John Sauer

AMERICAN OVERSIGHT

MO-AG-24-0028-A-001991

To: 'Mitchell.benzine@mail.house.gov'[Mitchell.benzine@mail.house.gov]
From: Scott, Todd[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1DAF1E35615D4B2E8DBB3F318306291A-SCOTT, TODD]
Sent: Mon 12/18/2023 9:13:53 AM (UTC-06:00)
Subject: Follow-up info
Doc. 214-1 - Ex. 1 Plaintiffs Proposed Findings of Fact ISO PI Motion - Handout.pdf
Doc. 268 - Third Amended Complaint - handout.pdf
Doc. 293 - Memorandum Ruling on Request for PI - handout.pdf
Doc. 214-1 - Ex. 1 Plaintiffs Proposed Findings of Fact ISO PI Motion.pdf
Doc. 268 - Third Amended Complaint.pdf
Doc. 293 - Memorandum Ruling on Request for PI.pdf

Mitch – Nice to speak with you this morning.I'm attaching a few documents that I think could be helpful.I've attached both the full document as well as an abbreviated version that is more to the points you are interested in.The abbreviated versions are labeled "handout" in the file name.
Happy to discuss via phone.The number below rings to my cell phone so don't hesitate to call.
Todd S.

Todd Scott | Senior Counsel
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8366
Todd.Scott@ago.mo.gov

This email message, including the attachments, is from the Missouri Attorney General's Office. It is for the sole use of the intended recipient(s) and may contain confidential and privileged information, including that covered by § 32.057, RSMo. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Thank you.

AMERICAN OVERSIGHT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

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 AND 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;

No. 3:22-cv-01213-TAD-KDM

AMERICAN OVERSIGHT

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;

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

THIRD AMENDED COMPLAINT

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.*

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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 P rogram 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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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 "misinformation" or "disinformation" does not strip away First Amendment protections.

AMERICAN OVERSIGHT

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.*

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.*

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

'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,

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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).

AMERICAN OVERSIGHT

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 conte nt 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.*

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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),

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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),

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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 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 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

AMERICAN OVERSIGHT

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*

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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 CRUNCH (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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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%20Spanish%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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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 misinformation 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/.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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 5government'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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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*

AMERICAN OVERSIGHT

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.*

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

"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-covid.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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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 misinformation 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.*

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

messaging systems." *Id.* "In his notice to major tech platforms, Murthy is requesting specific information on demographics affected by misinformation as well as sources 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"

AMERICAN OVERSIGHT

for such posts. Crawford cautioned the meeting 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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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 viewpoints 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*,

AMERICAN OVERSIGHT

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 upda tes 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

AMERICAN OVERSIGHT

"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 publisher." *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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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 misinformation. 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/uploadedfiles/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

AMERICAN OVERSIGHT

enough, arguing that "we can still see how easily this content is posted and amplified by ba d 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.

AMERICAN OVERSIGHT

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-surveil-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-

AMERICAN OVERSIGHT

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 terrorist s "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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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 Disinformation 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

AMERICAN OVERSIGHT

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 partners," 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

AMERICAN OVERSIGHT

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 said." *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.*

AMERICAN OVERSIGHT

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,*

AMERICAN OVERSIGHT

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 delegitimizes 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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

"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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.*

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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/.

AMERICAN OVERSIGHT

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+ individuals 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).

AMERICAN OVERSIGHT

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 Digital 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-

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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 did. 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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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."

AMERICAN OVERSIGHT

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 Claim s 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."

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

"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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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 de-platforming 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…."

AMERICAN OVERSIGHT

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 officials 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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

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 "misinformation" 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,

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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."

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.*

AMERICAN OVERSIGHT

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.*

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

rewarded the private-sector partners 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

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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 takedown 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 others, 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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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 foundationforfreedomonline.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]hi s 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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

"[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

AMERICAN OVERSIGHT

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 report 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

AMERICAN OVERSIGHT

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 misinformation 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,

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.*,

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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:

AMERICAN OVERSIGHT

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 crack-downs 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 …

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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 "across 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.

AMERICAN OVERSIGHT

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 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.

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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 bo th 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

AMERICAN OVERSIGHT

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 accommodati ons 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.*

AMERICAN OVERSIGHT

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.*

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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 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.

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).

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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) (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.

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).

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

Dated: March 20, 2023

Respectfully submitted,

ANDREW BAILEY
Attorney General of Missouri

/s/ Charles F. Capps
Joshua M. Divine, Mo. Bar No. 69875*
Solicitor General
Charles F. Capps, Mo. Bar No. 72734*
Deputy Solicitor General
Todd A. Scott, Mo. Bar No. 56614*
Senior Counsel
Kenneth C. Capps, Mo. Bar No. 70908*
Assistant Attorney General
Missouri Attorney General's Office
Post Office Box 899
Jefferson City, MO 65102
Tel: (573) 751-8870
charles.capps@ago.mo.gov
Counsel for State of Missouri

JEFFREY M. LANDRY
Attorney General of Louisiana

/s/ D. John Sauer
Elizabeth B. Murrill (La #20685)
Solicitor General
Tracy Short (La #23940)
Assistant Attorney General
D. John Sauer, Mo. Bar No. 58721*
Special Assistant Attorney General
Louisiana Department of Justice
1885 N. Third Street
Baton Rouge, Louisiana
Tel: (225) 326-6766
murrille@ag.louisiana.gov
Counsel for State of Louisiana

/s/ Jenin Younes
Jenin Younes*
John J. Vecchione*
New Civil Liberties Alliance
1225 19th Street N.W., Suite 450
Washington, DC 20036
Direct: (202) 918-6905
E-mail: jenin.younes@ncla.legal
Counsel for Plaintiffs Dr. Jayanta Bhattacharya, Dr. Martin Kulldorff, Dr. Aaron Kheriaty, and Jill Hines

/s/ John C. Burns
John C. Burns
Burns Law Firm
P.O. Box 191250
St. Louis, Missouri 63119
P: 314-329-5040
E-mail: john@burns-law-firm.com
Counsel for Plaintiff Jim Hoft

* admitted *pro hac vice*

AMERICAN OVERSIGHT

MO-AG-24-0028-A-002158

CERTIFICATE OF SERVICE

I hereby certify that, on March 20, 2023, I caused a true and correct copy of the foregoing to be filed by the Court's electronic filing system, to be served by operation of the Court's electronic filing system on counsel for all parties who have entered in the case.

/s/ Charles F. Capps

AMERICAN OVERSIGHT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

STATE OF MISSOURI, ET AL.	**CASE NO. 3:22-CV-01213**
VERSUS	**JUDGE TERRY A. DOUGHTY**
JOSEPH R. BIDEN JR., ET AL.	**MAG. JUDGE KAYLA D. MCCLUSKY**

MEMORANDUM RULING ON REQUEST FOR PRELIMINARY INJUNCTION

At issue before the Court is a Motion for Preliminary Injunction [Doc. No. 10] filed by Plaintiffs.[1] The Defendants[2] oppose the Motion [Doc. No. 266]. Plaintiffs 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,[3] the Buckeye Institute,[4] and Children's Health Defense.[5]

[1] 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").

[2] 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. 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").

[3] [Doc. No. 252]

[4] [Doc. No. 256]

[5] [Doc. No. 262]

AMERICAN OVERSIGHT

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 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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.[6]

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,"

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

AMERICAN OVERSIGHT

MO-AG-24-0028-A-002163

that masks would not protect people from COVID-19, and other "anti-mask" tweets.[7] Dr. Kulldorff (and Dr. Bhattacharya[8]) 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.[9] 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.[10]

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 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.[11] 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

[7] [Doc. No. 10-4]
[8] [Doc. No. 10-3]
[9] [Id.]
[10] [Id.]
[11] [Doc. No. 10-12]

AMERICAN OVERSIGHT

that is protected free speech. Additionally, Hines alleges that two of their Facebook groups, HFL Group and North Shore HFL, were de-platformed for posting content protected as free speech.[12]

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.[13]

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

[12] [Id.]
[13] [Doc. No. 10-7]

AMERICAN OVERSIGHT

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,[14] Amended Complaint,[15] Second Amended Complaint,[16] and Third Amended Complaint[17] 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.

[14] [Doc. No. 1]
[15] [Doc. No. 45]
[16] [Doc. No. 84]
[17] [Doc. No. 268]

AMERICAN OVERSIGHT

> Count Three – Violation of the Administrative Procedure Act against HHS, NIAID, CDC, FDA, Peck, Becerra, Murthy, Crawford, Fauci, Galatas, Waldo, 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.[18]

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, 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

[18] 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.

AMERICAN OVERSIGHT

("Zuckerberg"), the owner of Facebook, has publicly stated that the threat of antitrust enforcement is "an existential threat" to his platform.[19]

A. White House Defendants[20]

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.[21] Humphrey sent a copy of 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."[22]

(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."[23] Twitter suspended the parody account within forty-five minutes of Flaherty's request.

---

[19] [Doc. No. 212-3, citing Doc. No. 10-1, at 202]
[20] 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")
[21] [Doc. No. 174-1, Exh. A. at 1]
[22] [Id. at 2]
[23] [Doc. No. 174-1, Exh. A. at 4]

AMERICAN OVERSIGHT

(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."[24]

(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.[25] 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.[26] Facebook responded the same day and stated that "vaccine-skeptical" content does not

[24] [Doc. No. 174-1 at 3]
[25] [Id. at 5–8]
[26] [Id. at 6–8]

AMERICAN OVERSIGHT

violate Facebook's policies.[27] However, Facebook stated that it will have the content's "distribution reduced" and strong warning labels added, "so fewer people will see the post."[28] In other words, even though "vaccine-skeptical" content did not violate Facebook's policy, the content's distribution was still being reduced by Facebook.

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.[29] 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.[30] Facebook also referenced "previous meetings" between the White House and Facebook representatives during the "transition period" (likely referencing the Biden Administration transition).[31]

(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

[27] [Id.]
[28] [Id.]
[29] [Id.]
[30] [Id. at 6]
[31] [Id. at 5]

AMERICAN OVERSIGHT

Facebook's actual enforcement practices and for a report on misinformation 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?"[32] 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.'"[33]

(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."[34]

(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.[35] Meta also stated, "We think there is considerably more we can do in '*partnership*' with you and your team to drive behavior."[36]

---

[32] [Doc. No. 214-9 at 2–3]
[33] [Id.]
[34] [Doc. No. 214-10 at 2, Jones Declaration, #10, Exh. H] SEALED DOCUMENT
[35] [Doc. No. 71-4 at 6–11]
[36] [Id. at 10] (emphasis added)

AMERICAN OVERSIGHT

(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."[37] This email also provided a detailed report and summary regarding survey data on vaccine uptake from January 10 to February 27, 2021.[38]

(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."[39]

After Facebook denied "hiding the ball," Flaherty followed up by making clear that the White House was seeking more aggressive action on "borderline content."[40] Flaherty referred to a series of meetings with Facebook that were held in response to concerns over "borderline content" and accused Facebook of deceiving the White House about Facebook's "borderline policies."[41] Flaherty also accused Facebook of being the "top driver of vaccine hesitancy."[42] 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.

[37] [Doc. No. 174-1 at 9]
[38] [Id.]
[39] [Id. at 11]
[40] [Id. at 11–12]
[41] [Id.]
[42] [Id. at 11]

AMERICAN OVERSIGHT

This would all be a lot easier if you would just be straight with us.[43]

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."[44]

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."[45]

(11) On March 19, 2021, Facebook had an in-person meeting with White House officials, including Flaherty and Slavitt.[46] 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 platform WhatsApp.[47] 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."[48] 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.[49]

---

[43] [Id. at 11]
[44] [Id. at 11]
[45] [Id. at 10]
[46] [Id. at 15]
[47] [Id.]
[48] [Id. at 15]
[49] [Id. at 15]

AMERICAN OVERSIGHT

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.[50] Flaherty also requested more information about and demanded greater censorship by Facebook of "sensational," "vaccine skeptical" content.[51] He also requested more information about WhatsApp regarding vaccine hesitancy.[52] 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."[53] 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 techniques.[54] Facebook also noted it bans accounts that engage in those that seek to exploit COVID-19 misinformation.[55]

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.[56] "You only

[50] [Id.]
[51] [Id.]
[52] [Id.]
[53] [Id. at 14]
[54] [Id. at 17]
[55] [Id. at 17]
[56] [Id. at 17–21]

AMERICAN OVERSIGHT

did this, however, after an election that you helped increase skepticism in, and an insurrection which was plotted, in large part, on your platform."[57]

(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."[58] Flaherty 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!"[59]

Facebook promised the White House a report by the end of the week.[60]

(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.[61]

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.[62] Facebook responded, "Re the J & J news, we're keen to amplify any messaging you want us to project about what this means for people."[63]

(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

[57] [Id. at 17]
[58] [Id. at 22]
[59] [Id. at 22]
[60] [Id. at 23]
[61] [Id. at 30–31]
[62] [Id. at 31]
[63] [Id. at 31–32]

AMERICAN OVERSIGHT

does not violate Facebook's content-moderation policies, but indicated that Facebook still censors this content by suppressing it in news feeds and algorithms.[64] 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.[65] 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."[66] Facebook also mentioned looking forward to tomorrow's meeting "and how we can hopefully partner together."[67]

Other examples of posts that did not violate Facebook's policies but would nonetheless be suppressed included content that originated from the Children's Health Defense, a nonprofit activist group headed by Robert F. Kennedy, Jr. (labeled by Defendants as one of the "Disinformation Dozen").[68]

(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."[69] The subject line was "Tucker Carlson anti-vax message."[70] 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

[64] [Id. at 24–25]
[65] [Id.]
[66] [Id. at 24–25]
[67] [Id. at 24]
[68] [Id. at 25–27]
[69] [Id. at 34]
[70] Id. at 33]

AMERICAN OVERSIGHT

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.*"[71]

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.[72] Flaherty followed up six minutes later alleging Facebook provided incorrect information through Crowd Tangle.[73]

Two days later, on April 16, 2021, Flaherty demanded immediate answers from Facebook regarding the Tucker Carlson video.[74] 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").[75] 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.[76]

(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.[77]

---

[71] [Id. at 36]
[72] [Id. at 33–34]
[73] [Id.]
[74] [Id. at 33]
[75] [Id.]
[76] [Id. at 33, 36]
[77] [Doc. No. 71-7 at 86].

AMERICAN OVERSIGHT

Twitter discovery responses indicated that during the meeting, White House officials wanted to know why Alex Berenson ("Berenson") had not been "kicked off" Twitter.[78] Slavitt suggested Berenson was "the epicenter of disinfo that radiated outwards to the persuadable public."[79] Berenson was suspended thereafter on July 16, 2021, and was permanently de-platformed on August 28, 2021.[80]

(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.[81]

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."[82] Flaherty indicated that the White House remains concerned that YouTube is "funneling people into hesitancy and intensifying people's vaccine hesitancy."[83] Flaherty further shared that "we" want to make sure YouTube has a handle on vaccine hesitancy and is working toward making the problem better.[84] Flaherty again noted vaccine hesitancy was a concern that is shared by the highest ("and I mean the highest") levels of the White House.[85]

Flaherty further indicated that the White House was coordinating with the Stanford Internet Observatory (which was operating the Virality Project): "Stanford" has mentioned that it's recently

[78] [Doc. No. 212-14 at 2–5]
[79] [Id.]
[80] [Doc. No. 212-14, Exh. J, at 2–5]
[81] [Doc. No. 212-15, Exh. K, at 1–4] SEALED DOCUMENT
[82] [Doc. No. 174-1 at 39-40]
[83] [Id.]
[84] [Id.]
[85] [Doc. No. 174-1 at 39–40]

AMERICAN OVERSIGHT

Vaccine Passports and J&J pause-related stuff, but I'm not sure if that reflects what you're seeing."[86] Flaherty praised YouTube for reducing distribution of content: "I believe you said you reduced watch time by 70% on borderline content, which is impressive."[87] 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."[88] Flaherty also suggested regular meetings with YouTube ("Perhaps bi-weekly") as they have done with other "platform partners."[89]

(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.[90] 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 vaccine misinformation.[91] Flaherty noted sending this Brief was not a White House endorsement of it, but "this is circulating around the building and informing thinking."[92]

On May 1, 2021, Facebook's Clegg sent an email to Slavitt indicating Facebook and the White House met recently to "share research work."[93] Clegg apologized for not catching and

[86] [Id. at 39]
[87] [Id.]
[88] [Doc. No. 214-1 at 39–40]
[89] [Id. at 39–40]
[90] [Doc. No. 214-14 at 2–3]
[91] [Id.]
[92] [Doc. No. 214-14 at 2–3, Jones Declaration]
[93] [Doc. No. 214-1]

AMERICAN OVERSIGHT

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.[94]

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 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.[95] 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.[96] Facebook referred to its new policy as their "Dedicated Vaccine Discouraging Entities."[97] 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

[94] [Doc. No. 214-1 at ¶ 116].
[95] [Doc. No. 174-1 at 41–42]
[96] [Doc. No. 174-1 at 41–42].
[97] [Id.]

AMERICAN OVERSIGHT

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.'"[98]

(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, especially related to COVID-19 vaccinations and elections."[99] 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."[100]

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?"[101] Flaherty also criticized Facebook's efforts to censor the "Disinformation Dozen":

[98] [Id. at 42]
[99] [Doc. No. 266-6 at 374]
[100] [Id.]
[101] [Doc. No. 174-1 at 41]

AMERICAN OVERSIGHT

"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."[102]

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."[103]

(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,"[104] Psaki announced that Surgeon General Murthy had published an advisory on health misinformation as an urgent public health crisis.[105] 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."[106]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."[107]

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

[102] [Id.]
[103] [Id. at 55]
[104] [Doc. No. 210-1 at 16 (Waldo Depo, Exh. 10)]
[105] [Id. at 162]
[106] [Doc. No. 10-1 at 370]
[107] [Id. at 376–77]

AMERICAN OVERSIGHT

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.[108]

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."[109] Specifically, he stated "Look, the only pandemic we have is among the unvaccinated, and that they're killing people."[110] Psaki stated the actions of censorship Facebook had already conducted were "clearly not sufficient."[111]

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).[112] 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."[113]

(21) The public and private pressure from the White House apparently had its intended effect. All twelve members of the "Disinformation Dozen" were censored, and pages, groups, and accounts linked to the Disinformation Dozen were removed.[114]

---

[108] [Id. at 377–78]
[109] [Doc. No. 10-1 at 370]
[110] [Id. at 436–37]
[111] [Doc. No. 10-1 at 446]
[112] [Doc. No. 10-1 at 477–78]
[113] [Id.]
[114] [Doc. No. 10-1 at 483–85]

AMERICAN OVERSIGHT

Twitter suspended Berenson's account within a few hours of President Biden's July 16, 2021 comments. [115] 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."[116]

(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.[117] Twitter responded within six minutes, agreeing to "escalate with the team for further review."[118] Twitter advised users that the video had been edited for comedic effect. Tom then requested Twitter apply a "Manipulated Media" disclaimer to the video.[119] 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.[120] Further efforts by Tom and LaRosa to censor the video on December 9, 13, and 17 finally resulted in the video's removal in December 2021.[121]

(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.[122] 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."[123] In January 2022, Jesse

[115] [Doc. No. 214-12 at 2–5]
[116] [Doc. No. 174-1 at 49]
[117] [Doc. No. 174-1 at 59–67]
[118] [Id.]
[119] [Id.]
[120] [Id.]
[121] [Id. at 59–67]
[122] [Doc. No. 71-3 at 10–11]
[123] [Doc. No. 71-3 at 10–11]

AMERICAN OVERSIGHT

Lee ("Lee") of the White House sent an email accusing Twitter of calling the President a liar in regard to a Presidential tweet.[124]

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.[125]

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.[126]

On June 13, 2022, Flaherty demanded Meta continue to produce periodic COVID-19 insight reports to track 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.[127]

(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.[128]

[124] [Doc. No. 174-1 at 69]
[125] [Doc. No. 10-1 at 501–2]
[126] [Id. at 62–63, ¶¶ 193–197]
[127] [Doc. No. 71-3 at 5–6]
[128] [Doc. No. 214-15]

AMERICAN OVERSIGHT

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.[129] 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.[130] The Memorandum also called for the Task Force to confer with technology experts and again threatened social-media platforms with adverse legal consequences if the platforms did not censor aggressively enough.[131]

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.[132]

On August 11, 2022, Flaherty emailed Twitter to dispute a note added by Twitter to one of President Biden's tweets about gas prices.[133]

(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.[134]

[129] [Doc. No. 214-15[
[130] [Id.]
[131] [Doc. No. 214-16]
[132] [Doc. No. 214-18]
[133] [Doc. No. 174-1 at 68]
[134] [Id.]

AMERICAN OVERSIGHT

B. Surgeon General Defendants[135]

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 Preliminary Injunction-related discovery in this matter.[136]

(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.[137] 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.[138] Surgeon General Murthy's message was given to social-media platforms both publicly and privately.[139]

(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.[140] Murthy was directly involved in editing and approving the final work product for the July 15, 2021 health advisory on misinformation.[141] Waldo also admitted that Murthy used his "bully pulpit" to talk about health misinformation and to put public pressure on social-media platforms.[142]

---

[135] Surgeon General Defendants consists of Dr. Vivek H. Murthy ("Murthy") and Katharine Dealy ("Dealy").
[136] [Doc. No. 210]
[137] [Doc. No. 210 at 11, 20]
[138] [Id. at 25, 28]
[139] [Id. at 11, 20, 25, 28]
[140] [Id. at 33–35]
[141] [Waldo depo at 14–17]
[142] [Id. at 29]

AMERICAN OVERSIGHT

(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.[143] Clegg of Facebook reached out to attempt to request "de-escalation" and "working together" instead of the public pressure.[144] 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.[145] "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 monitoring the spread of misinformation.[146]

(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.[147] The Virality Project hosted a "rollout event" for Murthy's July 15, 2021 press conference.[148]

There was coordination between the Office of the Surgeon General and the Virality Project on the launch of Murthy's health advisory.[149] 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.[150]

---

[143] [Id. at 91–94]
[144] [Doc. No. 210 at 95–98]
[145] [Id.]
[146] [Doc. No. 210 at 95–98]
[147]The Virality Project will be discussed later in greater detail.
[148] [Id. at 36–38]
[149] [Id. at 38]
[150] [Id. at 39, 59, 85]

AMERICAN OVERSIGHT

Waldo, Fullenwider, and DiResta were involved in a conference call after the July 15, 2021 press conference where they discussed misinformation.[151] The Office of the Surgeon General anticipated that social-media platforms would feel pressured by the Surgeon General's health advisory.[152]

(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.[153]

(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.[154] The call was an update by Facebook about the internal action it was taking regarding censorship.[155] 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.[156] Waldo was also aware of other emails and at least one phone call where Flaherty communicated with Facebook.[157]

(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.[158]

---

[151] [Id.]
[152] [Id. at 39, 59, 85]
[153] [Id. at 43, 47]
[154] [Id. at 66, 124–25]
[155] [Id. at 66, 124–25]
[156] [Id. at 55–56]
[157] [Id. at 64–65]
[158] [Doc. No. 210-4]

AMERICAN OVERSIGHT

Policy updates about increasing censorship were announced by Facebook on May 27, 2021.[159] 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.[160] 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.[161]

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."[162] The Surgeon General's health advisory explicitly called for social-media platforms to do more to control the reach of misinformation.[163]

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.[164]

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.[165]

---

[159] [Id. at 78, Exh. 3]
[160] [Id. at 85]
[161] [Id.]
[162] [Id. at 95–98, 101, 105]
[163] [Id. at 107–08]
[164] [Doc. No. 210-4 at 33]
[165] [Id.]

AMERICAN OVERSIGHT

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.[166]

(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.[167] As promised, Clegg provided an update on misinformation to the Office of Surgeon General on May 28, 2021, three days after the meeting[168] and began sending bi-weekly COVID content reports on June 14, 2021.[169]

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.[170] Twitter ultimately publicly endorsed the Office of the Surgeon General's call for greater censorship of health misinformation.[171]

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.[172] YouTube eventually adopted a new policy on combatting COVID-19

---

[166] [Id. at 129]
[167] [Doc. No. 210-1 at 138]
[168] [Doc. No. 210-5 at 1–2]
[169] [Doc. No. 210-6]
[170] [Doc. No. 210-7 at 145–46]
[171] [Id.]
[172] [Doc. No. 210-8]

AMERICAN OVERSIGHT

misinformation and began providing federal officials with updates on YouTube's efforts to combat the misinformation.[173]

(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.[174] Murthy further stated that health disinformation is false, inaccurate, or misleading, based upon the best evidence at the time.[175]

Murthy also stated that people who question mask mandates and decline vaccinations are following misinformation, which results in illnesses and death.[176] 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.[177] 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."[178] Notably, Waldo agreed in his deposition that the word "accountable" carries with it the threat of consequences.[179] Murthy further demanded social-media platforms do "much, much, more" and take "aggressive action" against misinformation because the failure to do so is "costing people their lives."[180]

(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

[173] [Doc. No. 210-8].
[174] [Doc. No. 210-11]
[175] [Doc. No. 210-11]
[176] [Doc. No. 210-11]
[177] [Id.]
[178] [Id.]
[179] [Id.]
[180] [Id.]

AMERICAN OVERSIGHT

features and algorithms for furthering the spread.[181] 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.[182]

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.[183] The consequences for misinformation would include flagging problematic posts, suppressing the spread of the information, suspension, and permanent de-platforming.[184]

(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 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."[185]

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."[186]

[181] [Doc. No. 210-11]
[182] [Id.]
[183] [Id.]
[184] [Id.]
[185] [Doc. No. 210-13, Doc. No. 210, at 206–07].
[186] [Doc. No. 210-1 at 213]

AMERICAN OVERSIGHT

Murthy also stated that the Office of the Surgeon General had been "partnered with" the Stanford Internet Observatory for many months.[187]

(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 claims "that do not violate our policies but may present misleading or sensationalized information about COVID-19 and vaccines."[188]

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."[189]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."[190] As a result of this communication, a meeting was scheduled for July 23, 2021.[191]

[187] [Doc. No. 210-1 at 213]
[188] [Doc. No. 210-15]
[189] [Doc. No. 210-16]
[190] [Doc. No. 210-17]
[191] [Doc. No. 210-18]

AMERICAN OVERSIGHT

At the July 23, 2021 meeting, the Office of the Surgeon General officials were concerned about understanding the reach of Facebook's data.[192] 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."[193] 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."[194] Further, Facebook 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."[195]

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."[196] 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."[197] 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.[198] Facebook continued to report back to Waldo and Flaherty with updates on September 19 and 29 of 2021.[199]

(13) Waldo asked for similar updates from Twitter, Instagram, and Google/YouTube.[200]

---

[192] [Id.]
[193] [Id. at 4–5]
[194] [Id.]
[195] [Id.]
[196] [Doc. No. 210-22 at 1–3]
[197] [Doc. No. 210-21]
[198] [Doc. No. 210-22 at 2]
[199] [Doc. No. 210, Waldo depo. Exh 30, 31]
[200] [Doc. No. 210, Waldo depo. at 257–58]

AMERICAN OVERSIGHT

(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 disinformation issues.[201] 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."[202] Murthy further tweeted that "we need transparency and accountability now."[203]

(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."[204] Federal officials informed Facebook that the federal health authority that could dictate what content could be censored as misinformation was the CDC.[205]

(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;[206] a January 3, 2022 podcast with Alyssa Milano stating that "platformers need to step up to be accountable for making their spaces safer";[207] and a February

[201] [Doc. No. 210, Exh. 22]
[202] [Doc. No. 210, Exh. 31]
[203] [Id.]
[204] [Doc. No. 210, Exh. 33]
[205] [Id.]
[206] [Doc. No. 210, Exh. 38, Audio Transcript, at 7]
[207] [Doc. No. 210–33]

AMERICAN OVERSIGHT

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.[208]

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.[209] 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.[210] The RFI also sought information about censorship policies, how they were enforced, and information about disfavored speakers.[211]The RFI was sent to Facebook, Google/YouTube, LinkedIn, Twitter, and Microsoft[212] by Max Lesko ("Lesko"), Murthy's Chief of Staff, requesting responses from these social-media platforms.[213]Murthy again restated social-media platforms' responsibility to reduce the spread of misinformation in an interview with GQ Magazine.[214] Murthy also specifically called upon Spotify to censor health information.[215]

C. CDC Defendants[216]

(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-

[208] [Doc. No. 210–34]
[209] [Doc. No. 32. Ex. 42, 87 Fed. Reg. 12712]
[210] [Id.]
[211] [Id.]
[212] [Id. Exh. 46, 47, 48, 49, 50, 51]
[213] [Id.]
[214] [Id. Exh. 51]
[215] [Exh. 52]
[216] 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").

AMERICAN OVERSIGHT

injunction related discovery here.[217] The CDC is a component of the Department of Health and Human Services ("HHS"); Xavier Becerra ("Becerra") is the Secretary of HHS.[218] Crawford's division provides leadership for CDC's web presence, and Crawford, as director, determines strategy and objectives and oversees its general work.[219] Crawford was the main point of contact for communications between the CDC and social-media platforms.[220]

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 February and March of 2020.[221] Crawford communicated with these platforms via email, phone, and meetings.[222]

(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.[223] 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.[224]

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."[225] This CrowdTangle report was sent by Facebook to Crawford

[217] [Doc. No. 205-1]
[218] [Doc. No. 266-5 at 57–61]
[219] [Doc. No. 205-1 at 11]
[220] [Id. at 249]
[221] [Id. at 16–18]
[222] [Id. at 20]
[223] [Doc. 205-3 at 3]
[224] [Id. at 1–2]
[225] [Id. at 49–52]

AMERICAN OVERSIGHT

in response to a prior conversation with Crawford.[226] The CDC had privileged access to CrowdTangle since early 2020.[227]

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 information.[228] Crawford and Facebook began having discussions about misinformation with Facebook in the Fall of 2020, including discussions of how to combat misinformation.[229]

The CDC used CrowdTangle, along with Meltwater reports (used for all platforms), to monitor social media's themes of discussion across platforms.[230] Crawford recalls generally discussing misinformation with Facebook.[231] 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.[232]

(3) On January 27, 2021, Facebook sent Crawford a recurring invite to a "Facebook weekly sync with CDC."[233] A number of Facebook and CDC officials were included in the invite, and the CDC could invite other agencies as needed.[234] The CDC had weekly meetings with Facebook.[235]

(4) On March 10, 2021, Crawford sent Facebook an email seeking information about "Themes that have been removed for misinfo."[236] The CDC questioned if Facebook had info on the types of posts that were removed. Crawford was aware that the White House and the HHS

[226] [Doc. No. 205-1, Exh. 6 at 2]
[227] [Id. at 49–52, 146–47]
[228] [Doc. No. 205-4 at 1–2]
[229] [Doc. No. 205-7 at 1–2]
[230] [Doc. No. 205-1 at 154–55]
[231] [Id. at 58]
[232] [Id.]
[233] [Doc. No. 205-1 at 226]
[234] [Doc. No. 205-36]
[235] Doc. No. 205-1 at 226]
[236] [Doc. No. 205-44 at 2–3]

AMERICAN OVERSIGHT

were also receiving similar information from Facebook.[237] The HHS was present at meetings with social-media companies on March 1, 2021,[238] and on April 21, 2021.[239]

(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).[240] 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."[241] 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.[242]

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."[243] For each topic, the deck included sample slides and a statement from the CDC debunking the allegedly erroneous claim.[244]

(6) Crawford admits she began engaging in weekly meetings with Facebook,[245] and emails verify that the CDC and Facebook were repeatedly discussing misinformation back and forth.[246] The weekly meetings involved Facebook's content-mediation teams. Crawford mainly inquired about how Facebook was censoring COVID-19 misinformation in these meetings.[247]

---

[237] [Doc. No. 205-1 at 258–61]
[238] Twitter with White House
[239] Twitter with White House
[240] [Doc. No. 205-1 at 103]
[241] [Id.]
[242] [Doc. No. 205-34 at 3]
[243] [Id. at 4]
[244] [Id. at 6–14]
[245] [Doc. No. 205-1 at 68–69]
[246] [Doc. No. 205-9 at 1–4]
[247] [Doc. No. 205-1 at 68–69]

AMERICAN OVERSIGHT

(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.[248] To aid in this endeavor, Crawford asked Facebook to allow the Census Bureau to be added to CrowdTangle.[249]

(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."[250] 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 down for another reason?"[251] 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.[252]

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.[253]

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.[254]

---

[248] [Doc. No. 205-1 at 71–72, 110]
[249] [Doc. No. 205-9 at 1]
[250] [Doc. No. 205-9 at 2]
[251] [Id.]
[252] [Doc. No. 205-9 at 1]
[253] [Doc. No. 205-11 at 2]
[254] [Doc. No. 205-38 at 2]

AMERICAN OVERSIGHT

On May 6, 2021, Crawford emailed Facebook a table containing a list of sixteen specific postings on Facebook and Instagram that contained misinformation.[255] Crawford stated in her deposition that she knew when she "flagged" content for Facebook, they would evaluate and possibly censor the content.[256] Crawford stated CDC's goal in flagging information for Facebook was "to be sure that people have credible health information so that they can make the correct health decisions."[257] Crawford continued to "flag" and send misinformation posts to Facebook, and on May 19, 2021,[258] 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."[259] Facebook was relying on the CDC's "scientific information" to determine whether statements made on its platform were true or false.[260] The CDC would respond to "debunk" claims if it had an answer.[261] 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.[262]

Facebook content-mediation officials would contact Crawford to determine whether statements made on Facebook were true or false.[263] Because Facebook's content-moderation policy called for Facebook to remove claims that are false and can lead to harm, Facebook would

[255] [Doc. No. 205-10 at 1–3]
[256] [Doc. No. 205-1 at 88]
[257] [Id.]
[258] [Doc. No. 205-12 at 1]
[259] [Id. at 2]
[260] [Doc. No. 205-1 at 106]
[261] [Id.]
[262] [Doc. No. 205-12 at 1–2]
[263] [Doc. No. 205-12 at 2]

AMERICAN OVERSIGHT

remove and/or censor claims the CDC itself said were false.[264] Questions by Facebook to the CDC 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.[265] Crawford normally referred Facebook to CDC subject-matter experts or responded with the CDC's view on these scientific questions.[266]

(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.[267]

(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."[268] 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."[269] Crawford and the CDC followed up by providing written materials for Facebook to use.[270] The CDC eventually had a meeting with Facebook about VAERS-related misinformation and provided two experts for this issue.[271]

(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

[264] [Doc. No. 205-26 at 1–4]
[265] [Doc. No. 205-18]
[266] [Doc. No. 205-1 at 140]
[267] [Doc. No. 205-20 at 205–20]
[268] [Doc. No. 205-21]
[269] [Doc. No. 205-22]
[270] [Doc. No. 205-21]
[271] [Doc. No. 205-1 at 151–52]

AMERICAN OVERSIGHT

following the FDA's emergency use authorization ("EUA") related to the COVID-19 vaccine.[272] In addition to the EUA issue for children, Facebook identified other claims it sought clarity on regarding childhood vaccines and vaccine refusals.[273]

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.[274]

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);
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.[275] 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.[276]

(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

[272] [Doc. 205-23 at 1–2]
[273] [Id.]
[274] [Doc. No. 205–24]
[275] [Doc. No. 205-26 at 1]
[276] [Id. at 1–4]

AMERICAN OVERSIGHT

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."[277] According to Crawford, the previous Census project referred to the Census' work on combatting 2020 Census misinformation.[278]

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 employees, and six Google/YouTube officials.[279] 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. [280]

(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.[281] Crawford recalled that the Census was asking for regular meetings with platforms, specifically focused on misinformation.[282] 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."[283] 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.[284]

---

[277] [Doc. No. 205-28]
[278] [Doc. No. 205-1 at 175]
[279] [Doc. No. 214-22 Jones Dec. Exh. T] SEALED DOCUMENT
[280] [Id.] SEALED DOCUMENT
[281] [Doc. No. 205-1 at 179–82]
[282] [Doc. No. 205-1 at 184–85]
[283] [Doc. No. 205-1 at 180]
[284] [Id. at 181]

AMERICAN OVERSIGHT

(16) On May 10, 2021, Crawford emailed Facebook to establish "COVID BOLO" ("Be on The Lookout") meetings. Google and YouTube were included.[285] Crawford ran the BOLO meetings, and the Census Bureau official arranged the meetings and prepared the slide deck for each meeting.[286]

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.[287] 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.[288]

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 accumulate in ovaries causing fertility; that vaccines contain

[285] [Doc. No. 205-40]
[286] [Doc. No. 205-1 at 246, 265–66]
[287] [Doc. No. 214-23 at 4–5] SEALED DOCUMENT
[288] [Doc. No. 214-24 at 3–7] SEALED DOCUMENT

AMERICAN OVERSIGHT

microchips; and because of the risk of blood clots to vaccinated persons, airlines were discussing a ban. All were labeled as false.[289]

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.[290]

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.[291]

(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.[292]

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.[293]

On May 10, 2021, Crawford emailed Twitter to print out two areas of misinformation, which included copies of twelve tweets.[294] Crawford informed Twitter about 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

[289] [Doc. No. 214-25 at 2–7] SEALED DOCUMENT
[290] [Doc. No. 205-1 at 266]
[291] [Doc. No. 205-22]
[292] [Doc. No. 205-1 at 197, 205–33]
[293] [Doc. No. 205-33]
[294] [Doc. No. 205-34]

AMERICAN OVERSIGHT

response, Twitter stated that at least some of the examples had been "reviewed and actioned."[295] Crawford understood that she was flagging posts for Twitter for possible censorship.[296]

Twitter additionally offered to enroll CDC officials in its "Partner Support Portal" to provide expedited review of content flagged for censorship.[297] 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.[298] Census Bureau contractor Christopher Lewitzke ("Lewitzke") also requested to enroll in the Partner Support Portal.[299]

Crawford also sent Twitter a BOLO for the alleged misinterpretation of a CDC lab report.[300]

(18) Crawford testified in her deposition that the CDC has a strong interest in tracking what its constituents are saying on social media.[301] Crawford also expressed concern that if content were censored and removed from social-media platforms, government communicators would not know what the citizen's "true concerns" were.[302]

D. NIAID Defendants[303]

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.[304]

---

[295] [Id.]
[296] [Doc. No. 205-1 at 211]
[297] [Id. at 211–12]
[298] [Id. at 211–18]
[299] [Doc. No. 201-34 at 2]
[300] [Doc. No. 201-35]
[301] [Doc. No. 201-1 at 57–58]
[302] [Id. at 75]
[303] The NIAD Defendants consist of the National Institute of Allergy and Infectious Disease and Dr. Hugh Auchincloss ("Dr. Auchincloss").
[304] [Doc. No. 206]

AMERICAN OVERSIGHT

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.[305] Dr. Fauci retired December 31, 2022.

1. Lab-Leak Theory

Plaintiffs set forth arguments that because NIAID had funded "gain-of-function"[306] 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.[307]

(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 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.[308] 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."[309] 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

[305] [Doc. No. 206-1 at 10 (Deposition of Dr. Anthony S. Fauci)]
[306] "Gain-of-function" research involves creating a potentially dangerous virus in a laboratory.
[307] [Doc. No. 212-3 at 151–85]
[308] [Id. at 165]
[309] [Doc. No. 206-9 at 2]

AMERICAN OVERSIGHT

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."[310] 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.[311]

(2) On February 9, 2020, in a joint podcast with Dr. Peter Daszak of the Eco Health Alliance,[312] both Drs. Fauci and Daszak discredited the lab-leak theory, calling it a "conspiracy theory."[313]

(3) Three authors of "The Proximal Origins of SARS-CoV2," Robert Garry, Kristian Anderson, and Ian Lipkin, received grants from NIH in recent years.[314]

(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."[315]

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

[310] [Doc. No. 206-9 at 1]
[311] [Doc. No. 206-13 at 1, 7-8; 206-11 at 2–3; and 206–20]
[312] [Doc. No. 206-16 at 1]
[313] [Doc. No. 206-16 at 1; 206-17 at 1]
[314] [Doc. No. 214-30]
[315] [Doc. No. 206-27 at 3–4]

AMERICAN OVERSIGHT

with jump of a species from animal to a human."[316] "The Proximal Origin of SARS-CoV2" has since become one of the most widely read papers in the history of science.[317]

(5) Twitter and Facebook censored the lab-leak theory of COVID-19.[318] 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.[319]

(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."[320]

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.[321]

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."[322] The article purported to analyze 96,032 patients to compare persons who did and did not receive this treatment. The study concluded that hydroxychloroquine

[316] (Video of April 17, 2020, White House Coronavirus Task Force Briefing, at https://www.youtube.com/watch?v=brbArPX8=6I)
[317] [Doc. No. 214-30]
[318] [Doc. No. 206-32 at 1–2; Doc. No. 206-33 at 3]
[319] [Doc. No. 206-1 at 210]
[320] [Doc. No. 206-24 at 3]
[321] [Doc. No. 201-1 at 177]
[322] [Doc. No. 206-36 at 1]

AMERICAN OVERSIGHT

and chloroquine were associated with decreased in-hospital survival and an increased frequency of ventricular arrhythmias when used for treatment of COVID-19.[323]

Dr. Fauci publicly cited this study to claim that "hydroxychloroquine is not effective against coronavirus."[324] 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.[325]

(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,[326] Dr. Fauci made statements on Good Morning America[327] and on Andrea Mitchell Reports[328] 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.[329] Dr. Fauci does not deny that he or his staff at NIAID may have communicated with social-media platforms, but he does not specifically recall it.[330]

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

[323] [Id.]
[324] [Doc. No. 206-35 at 1]
[325] https://www.youtube.com/watch?v=RUNCSOQD2UE
[326] [Doc. No. 207-2 at 5]
[327] [Doc. No. 207-1 at 2]
[328] [Doc. No. 207-1 at 2–3]
[329] [Doc. No. 207-2 at 6]
[330] [Doc. No. 206-1 at 238]

AMERICAN OVERSIGHT

Oxford. The GBD is a one-page treatise opposing reliance on lockdowns and advocating for an approach to COVID-19 called "focused protection."[331] 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.[332]

(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.[333]

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."[334]

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."[335] Dr. Fauci consulted with Dr. Collins before he talked to the Washington Post.[336] Dr. Fauci also endorsed these comments in an email to Dr. Collins, stating "what you said was entirely correct."[337]

On October 15, 2020, Dr. Fauci called the GBD "nonsense" and "dangerous."[338] Dr. Fauci specifically stated, "Quite frankly that is nonsense, and anybody who knows anything about

---

[331] [Doc. No. 207-5 at 3]
[332] [Id.]
[333] [Doc. No. 207-6]
[334] [Doc. No. 207-7]
[335] [Doc. No. 207-9]
[336] [Doc. No. 206-1 at 272]
[337] [Doc. No. 207-10]
[338] [Doc. No. 207-11 at 1]

AMERICAN OVERSIGHT

epidemiology will tell you that is nonsense and very dangerous."[339] Dr. Fauci testified "it's possible that" he coordinated with Dr. Collins on his public statements attacking the GBD.[340]

(3) Social-media platforms began censoring the GBD shortly thereafter. In October 2020, Google de-boosted 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.[341] Reddit removed links to the GBD.[342] YouTube updated its terms of service regarding medical "misinformation," to prohibit content about vaccines that contradicted consensus from health authorities.[343] 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.[344] Dr. Fauci testified that he could not recall anything about his involvement in seeking to squelch the GBD.[345]

(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,"[346] Scott Prince of NIH responded, "Fake/Imposter handle. PLEASE REMOVE!!!"[347] 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

[339] [Id. at 3]
[340] [Doc. No. 206-1 at 279]
[341] [Doc. No. 207-12 at 4]
[342] [Id. at 4–5]
[343] [Doc. No. 207-13 at 4–5]
[344] [Doc. No. 207-15]
[345] [Doc. No. 206-1 at 251–52, 255–58]
[346] [Doc. No. 207-17 at 2]
[347] [Id.]

AMERICAN OVERSIGHT

occur again?"[348] Twitter replied, "We'll freeze this @handle and some other variations so no one can hop on them."[349]

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."[350] Both Lavelle and Routh are members of Dr. Fauci's communications staff.[351] Six of the eight accounts listed were removed by Facebook on the same day.[352]

(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.'"[353] 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.[354] Twitter disclosed that Dina Perry ("Perry"), a Public Affairs Specialist for NIAID, communicates or has communicated with Twitter about misinformation and censorship.[355]

(6) Dr. Fauci testified that he has never contacted a social-media company and asked them to remove misinformation from one of their platforms.[356]

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

[348] [Id. at 1]
[349] [Id.]
[350] [Doc. No. 207-19 at 3]
[351] [Doc. No. 206-1 at 308]
[352] [Doc. No. 207-19 at 3]
[353] [Doc. No. 207-20 at 1]
[354] [Id.]
[355] [Doc. No. 214-8 at 1]
[356] [Doc. No. 206-1 at 151]

AMERICAN OVERSIGHT

contribute to people refusing the vaccine or self-medicating."[357] The CDC responded the next day and advised Facebook that the claim that Ivermectin is effective in treating COVID is "NOT ACCURATE."[358] The CDC cited the NIH's treatment guidelines for authority that the claims were not accurate.[359]

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."[360] Dr. Fauci stated that, at that time, there were "no studies" on the efficacy of masking to stop the spread.[361] On March 31, 2020, Dr. Fauci forwarded studies showing that masking is ineffective.[362]

Plaintiffs allege that Dr. Fauci's position on masking changed dramatically on April 3, 2020, when he became an advocate for universal mask mandates.[363] Dr. Fauci testified his position changed in part because "evidence began accumulating that masks actually work in preventing acquisition and transmission,"[364] although Dr. Fauci could not identify those studies.[365]

[357] [Doc. No. 207-22 at 2]
[358] [Id. at 1]
[359] [Id.]
[360] [Doc. No. 206-1 at 314]
[361] [Id. at 316]
[362] [Id. at 318]
[363] [Id. at 317]
[364] [Id.]
[365] [Id. at 318]

AMERICAN OVERSIGHT

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.[366]

Dr. Fauci had previously sought to discredit Berenson publicly during an interview with CNN.[367] 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.[368]

E. FBI Defendants[369]

(1) The deposition of Elvis Chan ("Chan") was taken on November 29, 2021.[370] Chan is the Assistant Special Agent in charge of the Cyber Branch for the San Francisco Division of the FBI.[371] 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 squads, along with the FBI's private sector engagement squad, who relay information to social-media platforms.[372]

Chan graduated from the Naval Postgraduate School in 2020 with a M.A. in Homeland Security Studies.[373] 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."[374] His thesis focuses on information sharing between the FBI, Facebook,

[366] [Doc. No. 207-23 at 4]
[367] [Doc. No. 207-24 at 1–2]
[368] [Doc. No. 206-1 at 341–43]
[369] FBI Defendants include Elvis Chan ("Chan"), the Federal Bureau of Investigation ("FBI"), Lauren Dehmlow ("Dehmlow"), and the U.S. Department of Justice ("DOJ").
[370] [Doc. No. 204-1]
[371] [Id. at 8]
[372] [Id. at 105]
[373] [Id. at 10]
[374] [Doc. No. 204-2 at 1]

AMERICAN OVERSIGHT

Google, and Twitter.[375] Chan relied on research performed by persons and entities comprising the Election Integrity Partnership, including Graphika,[376] and DiResta of the Stanford Internet Observatory. Chan communicated directly with DiResta about Russian disinformation.[377]

Chan also knows Alex Stamos ("Stamos"), the head of the Stanford Internet Observatory, from when Stamos worked for Facebook.[378] Chan and Stamos worked together on "malign-foreign-influence activities, on Facebook."[379]

(2) Chan stated that the FBI engages in "information sharing" with social-media companies about content posted on their platforms, which includes both "strategic-level information" and "tactical information."[380]

(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."[381] 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.[382]

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.[383]

---

[375] [Id. at 18]
[376] [Doc. No. 204-1 at 145]
[377] [Doc. No. 204-1 at 51–52, 85]
[378] [Id. at 54]
[379] [Id at 55]
[380] [Id. at 16–19]
[381] [Id. at 18, 23–24]
[382] [Id. at 24, 171]
[383] [Id. at 24]

AMERICAN OVERSIGHT

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.[384] 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 overviews of things they were seeing from Russian actors.[385]

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.[386]

(4) Chan also hosted bilateral meetings between FBI and Facebook, Twitter, Google/YouTube, Yahoo!/Verizon, Microsoft/LinkedIn, Wikimedia Foundation and Reddit,[387] and the Foreign Influence Task Force.[388] In the Industry meetings, the FBI raised concerns about the possibility of "hack and dump" operations during the 2020 election cycle.[389] The bilateral meetings are continuing, occurring quarterly, but will increase to monthly and weekly nearer the elections.[390]

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.[391] These meetings began as early as 2017.[392] At the Industry

[384] [Id. at 25–26]
[385] [Id. at 156–57]
[386] [Id. at 285–86]
[387] [Id. at 23–24]
[388] [Id. at 39]
[389] [Id.]
[390] [Id. at 40]
[391] [Id. at 43–44]
[392] [Id. at 87–89]

AMERICAN OVERSIGHT

meetings, in addition to Chan and Laura Dehmlow ("Dehmlow"), head of the FITF, between three and ten FITF officials and as high as a dozen FBI agents are present.[393]

(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."[394]

(6) Discovery obtained from LinkedIn contained 121 pages of emails between Chan, other FBI officials, and LinkedIn officials.[395] Chan testified he has a similar set of communications with other social-media platforms.[396]

(7) The FBI communicated with social-media platforms using two alternative, encrypted channels, Signal and Teleporter.[397]

(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.[398]

(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.[399]

---

[393] [Id. at 109–10]
[394] [Id. at 151]
[395] [Doc. No. 204-3]
[396] Doc. No. 204-1 at 288]
[397] [Id. at 295–296]
[398] [Id. at 301]
[399] [Doc. No. 204-1 at 172, 232–34]

AMERICAN OVERSIGHT

Dehmlow also mentioned the possibility of "hack and dump" operations.[400] 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.[401]

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.[402] 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[403] because the FBI wanted to know what the companies would do if they received such materials.[404]

(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-operations" at the meetings between the FBI, other natural-security agencies, and social-media platforms.[405] 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

[400] [Id. at 175]
[401] [Id. at 177–78]
[402] [Id. at 205]
[403] [Id. at 206]
[404] [Id. at 249]
[405] [Doc. No. 204-5, ¶¶ 10-11, at 2–3]

AMERICAN OVERSIGHT

> were discussed through 2020. *I also learned in these meetings that there were rumors that a hack-and-leak operation would involve Hunter Biden.*[406]

Chan testified that, in his recollection, Hunter Biden was not referred to in any of the CISA Industry meetings.[407] 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 about Hunter Biden's laptop was not Russian disinformation.[408]

In Scully's deposition,[409] he did not dispute Roth's version of events.[410]

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.[411]

(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.[412]

The Hunter Biden laptop story was censored on social media, including Facebook and Twitter.[413] 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

---

[406] (emphasis added)
[407] [Doc. No. 204-1 at 213, 227–28].
[408] [Doc. No. 106-3 at 5–11]
[409] [Doc. No. 209]
[410] [Id. at 247]
[411] [Doc. 204-6 at 56]
[412] [Doc. No. 204-1 at 215]
[413] [Doc. No. Doc 204-5 at ¶ 17]

AMERICAN OVERSIGHT

the previous tweet.[414] Further, Facebook began reducing the story's distribution on the platform pending a third-party fact-check.[415]

(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.[416] 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.[417] 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.[418] Additionally, Chan admits that during the 2020 election cycle, the United States Government engaged in information sharing with social-media companies.[419] The FBI also shared "indicators" with state and local government officials.[420]

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.[421]

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

[414] [Id.]
[415] [Doc. No. 204-6 at 2]
[416] [Doc. No. 204-2 at 3]
[417] [Id.]
[418] [Id. at 32–33]
[419] [Id. at 19]
[420] [Id. at 50]
[421] [Id.]

AMERICAN OVERSIGHT

American users on that site.[422] The FBI identified this site to the social-media companies that took action to suppress it.[423]

(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.[424] The FBI made no attempt to distinguish whether those reports of election disinformation were American or foreign.[425]

Chan testified the FBI had about a 50% success rate in having alleged election disinformation taken down or censored by social-media platforms.[426] 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[427] and what their terms of service were.[428]

(14) Chan further testified the FBI identifies specific social-media accounts and URLs to be evaluated "one to five times a month"[429] and at quarterly meetings.[430] 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.[431] The emails would contain "different types of indicators," including specific

[422] [Id. at 144–46]
[423] [Doc. No. 204-1 at 141-43]
[424] [Id. at 162]
[425] [Id. at 163]
[426] [Id. at 167]
[427] [Id. at 88]
[428] [Id. at 92]
[429] [Id. at 96]
[430] [Id. at 98]
[431] [Id.]

AMERICAN OVERSIGHT

social-media accounts, websites, URLs, email accounts, and the like, that the FBI wanted the platforms to evaluate under their content-moderation policies.[432]

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.[433] 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.[434]

(15) At least eight FBI agents at the San Francisco office, including Chan, are involved in reporting disinformation to social-media platforms.[435] In addition to 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.[436]

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.[437]

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.[438] However, Plaintiffs identified tweets and trends on Twitter, such as #ReleasetheMemo in 2019, and indicated that 929,000 tweets were political speech by American citizens.[439]

---

[432] [Id. at 99]
[433] [Id. at 100–01]
[434] [Id. at 102–03]
[435] [Id. at 105–08]
[436] [Id. at 108]
[437] [Id. at 111–12]
[438] [Id. at 112]
[439] [Doc. No. 204-2 at 71]

AMERICAN OVERSIGHT

(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.[440] 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.[441] Chan also stated that congressional hearings placed pressure on the social-media platforms.[442]

Chan further testified that Congressional staffers have had meetings with Facebook, Google/YouTube, and Twitter and have discussed potential legislation.[443] Chan spoke directly with Roth of Twitter, Steven Slagle of Facebook, and Richard Salgado of Google, all of whom participated in such meetings.[444]

(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.[445]

(18) Chan testified that the FBI is continuing its efforts to report disinformation to social-media companies to evaluate for suppression and/or censorship.[446] "Post-2020, we've never stopped…as soon as November 3 happened in 2020, we just pretty much rolled into preparing for 2022."[447]

[440] [Id. at 115–16]
[441] [Id. at 116]
[442] [Id. at 117–18]
[443] [Id. at 118]
[444] [Id. at 123–26]
[445] [Id. at 133–34, 149–50]
[446] [Doc. No. 204-8 at 2–3]
[447] [Doc. No. 204-8 at 2]

AMERICAN OVERSIGHT

E. CISA Defendants[448]

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").[449] 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.[450] Both Scully and Protentis have done extended detail at the National Security Council, where they work on misinformation and disinformation issues.[451]

(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 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.[452]

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.[453] Scully further testified he decided in late April or early May 2022 not to perform switchboarding in 2022.

---

[448] 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").
[449] [Doc. No. 209-1 at 12]
[450] [Id. at 18–20]
[451] [Id. at 19]
[452] [Id. at 16–17]
[453] [Id. at 17]

AMERICAN OVERSIGHT

However, the CISA website states the MDM Team serves as a "switchboard for routing disinformation concerns to social-media platforms."[454] The switchboarding activities began in 2018.[455]

(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.[456] 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.[457]

(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 were monthly but increased to biweekly in October 2022.[458]

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.[459] Wyman, Snell, and Protentis also participate in the meetings on behalf of CISA.[460] On behalf of the FBI, FITF Chief Dehmlow, Chan, and others from different parts of the FBI participate.[461]

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

[454] [Doc. No. 209-19 at 3]
[455] [Id.]
[456] [Doc. No. 209-1 at 21]
[457] [Id.]
[458] [Id. at 24]
[459] [Id. at 25]
[460] [Id. at 28]
[461] [Id. at 29]

AMERICAN OVERSIGHT

federal agencies.[462] The social-media platforms attending the industry meetings include Facebook, Twitter, Microsoft, Google/YouTube, Reddit, LinkedIn, and sometimes the Wikipedia Foundation.[463] 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.[464] Scully testified that the specific discussion of foreign-originating information is ultimately targeted at preventing domestic actors from engaging in this information.[465]

(5) CISA has established relationships with researchers at Stanford University, the University of Washington, and Graphika.[466] All three are involved in the Election Integrity Partnership ("EIP").[467]

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.[468] The "gap"

[462] [Id. at 36–37]
[463] [Id. at 39]
[464] [Id. at 39–41]
[465] [Id. at 41]
[466] [Id. at 46, 48]
[467] [Id. at 48]
[468] [Id. at 49–52]

AMERICAN OVERSIGHT

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.[469]

(6) The EIP continued to operate during the 2022 election cycle. At the beginning of the election cycle, the EIP gave Scully and Hale, on behalf of CISA, a briefing in May or June of 2022.[470] 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.[471]

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."[472] CISA connected the CIS with the EIP because the EIP was working on the same mission,[473] 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.[474]

---

[469] [Id. at 57]
[470] [Id. at 53–54]
[471] [Id. at 59–61]
[472] [Id. at 61–62]
[473] [Id. at 62–63]
[474] [Id. at 63–64]

AMERICAN OVERSIGHT

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.[475] When CISA reported misinformation to social-media platforms, CISA would generally copy the CIS, who, as stated above, was coordinating with the EIP.[476]

(9) Stamos and DiResta of the Stanford Internet Observatory briefed Scully about the EIP report, "The Long Fuse,"[477] 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.[478] Stamos identified the EIP's "partners in government" as CISA, DHS, and state and local officials.[479] Also, according to Stamos, the EIP targeted "large following political partisans who were spreading misinformation intentionally."[480]

(10) CISA's Masterson was also involved in communicating with the EIP.[481] Masterson and Scully 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.[482]

---

[475] [Id. at 63–66]
[476] [Id. at 67–68]
[477] [Doc. 209-2]
[478] [Doc. No. 209-1, at 72, 361; Doc. No. 212-36 at 4 (Jones Deposition-SEALED DOCUMENT)]
[479] [Doc. No. 209-4 at 4]
[480] [Scully depo. Exh. at 17]
[481] [Doc. No. 209-1 at 76]
[482] [Id. at 88–89]

AMERICAN OVERSIGHT

(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.[483] CISA shared information with the EIP and the CIS.[484]

(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.[485]

(13) The Virality Project was created by the Stanford Internet Observatory to mimic the EIP for COVID.[486] 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.[487] Scully also had conversations with DiResta about the Virality Project.[488] DiResta noted the Virality Project was established on the heels of the EIP, following its success in order to support government health officials' efforts to combat misinformation targeting COVID-19 vaccines.[489]

(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.[490]

(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.[491] Scully asked the social-media platforms to report back on how they were handling reports of misinformation and

---

[483] [Id. at 119–20]
[484] [Id. at 120–21]
[485] [Id. at 122–23]
[486] [Id. at 134]
[487] [Id. at 134–36]
[488] [Id. at 139]
[489] [Doc. No. 209-5 at 7]
[490] [Id. at 4]
[491] [Doc. No. 209-1 at 159]

AMERICAN OVERSIGHT

disinformation received from CISA.[492] CISA maintained a "tracking spreadsheet" of its misinformation reports to social-media platforms during the 2020 election cycle.[493]

(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 and working for the Stanford Internet Observatory, which was the operating the EIP.[494] Therefore, Zaheer and Lowary were simultaneously engaged in reporting misinformation to social-media platforms on behalf of both CISA and the EIP.[495] Zaheer and Lowary were also two of the four Stanford interns who came up with the idea for the EIP.[496]

(17) The CISA switchboarding operation ramped up as the election drew near. Those working on the switchboarding operation worked tirelessly on election night.[497] They would also "monitor their phones" for disinformation reports even during off hours so that they could forward disinformation to the social-media platforms.[498]

(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."[499]

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

[492] [Doc. No. 209-6 at 11]
[493] [Doc. No. 209-1 at 165–66]
[494] [Id. at 166–68, 183]
[495] [Id.]
[496] [Id. at 171, 184–85]
[497] [Id. at 174–75]
[498] [Id. at 75]
[499] [Doc. No. 209-6 at 61–62]

AMERICAN OVERSIGHT

to review under their policies.[500] One of these reports was reported to Twitter for censorship because EIP "saw an article on the Gateway Pundit" run by Plaintiff Jim Hoft.[501]

(19) Scully admitted that CISA engaged in "informal fact checking" to determine whether a claim was true or not.[502] 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.[503]

(20) CISA's switchboarding activities reported private and public postings.[504] Social-media platforms responded swiftly to CISA's reports of misinformation.[505]

(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.[506] CISA also had bilateral meetings between CISA and the social-media companies.[507]

(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.[508] However, several emails confirm that "hack and leak" operations were on the agenda for the Industry meeting on September 15, 2020,[509] and July 15, 2020.[510]

---

[500] [Doc. No. 214-35 at 5–6, Column C]
[501] [Id. at 4–5, Column F, Line 94]
[502] CISA also became the "ministry of truth."
[503] [Doc. No. 209-1 at 220–22]
[504] [Doc. No. 209-7 at 45–46]
[505] [Doc. No. 209-1 at 291–94; 209–49]
[506] [Doc. No. 209-9 at 38–40]
[507] [Doc. No. 209-1 at 241]
[508] [Id. at 236–37]
[509] [Doc. No. 209-13 at 1]
[510] [Doc. No. 209-14 at 16]

AMERICAN OVERSIGHT

(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[511] that could then be shared with election officials—and which also included "steps for flagging or escalating MDM content" and how to report misinformation.[512] Protentis referred to the working group (which included Facebook and CISA's Hale) as "Team CISA."[513]

(24) The Center for Internet Security continued to report misinformation to social-media platforms during the 2022 election cycle.[514]

(25) CISA has teamed up directly with the State Department's Global Engagement Center ("GEC") to seek review of social-media content.[515] CISA also flagged for review parody and joke accounts.[516] Social-media platforms report to CISA when they update their content-moderation policies to make them more restrictive.[517] CISA publicly stated that it is expanding its efforts to fight disinformation-hacking in the 2024 election cycle.[518]

(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 COV ID-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.[519]

[511] [Doc. No. 209-14]
[512] [Doc. No. 209-15 at 41, 44–45]
[513] [Doc. No. 209-15 at 39]
[514] [Doc. No. 209-1 at 266]
[515] [Doc. No. 209-15 at 1–2]
[516] [Id. at 11–12]
[517] [Id. at 9]
[518] [Doc. No. 209-20 at 1–2]
[519] [Doc. No. 209-23 at 1–4]

AMERICAN OVERSIGHT

(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.[520]

(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."[521] 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."[522]

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.'"[523] 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.[524]

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."[525]

[520] [Doc. No. 209-1 at 323–25]
[521] [Doc. No. 209-1 at 335–36]
[522] [Doc. No. 209-18 at 1–2]
[523] [Id.]
[524] [Doc. No. 209-1 at 341]
[525] [Doc. No. 209-25 at 1]

AMERICAN OVERSIGHT

(29) In September 2022, the CIS was working on a "portal" for government officials to report election-related misinformation to social-media platforms.[526] That work continues today.[527]

F. State Department Defendants[528]

1. The GEC

(1) Daniel Kimmage is the Principal Deputy Coordinator of the State Department's Global Engagement Center ("GEC").[529] The GEC's front office and senior leadership meets with social-media platforms every few months, sometimes quarterly.[530] 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.[531] Additionally, GEC has a "Technology Engagement Team" ("TET") that also meets with social-media companies. The TET meets more frequently than the GEC.[532]

(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.[533] 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.[534]

---

[526] [Doc. No. 210-22]
[527] [Id.]
[528] The State Department Defendants consist of the United States Department of State, Leah Bray ("Bray"), Daniel Kimmage ("Kimmage'), and Alex Frisbie ("Frisbie").
[529] Kimmage's deposition was taken and filed as [Doc. No. 208-1].
[530] [Doc. No. 208-1 at 29, 32]
[531] [Id. at 30]
[532] [Id. at 37]
[533] [Id. at 130–31]
[534] [Id. at 133–36]

AMERICAN OVERSIGHT

(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.[535]

(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.[536]

(5) The GEC also coordinated with CISA and the EIP. Kimmage testified that the GEC had a "general engagement" with the EIP.[537]

(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.[538] Specifically, he stated, "We have something called the Global Engagement Center that's working on this every single day."[539]

(7) Like CISA, the GEC works through the CISA-funded EI-ISAC and works closely with the Stanford Internet Observatory and the Virality Project.

---

[535] [Id. at 141–43]
[536] [Id. at 159–60]
[537] [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.
[538] [Doc. No. 208-17 at 5]
[539] [Id.]

AMERICAN OVERSIGHT

2. The EIP

(8) The EIP is partially-funded by the United States National Science Foundation through grants.[540] Like 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.[541]

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.[542]

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.[543]

(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,[544] including accounts belonging to media outlets, social-media influencers, and political figures.[545] 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.[546]

---

[540] [Id. at 17]
[541] [Doc. No. 209-5 at 4]
[542] [Doc. No. 209-5, Exh. 1; Ex. 4 at 7, Audio Tr. 4]
[543] [Doc. No. 209-2 at 30]
[544] [Id. at 11]
[545] [Id. at 12]
[546] [Id. at 14]

AMERICAN OVERSIGHT

The EIP was formed on July 26, 2020, 100 days before the November 2020 election.[547] 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.[548]

(10) EIP's managers both report misinformation to platforms and communicate with government partners about their misinformation reports.[549] 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.[550]

(11) Social-media platforms that participated in the EIP were Facebook, Instagram, Google/YouTube, Twitter, TikTok, Reddit, Nextdoor, Discord, and Pinterest.[551]

(12) In the 2020 election cycle, the EIP processed 639 "tickets," 72% of which were related to delegitimizing the election results.[552] Overall, social-media platforms took action on 35% of the URLs reported to them.[553] One "ticket" could include an entire idea or narrative and was not always just one post.[554] Less than 1% of the tickets related to "foreign interference."[555]

(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

[547] [Id. at 20]
[548] [Id.]
[549] [Id. at 27–28]
[550] [Id. at 28]
[551] [Id. at 35]
[552] [Id. at 45]
[553] [Id. at 58]
[554] [Id. at 27]
[555] [Id. at 53]

AMERICAN OVERSIGHT

not say that the information was false.[556] The EIP Report cites The Gateway Pundit forty-seven times.[557]

(14) The GEC was engaging with the EIP and submitted "tickets."[558]

(15) The tickets and URLs encompassed millions of social-media posts, with almost twenty-two million posts on Twitter alone.[559] The EIP sometimes treats as "misinformation" truthful reports that the EIP believes "lack broader context."[560]

(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."[561] 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 or right-wing political views and support of President Trump."[562] 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.[563] The Gateway Pundit ranked above Donald Trump, Eric Trump, Breitbart News, and Sean Hannity.[564]

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.[565] The Gateway Pundit ranked above Fox News, the New York Post, the New York Times, and the

[556] [Id. at 51]
[557] [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]
[558] [Id. at 60]
[559] [Id. at 201]
[560] [Id. at 202]
[561] [Id. at 204–05]
[562] [Id. at 204–05]
[563] [Id.]
[564] [Id. at 246]
[565] [Id. at 207]

AMERICAN OVERSIGHT

Washington Post.[566] The EIP report also notes that Twitter suspended The Gateway Pundit's account on February 6, 2021, and it was later de-platformed entirely.[567]

(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.'"[568] The EIP was not targeting foreign disinformation, but rather "domestic speakers."[569] The EIP also indicated it would continue its work in future elections.[570]

(18) The EIP also called for expansive censorship of social-media speech into other areas such as "public health."[571]

(19) The EIP stated that it "united government, academic, civil society, and industry, analyzing across platforms to address misinformation in real time."[572]

(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."[573]

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

[566] [Id.]
[567] [Id. at 224]
[568] [Id. at 229]
[569] [Id. at 243–44]
[570] [Id. at 243–44]
[571] [Id. at 251]
[572] [Id. at 259]
[573] [Doc. No. 276-1 at 12]

AMERICAN OVERSIGHT

> is being driven by people who are verified that are Americans who are using their real identities.[574]

(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.[575]

3. The Virality Project

(22) The Virality Project targeted domestic speakers' alleged disinformation relating to the COVID-19 vaccines.[576] The Virality Project's final report, dated April 26, 2022, lists DiResta as principal Executive Director and lists Starbird and Masterson as contributors.[577]

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."[578]

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."[579] The Virality Project also calls for more aggressive censorship of COVID-19 misinformation, calls for more federal agencies to

---

[574] [Id.]
[575] [Doc. No. 276-1 at 42]
[576] [Doc. No. 209-3]; Memes, Magnets, Microchips, Narrative Dynamics Around COVID-19 Vaccines.
[577] [Doc. No. 209-3 at 4]
[578] [Id. at 9]
[579] [Id.]

AMERICAN OVERSIGHT

be involved through "cross-agency collaboration,"[580] and calls for a "whole-of-society response."[581] Just like the EIP, the Virality Project states that it is "multistakeholder collaboration" that includes "government entities" among its key stakeholders.[582] The Virality Project targets tactics that are not necessarily false, including hard-to-verify content, alleged authorization sources, organized outrage, and sensationalized/misleading headlines.[583]

(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-person gatherings to oppose mask and vaccine mandates in Louisiana.[584]

(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."[585]

(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."[586]

(26) The Virality Project flagged the following persons and/or organizations as spreaders of misinformation:

i. Jill Hines and Health Freedom of Louisiana;[587]
ii. One America News;[588]

[580] [Id. at 12]
[581] [Id.]
[582] [Id. at 17]
[583] [Id. at 19]
[584] [Id. at 9, 19]
[585] [Id. at 24]
[586] [Id. at 37]
[587] [Id. at 59]
[588] [Id. at 60]

AMERICAN OVERSIGHT

iii. Breitbart News;[589]
iv. Alex Berenson;[590]
v. Tucker Carlson;[591]
vi. Fox News;[592]
vii. Candace Owens;[593]
viii. The Daily Wire;[594]
ix. Robert F. Kennedy, Jr.;[595]
x. Dr. Simone Gold and America's Frontline Doctors; and[596]
xi. Dr. Joyce Mercula.[597]

(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.[598]

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 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

[589] [Id.]
[590] [Id. at 54, 57, 49, 50]
[591] [Id. at 57]
[592] [Id. at 91]
[593] [Id. at 86, 92]
[594] [Id.]
[595] [Id.]
[596] [Id. at 87–88]
[597] [Id. at 87]
[598] [Id. at 150]

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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,[599] 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*

[599] 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).

AMERICAN OVERSIGHT

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 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);

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.*

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.[600] 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 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"[601] of social-media companies.[602] 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

[600] [Doc. No. 288 at 164–65]
[601] 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.
[602] [Doc. No. 10-1 at 377–78]

AMERICAN OVERSIGHT

because some of the things the social-media-companies told him were inconsistent with what others told him, 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."[603]

(b) Accused Facebook of causing "political violence" by failing to censor false COVID-19 claims.[604]

(c) "You are hiding the ball."[605]

(d) "Internally we have been considering our options on what to do about it."[606]

(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."[607]

(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."[608]

(g) Questioning how the Tucker Carlson video had been "demoted" since there were 40,000 shares.[609]

(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.[610] "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."'[611]

---

[603] [II. A.]
[604] [Id. A. (5)]
[605] [Id. A. (10)]
[606] [Id.]
[607] [Id. A. (11)]
[608] [Id. A. (12)]
[609] [Id. A. (15)]
[610] [Id. A. (16)]
[611] [Id. A. (17)]

AMERICAN OVERSIGHT

(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."[612]

(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?"[613]

(k) Flaherty told Facebook: "Are you guys fucking serious" I want an answer on what happened here and I want it today."[614]

(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."[615]

(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."[616]

(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."[617]

(o) Psaki stated at the February 1, 2022, White House Press Conference that the White House wanted every social-media platform to do more to call out misinformation and disinformation and to uplift accurate information.[618]

(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"[619]

(q) "How many times can someone show false COVID-19 claims before being removed?"

---

[612] [Id.]
[613] [Id at A. (19)]
[614] [Id.]
[615] [Id.]
[616] [Id.]
[617] [Id.]
[618] [Id. at A. (24)]
[619] [Doc. No. 174-1 at 1]

AMERICAN OVERSIGHT

(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."[620]

(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."[621]

(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."[622]

(u) "Seems like your 'dedicated vaccine hesitancy' policy isn't stopping the disinfo dozen." [623]

(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."[624]

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

[620] [Id. at 11]
[621] [Id.]
[622] [Doc. No. 174-1 at 17–20]
[623] [Id. at 41]
[624] [Doc. No. 10-1 at 477–78]

AMERICAN OVERSIGHT

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 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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

(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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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[625] 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.

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

AMERICAN OVERSIGHT

In opposition, Defendants assert that the FBI Defendants' specific job duties relate to foreign influence 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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

(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

AMERICAN OVERSIGHT

cycle and has no intention to engage in switchboarding for the next election.[626] 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 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.[627] 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-

[626] 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]
[627] Google English Dictionary

AMERICAN OVERSIGHT

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 media."[628] 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

[628] [Doc. No. 209-5 at 4]

AMERICAN OVERSIGHT

("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 in government." The CIS coordinated with EIP regarding online misinformation. The EIP publication, "The Long Fuse,"[629] states the EIP has a focus on election misinformation originating from "domestic" sources across the United States.[630] 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."[631] 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."[632] The Government was listed as one of EIP's Four Major Stakeholder Groups, which included CISA, the GEC, and ISAC.[633]

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

[629] [Doc. No. 209-2]
[630] [Id. at 9]
[631] [Id. at 12]
[632] [Id. at 20–21]
[633] [Id. at 30]

AMERICAN OVERSIGHT

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 companies. Lowary identified himself as "working for CISA" on the emails.[634]

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 Defendants. For many of the same reasons the Court reached its conclusion as to the CISA Defendants, the State Department

[634] [Doc. No. 227-2 at 15, 23, 42, 65 & 78]

AMERICAN OVERSIGHT

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.[635] 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.

(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

[635] [Doc. No. 209-5 at 4]

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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." Ra*wson 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.[636]

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

[636] It is not necessary to repeat the details discussed in the "significant encouragement" analysis in order to find Plaintiffs have met their initial burden.

AMERICAN OVERSIGHT

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.

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

(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

AMERICAN OVERSIGHT

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.[637] 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.[638] The Court will first address whether the Plaintiff States are likely to prove an injury-in-fact. Then 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,[639] 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.[640] 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

[637] *See* [Doc. No. 214, at 66]
[638] *See* [Doc. No. 266, at 151]
[639] [Doc. No. 128]
[640] [Doc. No. 224, at 20–33]

AMERICAN OVERSIGHT

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 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.

AMERICAN OVERSIGHT

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.[641] The Complaint provides 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

[641] *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 Facebook pages have faced increasing censorship penalties and that the latter pages were de-platformed completely), etc.]

AMERICAN OVERSIGHT

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]."[642] 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. 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

[642] [Doc. No. 266, at 151]

AMERICAN OVERSIGHT

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.[643] 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.[644] Moreover, a Louisiana state legislator experienced censorship on Facebook when he posted content addressing the vaccination of children against COVID-19.[645] 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.[646] 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.

[643] [Doc. No. 214-1, at ¶¶1428–1430]
[644] [Id. at ¶1428]
[645] [Id. at ¶1429]
[646] [Id. at ¶ 1430]

AMERICAN OVERSIGHT

Accordingly, for the reasons stated above and explained in this Court's ruling on the Motion to Dismiss,[647] 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-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

[647] [Doc. No. 214, at 20–33]

AMERICAN OVERSIGHT

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.[648] Similarly, Kulldorff attests to a coordinated federal censorship campaign against the Great Barrington Declaration, which implies future censorship.[649] Kulldorff's ongoing censorship experiences on his personal social-media accounts provide evidence of ongoing harm and support the expectation of imminent future harm.[650] Kheriaty also affirms ongoing and anticipated future injuries, noting that the issue of "shadow banning" his social-media posts has intensified since 2022.[651]

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.[652] Hines, too, recounts past and ongoing censorship injuries, stating that her personal Facebook page, as well as the pages

---

[648] *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)]

[649] *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)]

[650] [Id.]

[651] [Id. at ¶¶1383–1386]

[652] *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)]

AMERICAN OVERSIGHT

of Health Freedom Louisiana and Reopen Louisiana, are constantly at risk of being completely de-platformed.[653] 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. Traceability

To establish traceability, or "causation" in this context, a plaintiff must demonstrate a "direct relation between the injury asserted and the injurious conduct 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'

[653] *See* [Id. at ¶¶1397–1411]

AMERICAN OVERSIGHT

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.[654] In support, they cite the above-mentioned examples of switchboarding and other pressure tactics employed by Defendants.[655] In response, Defendants 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.[656] 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

---

[654] [Doc. No. 204, at 67–68]

[655] [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 scrambled to get back into the White House's good graces. Id. ¶¶ 172, 224 (pleading for "de-escalation" and "working together").")]

[656] [Doc. No. 266, at 131–136]

AMERICAN OVERSIGHT

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 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.[657] A drastic increase in censorship, deboosting, shadow-banning, and account suspensions directly coincided with Defendants' public calls for censorship and private demands for

[657] *See* [Doc. No. 204, at 41-44 (where this Court distinguished this case from cases that "left gaps" in the pleadings)]

AMERICAN OVERSIGHT

censorship.[658] 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.[659] In the wake of COVID-19 and the 2020 election, the threats intensified and became more direct.[660] Around this same time, Defendants began having extensive contact with social-media companies via emails, phone calls, and in-person meetings.[661] 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 between Defendants and social-media companies.[662] 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

---

[658] *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)]

[659] [Doc. No. 214-1, ¶1]

[660] *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)]

[661] *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)]

[662] *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.]

AMERICAN OVERSIGHT

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.[663]

For the reasons stated above, as well as those set forth in this Court's previous ruling on the Motion to Dismiss,[664] 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).

---

[663] 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 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).

[664] [Doc. No. 204, at 67–71]

AMERICAN OVERSIGHT

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.[665] 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.[666] 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,[667] 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,[668] and the individual Plaintiffs joined on August 2, 2022.[669] 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.[670] Specifically, 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]."[671] The CDC also remained in collaboration with Facebook in June of 2022 and even delayed implementing policy changes

[665] [Doc. No. 214, at 71–74]
[666] [Doc. No. 266, at 152–157]
[667] [Doc. No. 204, at 62–65]
[668] [Doc. No. 1]
[669] [Doc. No. 45]
[670] [Doc. No. 214-1, at ¶425]
[671] [Id.]

AMERICAN OVERSIGHT

"until [it got] the final word from [the CDC]."[672] 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."[673]

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.[674] As of August 12, 2022, Easterly was directing the "mission of Rumor Control" for the 2022 midterm elections,[675] and CISA candidly reported to be "bee[fing] up [its] efforts to fight falsehoods[]" in preparation for the 2024 election cycle.[676] Chan of the FBI also testified at his deposition that online disinformation continues to be 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.[677] 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.

---

[672] [Doc. Nos. 71-7, at 6; 214-1, ¶424]
[673] [Doc. Nos. 71-7, at 6; 71-3, at 5; 214-1, ¶¶424–425]
[674] [Doc. No. 71-8, at 2; Doc. 86-7, at 14]
[675] [Doc. No. 86-7, at 14]
[676] [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."]
[677] [Id. at ¶ 866]

AMERICAN OVERSIGHT

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 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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.[678] 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."[679] 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

[678] [Doc. 289, at 2].
[679] [Doc. 224, at 215–26], *quoting Kentucky v. Biden*, 23 F.4th 585, 598 (6th Cir. 2022).

AMERICAN OVERSIGHT

thousands 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.[680] 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.[681] 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 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

[680] *See, e.g.*, [Doc. 214-1, ¶¶ 1427–1442]
[681] [Doc. 289, at 3] *quoting Haaland*, 2023 WL 4002951, at *19.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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[682] and third-party subpoena requests that were submitted to five social-media platforms on or about July 19, 2022.[683] The original Complaint[684] 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,[685] 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

[682] [Doc. No. 34]
[683] [Doc. No. 37]
[684] [Doc. No. 1]
[685] Plaintiffs allege actions occurring as far back as 2020.

AMERICAN OVERSIGHT

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 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

AMERICAN OVERSIGHT

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.[686]

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;[687] in fact, Chan testified post 2020, "we've never stopped."[688] Notably, 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,

[686] [Doc. No. 204-1 at 40]
[687] [Doc. No. 208 at 122]
[688] [Chan depo. at 8–9]

AMERICAN OVERSIGHT

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.[689]

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,[690] parody speech,[691] calling the President a liar,[692] climate change,[693] gender,[694] and abortion.[695] 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 specific individuals over and over to spread disinformation."[696]

The Complaint (and its amendments) shows numerous allegations of apparent future harm. Plaintiff Bhattacharya alleges ongoing social-media censorship.[697] Plaintiff Kulldorff alleges an ongoing campaign of censorship against the GBD and his personal social-media accounts.[698] Plaintiff Kheriaty also alleges ongoing and expected future censorship,[699] noting "shadow-banning" his social-media account is increasing and has intensified since 2022.[700] Plaintiffs Hoft

[689] [Doc. No. 209-23 at 4]
[690] [Doc. No. 212-3 at 65–66, ¶ 211]
[691] [Id. at 58-60, ¶¶ 180–188]
[692] [Id. at 61, ¶ 190]
[693] [Id. at 63-64, ¶¶ 200–203]
[694] [Id. at 64-64, ¶¶ 204–208]
[695] [Id. at 65, ¶¶ 209–210]
[696] [Doc. No. 214-15]
[697] [Doc. No. 45-3, ¶¶ 15–33]
[698] [Doc. No. 45-4, ¶¶ 14–16]
[699] [Doc. No. 45-7, ¶¶ 12–18]
[700] [Id. at ¶¶ 15]

AMERICAN OVERSIGHT

and Hines also allege ongoing and expected future censorship injuries.[701] 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. 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. *Sierra 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

[701] [Doc. No. 45-7 at ¶¶ 12–18]; [Doc. No. 84 at ¶¶ 401–420]; [Doc. No. 45-12 at ¶ 4, 12]

AMERICAN OVERSIGHT

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."[702] Plaintiffs

[702] [Doc. No. 268 at ¶489].

AMERICAN OVERSIGHT

go on to describe the two proposed classes, as well as state generally that each requirement for class certification is met.[703] Defendants opposed Plaintiffs' request for class certification in their Response to Plaintiffs' Motion for Class Certification and for Leave to File Third Amended Complaint.[704]

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:
> (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;
> (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).

---

[703] [Id. at ¶¶490–501].
[704] [Doc. No. 244].

AMERICAN OVERSIGHT

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):

AMERICAN OVERSIGHT

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.[705]

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.[706]

"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

[705] [Doc. No. 268 at ¶490]
[706] [Id. at ¶491]

AMERICAN OVERSIGHT

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 action using these definitions.[707] 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.[708] 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."[709] 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.

[707] [Doc. No. 244 at 7]
[708] Hearing Transcript at 181, line 15.
[709] [Id. at lines 16–18]

AMERICAN OVERSIGHT

Without a feasible class definition, the Court cannot certify Plaintiffs' proposed class action. Out of an 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."[710] Plaintiffs reference the "content of hundreds of users with, collectively, hundreds of thousands or millions of followers" who were affected by Defendants' alleged censorship.[711] 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 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

[710] [Doc. No. 268 at ¶¶492–93]
[711] [Id. at ¶¶492]

AMERICAN OVERSIGHT

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.[712] 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 whose resolution are going to determine whether or not there's a First Amendment violation."[713] 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.[714] The difficulty of providing "a single,

[712] [Id. at ¶¶494–95]
[713] Hearing Transcript, at 183, lines 19–21.
[714] [Doc. No. 244 at 10]

AMERICAN OVERSIGHT

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.[715] 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."[716] Further, Plaintiffs state that 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."[717]

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.[718] 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,

[715] [Id. at 13]
[716] [Doc. No. 268 at ¶496–97]
[717] [Id.]
[718] [Id. at ¶491]

AMERICAN OVERSIGHT

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 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."[719] Plaintiff also state that "[n]o conflicts of interest currently exist or are likely to develop" between themselves and the absentees.[720] 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

[719] [Id. at ¶498]
[720] [Id.]

AMERICAN OVERSIGHT

> 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; 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."[721]

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

[721] 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.

AMERICAN OVERSIGHT

herein. The Plaintiffs Motion for 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.

TERRY A. DOUGHTY
UNITED STATES DISTRICT JUDGE

AMERICAN OVERSIGHT

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

BRIEF FOR THE PETITIONERS

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
BRIAN H. FLETCHER
Deputy Solicitor General
SOPAN JOSHI
Assistant to the Solicitor General
DANIEL TENNY
DANIEL WINIK
SIMON C. BREWER
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

AMERICAN OVERSIGHT

QUESTIONS PRESENTED

Respondents are two States and five individual users of social-media platforms who allege that the federal government transformed the private platforms' content-moderation decisions into state action and violated the First Amendment by communicating with the platforms about content moderation and responding to the platforms' inquiries about matters of public health. The district court issued a preliminary injunction that, as modified by the court of appeals, restricts speech by thousands of federal officials and employees concerning any content posted by anyone on any social-media platform. The questions presented are:

1. Whether respondents have Article III standing.

2. Whether the government's challenged conduct transformed private social-media companies' content-moderation decisions into state action and violated respondents' First Amendment rights.

3. Whether the terms and breadth of the preliminary injunction are proper.

AMERICAN OVERSIGHT

MO-AG-24-0028-A-002316

PARTIES TO THE PROCEEDING

Petitioners (defendants-appellants below) are Surgeon General Vivek H. Murthy and Chief Engagement Officer for the Surgeon General, Katharine Dealy, along with their directors, administrators and employees; White House Press Secretary, Karine Jean-Pierre; Counsel to the President, Edward N. Siskel; White House Partnerships Manager, formerly 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; Assistant to the President and Director of Digital Strategy, Christian L. Tom (formerly Rob Flaherty); White House COVID-19 Director of Strategic Communications and Engagement, formerly 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, formerly Dr. Anthony S. Fauci, 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 Fed-

AMERICAN OVERSIGHT

MO-AG-24-0028-A-002317

eral Bureau of Investigation (FBI), and specifically the following employees: Section Chief, FBI Foreign Influence Task Force, formerly Laura Dehmlow; and Elvis M. Chan, Supervisory Special Agent of Squad CY-1 in the FBI San Francisco Division; the Cybersecurity and Infrastructure Security Agency (CISA); the Director of CISA, Jen Easterly; the Senior Cybersecurity Advisor and Senior Election Security Lead, formerly Kim Wyman; Lauren Protentis; Geoffrey Hale; Allison Snell; and Brian Scully.*

---

* All individual defendants were sued in their official capacities and their successors, if any, have automatically been substituted in their respective places. See Sup. Ct. R. 35.3; Fed. R. App. P. 43(c)(2); Fed. R. Civ. P. 25(d).

The following defendants-appellants, as named in the operative complaint, are not petitioners here because the court of appeals reversed the entry of injunctive relief against them: the Department of Health and Human Services (HHS); the National Institute of Allergy and Infectious Diseases (NIAID); Xavier Becerra, Secretary of HHS; Dr. Jeanne Marrazzo, Director of NIAID (formerly Dr. Anthony S. Fauci); 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 (formerly Janell Muhammed); along with their secretaries, directors, administrators, and employees; the United States Census Bureau, 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 United States Department of Justice, along with its secretary, director, administrators, and employees; the United States Department of Homeland Security (DHS); Alejandro Mayorkas, Secretary of Homeland Security; Robert Silvers, Under-Secretary of the Office of Strategy, Policy and Plans for DHS; Samantha Vinograd, Senior Counselor for National Security in the Office of the Secretary for DHS, along with their secre-

AMERICAN OVERSIGHT

Respondents (plaintiffs-appellees below) are the State of Missouri; the State of Louisiana; Aaron Kheriaty; Martin Kulldorff; Jim Hoft; Jayanta Bhattacharya; and Jill Hines.

---

tary, directors, administrators, and employees; the United States Department of State (State Department); Leah Bray, Acting Coordinator of the State Department's Global Engagement Center (GEC); Alexis 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.

The following defendants are not petitioners here because the district court did not enter injunctive relief against them: Joseph R. Biden, Jr., President of the United States; the Food and Drug Administration; the Department of the Treasury; the Department of Commerce; Erica Jefferson; Michael Mur ray; Wally Adeyemo; Steven Frid; Brad Kimberly; Kristen Muthig; the Disinformation Governance Board; and Nina Jankowicz.

AMERICAN OVERSIGHT

TABLE OF CONTENTS

Page

Opinions below 1
Jurisdiction 1
Constitutional provision involved 2
Statement 2
A. Background 3
B. The present controversy 7
Summary of argument 13
Argument:
I. Respondents lack Article III standing 16
A. Individual respondents lack standing 17
B. State respondents lack standing 20
II. Respondents' First Amendment claims lack merit:
A. Government speech does not create state action unless it involves compulsion by threats or inducements 23
B. The government did not compel the challenged content-moderation decisions through threats or inducements 29
C. The Fifth Circuit found state action only by embracing malleable, overbroad standards for coercion and significant encouragement 35
1. The Fifth Circuit erroneously applied a four-factor test unmoored from the proper coercion inquiry 36
2. The Fifth Circuit erred in finding significant encouragement based only on mere entanglement 43
III. The lower courts' injunction is inequitable 45
Conclusion 51

AMERICAN OVERSIGHT

TABLE OF AUTHORITIES

Cases: Page

Adickes v. *S.H. Kress & Co.*, 398 U.S. 144 (1970) 36
Already, LLC v. *Nike, Inc.*, 568 U.S. 85 (2013) 28
American Manufacturers Mutual Insurance Co. v. *Sullivan*, 526 U.S. 40 (1999) 35, 45
Ashcroft v. *American Civil Liberties Union*, 535 U.S. 564 (2002) 23
Bantam Books, Inc. v. *Sullivan*, 372 U.S. 58 (1963) 26, 27
Blum v. *Yaretsky*, 457 U.S. 991 (1982) 26, 27
Board of Regents v. *Southworth*, 529 U.S. 217 (2000) 23, 38
Brentwood Academy v. *Tennessee Secondary School Athletic Association*, 531 U.S. 288 (2001) 43
Califano v. *Yamasaki*, 442 U.S. 682 (1979) 46
Carney v. *Adams*, 141 S. Ct. 493 (2020) 16
Changizi v. *HHS*, 82 F.4th 492 (6th Cir. 2023) 18
City of Los Angeles v. *Lyons*, 461 U.S. 95 (1983) 19
Clapper v. *Amnesty International USA*, 568 U.S. 398 (2013) 20
Colorado v. *Connelly*, 479 U.S. 157 (1986) 40, 41
Counterman v. *Colorado*, 600 U.S. 66 (2023) 38
Elrod v. *Burns*, 427 U.S. 347 (1976) 46
Gill v. *Whitford*, 138 S. Ct. 1916 (2018) 46
Haaland v. *Brackeen*, 599 U.S. 255 (2023) 20, 22
Harlow v. *Fitzgerald*, 457 U.S. 800 (1982) 50
INS v. *Legalization Assistance Project*, 510 U.S. 1301 (1993) 49
Kennedy v. *Warren*, 66 F.4th 1199 (9th Cir. 2023) 42, 43
Kleindienst v. *Mandel*, 408 U.S. 753 (1972) 21
Lewis v. *Casey*, 518 U.S. 343 (1996) 19, 47

AMERICAN OVERSIGHT

Cases—Continued: Page

Lugar v. *Edmondson Oil Co.*, 457 U.S. 922 (1982) 25
Manhattan Community Access Corp. v. *Halleck*, 139 S. Ct. 1921 (2019) 2, 3, 14, 16, 22, 25, 26, 28, 36
McConnell v. *FEC*, 540 U.S. 93 (2003), overruled on other grounds by *Citizens United* v. *FEC*, 558 U.S. 310 (2010) 22
National Endowment for the Arts v. *Finley*, 524 U.S. 569 (1998) 23
National Rifle Association v. *Cuomo*, 525 F. Supp. 3d 382 (N.D.N.Y. 2021), reversed, 49 F.4th 700 (2d Cir. 2022), cert. granted, No. 22-842 (Nov. 3, 2023) 27
Nken v. *Holder*, 556 U.S. 418 (2009) 47
O'Handley v. *Weber*, 62 F.4th 1145 (9th Cir.), petition for cert. pending, No. 22-1199 (filed June 8, 2023) 28, 30, 39, 40, 45
O'Shea v. *Littleton*, 414 U.S. 488 (1974) 19, 21
Peery v. *Chicago Housing Authority*, 791 F.3d 788 (7th Cir. 2015) 28
Penthouse International, Ltd. v. *Meese*, 939 F.2d 1011 (D.C. Cir. 1991), cert. denied, 503 U.S. 950 (1992) 23, 24, 35
Pleasant Grove City v. *Summum*, 555 U.S. 460 (2009) 2, 23, 45
Roman Catholic Diocese of Brooklyn v. *Cuomo*, 141 S. Ct. 63 (2020) 46
Schmidt v. *Lessard*, 414 U.S. 473 (1974) 50
Schneckloth v. *Bustamonte*, 412 U.S. 218 (1973) 41
Shurtleff v. *City of Boston*, 596 U.S. 243 (2022) 23
TransUnion LLC v. *Ramirez*, 141 S. Ct. 2190 (2021) 16, 21

AMERICAN OVERSIGHT

Cases—Continued: Page

Twitter, Inc. v. *Taamneh*, 598 U.S. 471 (2023) 3
United States v. *American Library Association*, 539 U.S. 194 (2003) 22
United States v. *Texas*, 599 U.S. 670 (2023) 16, 17, 46
Valley Forge Christian College v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. 464 (1982) 17
Virginia State Board of Pharmacy v. *Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976) 21
Winter v. *NRDC, Inc.*, 555 U.S. 7 (2008) 45, 46

Constitution, statutes, regulation, and rules:

U.S. Const.:
Art. III 9, 13, 16, 17, 20, 22
§ 2 16
Amend. I 2, 3, 8, 9, 14, 15, 17, 20-23, 25, 29, 30, 34, 36, 45, 46
Communications Decency Act of 1996, 47 U.S.C. 230 32
18 U.S.C. 2702 48
Presidential Proclamation No. 7725, *Protection from Pornography Week, 2003*, 3 C.F.R. 129 (2003 comp.) 24
Fed. R. Civ. P.:
Rule 23(f) 8
Rule 65(d) 50

Miscellaneous:

DHS, *Strategic Framework for Countering Terrorism and Targeted Violence* (Sept. 2019), perma.cc/ZRBA-MLHD 5

AMERICAN OVERSIGHT

Miscellaneous—Continued: Page

Steven Greenhouse, *Labor Secretary Gets 2 Sides to Meet in Long Coal Strike*, N.Y. Times, Oct. 14, 1989 29

Douglas Jehl, *Clinton Warns Major Leagues To Settle Strike*, N.Y. Times, Jan. 27, 1995 29

Sapna Maheshwari, *Bin Laden Videos Go Viral on App*, N.Y. Times, Nov. 17, 2023 49

Meta, *Adversarial Threat Report* (Nov. 2023), perma.cc/Z6HZ-LJWW 49

Obama White House Archives, *Fact Sheet: Progress in Our Ebola Response at Home and Abroad* (Feb. 11, 2015), perma.cc/LE9J-FKB5 49

Emily Oster, *How to Weigh the Risks of Social Media: A conversation with the surgeon general* (Nov. 16, 2023), parentdata.org/weigh-risks-social-media 49

Gerhard Peters & John T. Woolley, The American Presidency Project:

Address at the Associated Press Luncheon in New York City (Apr. 20, 1915), perma.cc/3XLL-VCFK 24

Remarks at the Laying of the Cornerstone of the Office Building of the House of Representatives: "The Man with the Muck-Rake" (Apr. 14, 1906), perma.cc/7WMN-8ELF 24

Ronald Reagan, Presidential Library & Museum, *Remarks to Media Executives at a White House Briefing on Drug Abuse* (Mar. 7, 1988), perma.cc/QFL7-D4GQ 24

AMERICAN OVERSIGHT

Miscellaneous—Continued: Page

Christopher Wray, *Statement Before the House Judiciary Committee* (Feb. 5, 2020), perma.cc/KZ2B-XZLP 4

Adam S. Zimmerman, *Presidential Settlements*, 163 U. Pa. L. Rev. 1393 (2015) 29

AMERICAN OVERSIGHT

In the Supreme Court of the United States

No. 23-411

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

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The opinion of the court of appeals (J.A. 1-84) is reported at 83 F.4th 350. A prior opinion of the court of appeals (J.A. 305-387) is reported at 80 F.4th 641. The opinion of the district court (J.A. 85-277) is not yet published in the Federal Supplement but is available at 2023 WL 4335270.

JURISDICTION

The judgment of the court of appeals affirming in part and modifying the district court's preliminary injunction was entered on October 3, 2023. On October 20, 2023, this Court treated the government's application for a stay of the injunction as a petition for a writ of certiorari and granted the petition. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

AMERICAN OVERSIGHT

CONSTITUTIONAL PROVISION INVOLVED

The First Amendment provides in pertinent part:

> Congress shall make no law * * * abridging the freedom of speech.

U.S. Const. Amend. I.

STATEMENT

This case concerns the fundamental principle that the First Amendment "restricts government regulation of private speech" but "does not regulate government speech." *Pleasant Grove City* v. *Summum*, 555 U.S. 460, 467 (2009). The government is entitled to "speak for itself" by sharing information, urging action, and participating in "debate over issues of great concern to the public." *Id.* at 467-468 (citations omitted). "Indeed, it is not easy to imagine how government could function if it lacked this freedom." *Id.* at 468. Of course, the government cannot punish people for expressing different views, and it cannot accomplish the same thing indirectly by threatening to punish private actors for disseminating those views. But so long as the government seeks to inform and persuade rather than to compel, its speech poses no First Amendment concern—even if government officials state their views in strong terms, and even if private actors change their speech or conduct in response.

Maintaining that distinction is vital to preserving the "constitutional boundary between the governmental and the private." *Manhattan Community Access Corp.* v. *Halleck*, 139 S. Ct. 1921, 1928 (2019). If the government is deemed to have compelled a private party to act, that party becomes a state actor subject to constitutional constraints. *Id.* at 1933. And this Court has emphatically rejected theories of state action that would

AMERICAN OVERSIGHT

"endanger individual liberty and private enterprise" by too readily deeming private individuals and companies to be state actors—especially theories that would undermine private entities' "rights to exercise editorial control over speech and speakers on their properties or platforms" by subjecting them to the requirements of the First Amendment. *Id.* at 1932.

This is a suit brought by two States and five individuals who assert a sprawling challenge to federal officials' speech to and about social-media platforms such as Facebook, YouTube, and X (formerly known as Twitter). The district court and the Fifth Circuit held that a wide range of the officials' speech—including speech criticizing the platforms' content-moderation policies, identifying posts that may have violated those policies, and even answering platforms' questions about public health—transformed private social-media platforms' decisions to remove, demote, or label posts into state action that violated the First Amendment. The lower courts then entered a sweeping preliminary injunction that effectively installs the district court as the superintendent of the Executive Branch's communications with and about the platforms.

A. Background

1. Social-media platforms allow billions of people to share content instantaneously around the globe. See *Twitter, Inc.* v. *Taamneh*, 598 U.S. 471, 480 (2023). The unprecedented scale and speed of social-media communications have obvious benefits, but they also pose significant hazards. Terrorist organizations, for example, use the platforms "as tools for recruiting, fundraising, and spreading their propaganda"—including by radicalizing vulnerable individuals and inspiring attacks in the United States. *Id.* at 481; see Christopher Wray, *State-*

AMERICAN OVERSIGHT

ment Before the House Judiciary Committee (Feb. 5, 2020) (*Wray Statement*), perma.cc/KZ2B-XZLP; C.A. ROA 23,864-23,866. Child predators use the platforms to groom and sexually exploit minors. C.A. ROA 23,869. And foreign governments such as Russia, China, and Iran use the platforms in "influence operations" that "spread disinformation, sow discord, push foreign nations' policy agendas, and ultimately undermine confidence in our democratic institutions and values." *Wray Statement*; see C.A. ROA 23,857-23,859.

Social-media companies have long sought to address those and other hazards—and thus preserve the value of their products to users and advertisers—by adopting and enforcing policies to moderate the content posted on their platforms. C.A. ROA 21,943-21,961. Moderation by the platforms can include "demoting" content to reduce its reach, removing content, or suspending a user's account. See, *e.g.*, *id.* at 22,546-22,547. Each platform's content-moderation policies reflect its views, market incentives, and editorial judgments. See, *e.g.*, *id.* at 22,044-22,053 (YouTube); *id.* at 22,069-22,073 (Facebook). Different platforms have adopted different approaches, and platforms have changed their policies in response to "evolving social concerns, including terrorism, election interference, and public health." *Id.* at 21,957; see *id.* at 21,957-21,961 (collecting examples).

"For example, in response to a large increase in violent terror-related content in 2014, social media platforms implemented more stringent rules against violent content." C.A. ROA 21,957. And during the COVID-19 pandemic, the platforms adopted and adjusted policies aimed at combatting the spread of harmful hoaxes and misinformation. See, *e.g.*, *id.* at 22,536-22,551 (Twitter and Facebook). In March 2020, for instance, Twitter

AMERICAN OVERSIGHT

amended its content-moderation policies "to address content that goes directly against guidance from authoritative sources of global and local public health information." *Id.* at 22,539. And in November 2022, Twitter announced that it was "no longer enforcing" that policy. *Id.* at 22,536.

2. Throughout our Nation's history, government officials have communicated with the media and other private actors to inform, persuade, and protect the public. Federal officials have continued those practices in response to the new opportunities and dangers posed by the rise of social media. Given the ubiquity of social media in modern public life, those communications take a wide variety of forms and address a wide range of topics. To take just a few examples:

- The Department of Homeland Security (DHS) provides general "awareness briefings" to help social-media platforms "recognize and react to violent extremist content" posted by terrorist groups. DHS, *Strategic Framework for Countering Terrorism and Targeted Violence* 24 (Sept. 2019), perma.cc/ZR8A-MLHD.
- The Federal Bureau of Investigation (FBI) sometimes "provides social media platforms with notice, for whatever action they deem appropriate, that foreign terrorists or those promoting terrorism are using their platforms." C.A. ROA 23,866.
- When FBI intelligence reveals that a social-media account appears to be controlled by a "covert foreign malign actor," the FBI may share account details "that will enable social media companies to conduct their own independent investigation into

AMERICAN OVERSIGHT

whether there is a violation of their terms of service." C.A. ROA 23,860.

- During the pandemic, platforms "regularly reached out" to the Centers for Disease Control and Prevention (CDC) "to ensure that the information the social media companies chose to promote on their platforms remained consistent with the latest CDC guidance." C.A. ROA 23,094. In some cases, platforms also solicited CDC's views on the veracity of specific claims. J.A. 138-139; see, *e.g.*, C.A. ROA 11,445-11,447.
- During the 2018 and 2020 election cycles, the Cybersecurity and Infrastructure Security Agency (CISA) forwarded messages from state officials identifying false election-related information posted on the platforms, such as false statements about the time, place, and manner of elections. See, *e.g.*, C.A. ROA 23,220-23,221 (Louisiana); *id.* at 23,226-23,227 (Greene County, Missouri). Those communications typically stated that CISA "makes no recommendations" about how the platforms should respond and "will not take any action, favorable or unfavorable," based on the platforms' "decisions about how or whether to use this information." *Id.* at 23,220; see, *e.g.*, *id.* at 14,504, 23,223, 23,230.
- During a few months in early 2021, some White House officials working on the rollout of COVID-19 vaccines communicated frequently with platforms about the platforms' publicly announced efforts to promote accurate information about the vaccines and remove or demote vaccine-related

AMERICAN OVERSIGHT

content that violated the platforms' policies. See J.A. 6-9.

- White House officials also communicate with the platforms to manage the White House's own social-media accounts and to report accounts impersonating the President's family members. *E.g.*, J.A. 639 (February 2021 email exchange describing procedures Twitter used for such requests during "prior administrations").

In addition, senior government officials have often spoken publicly about a variety of issues raised by social media platforms, including the harms that can arise from the rapid spread of falsehoods online. In May 2021, for example, the White House Press Secretary expressed the President's view that social-media platforms have a "responsibility" to "stop amplifying untrustworthy content, disinformation, and misinformation, especially related to COVID-19, vaccinations, and elections." C.A. ROA 609. She also emphasized that the President "believe[s] in First Amendment rights" and that "social media platforms need to make" "the decisions" regarding "how they address * * * disinformation" and "misinformation." *Ibid.*

B. The Present Controversy

1. Respondents are two States and five individual social-media users. They allege that in the past, some of their social-media posts or accounts were "removed or downgraded by the platforms," J.A. 3, though their accounts have since been restored, C.A. ROA 23,513-23,514. Respondents "maintain that although the platforms stifled their speech" by moderating their posts, "government officials were the ones pulling the strings." J.A. 3. The operative complaint names 67 fed-

AMERICAN OVERSIGHT

eral entities, officials, and employees, and characterizes their communications with and about social-media platforms as a "sprawling federal 'Censorship Enterprise.'" J.A. 395. Although respondents' allegations touch on a wide range of the platforms' content-moderation activities, they have focused primarily on content related to the COVID-19 pandemic and the 2020 election.

After allowing extensive discovery, the district court issued a preliminary injunction. J.A. 85-277. The court held that seven groups of defendants had transformed social-media platforms' content-moderation decisions into state action—and violated the First Amendment—by "coercing" or "significantly encouraging" the platforms' content-moderation activities. J.A. 194-227. The court enjoined those defendants, and hundreds of thousands of unnamed employees of the defendant agencies, from engaging in ten types of speech, such as "communication of any kind with social-media companies urging, encouraging, pressuring, or inducing" the "removal, deletion, suppression, or reduction of content"; "urging" those companies "to change their guidelines for removing" content; and "flagging content or posts." J.A. 281-283. The injunction also contained a series of carveouts that purported to permit the government to inform platforms of posts involving "criminal activity," "national security threats," and certain other categories of content. J.A. 283-284.

In the same order, the district court denied respondents' motion to certify two broad classes of "social-media users" who have posted or viewed, or who will post or view, content subject to moderation. J.A. 268-269 (citations omitted); see J.A. 265-275. Respondents did not seek to appeal that denial. Cf. Fed. R. Civ. P. 23(f).

AMERICAN OVERSIGHT

2. Following a grant of panel rehearing, the Fifth Circuit vacated part of the preliminary injunction and modified the rest. J.A. 1-84; cf. J.A. 305-387 (original panel opinion). On appeal, the government had vigorously disputed many of the district court's factual findings, which were often demonstrably wrong. *E.g.*, Gov't C.A. Br. 29-32, 35-36, 39; Gov't C.A. Reply Br. 9-13. The Fifth Circuit did not rely on many of the disputed findings, but it held that the findings it did credit were sufficient to establish respondents' entitlement to relief.

a. The Fifth Circuit held that individual respondents have Article III standing to seek injunctive relief on the theory that the platforms' past moderation of their posts and accounts caused respondents "ongoing harm" because they now "self-censor" their social-media activity. J.A. 20-21. The court also found "a substantial risk" that individual respondents' injuries "will reoccur" because platforms "continue[] to enforce a robust general misinformation policy" and the government "continue[s] to be in regular contact with" the platforms. J.A. 22-23. The court held that respondent States have standing on the theory that the past removal of content posted by a state legislator, a state agency, and a county implicated the States' "'right' to speak." J.A. 29 (citation omitted). The court also held that the States have a right "to listen to their citizens" on social media. *Ibid.*

b. On the merits, the Fifth Circuit held that platforms' decisions to moderate content constituted "state action" subject to the First Amendment. J.A. 31-71. The court explained that state action exists "when a private party is coerced or significantly encouraged by the government to such a degree that its 'choice' * * * 'must in law be deemed to be that of the'" government. J.A. 32 (citations omitted).

AMERICAN OVERSIGHT

The Fifth Circuit stated that a decision is "coerced" if "the government compelled the decision by, through threats or otherwise, intimating that some form of punishment [would] follow a failure to comply." J.A. 46. To identify such coercion, the court weighed four factors: "(1) word choice and tone"; "(2) the recipient's perception"; "(3) the presence of authority"; and "(4) whether the speaker refers to adverse consequences." J.A. 47.

The Fifth Circuit stated that the government can be found to have "significantly encouraged" private conduct if it "exercise[d] active, meaningful control over the private party's decision." J.A. 46. But the court held that such "control" can be established by mere "entanglement in a party's independent decision-making." *Ibid.*

Applying those standards, the Fifth Circuit determined that certain White House officials engaged in both coercion and significant encouragement in their communications about the platforms' approach to content related to COVID-19 vaccines. J.A. 49-62. The court asserted that those officials made threats, though it did not cite any communication threatening any specific action. See J.A. 49-50. The court also concluded that the four-factor test weighed in favor of finding coercion, especially in light of the officials' "tone." J.A. 51-59. And the court found significant encouragement because officials "entangled themselves in the platforms' decision-making processes" by engaging in frequent communications and making requests for information. J.A. 59; see J.A. 59-62. The court also lumped the Surgeon General's Office in with the White House based on what the court called their "close cooperation" and "the ministerial ecosystem." J.A. 4.

AMERICAN OVERSIGHT

The Fifth Circuit held that the FBI coerced and significantly encouraged the platforms by communicating about "foreign threats" and false election information, such as "posts that stated incorrect poll hours." J.A. 15; see J.A. 62-65. The court acknowledged that the FBI did not "reference adverse consequences" in its communications. J.A. 63. But the court reasoned that the FBI has "inherent authority" as a law-enforcement agency and that platforms must have "perceived the FBI's messages as threats" because they sometimes removed content. J.A. 64.

The Fifth Circuit concluded that CDC's communications "were not coercive." J.A. 65. But the court determined that CDC officials engaged in significant encouragement because they provided guidance about COVID-related falsehoods, sometimes at the platforms' request, which the court viewed as causing the platforms "to *heavily rely*" on CDC in applying their content-moderation policies. J.A. 66.

Although the Fifth Circuit initially concluded that CISA did not engage in coercion or significant encouragement, see J.A. 372, the court reversed itself on panel rehearing, holding that CISA "significantly encouraged the platforms' content-moderation decisions" because it "'facilitat[ed]'" the FBI's interactions with platforms and "affirmatively *told* the platforms whether" certain content "was true or false" as part of its "switchboarding" operations. J.A. 67-68; see J.A. 15 (explaining that "'switchboarding'" involved CISA's "act[ing] as an intermediary for third parties by forwarding flagged content from them to the platforms").

The Fifth Circuit found that the remaining defendants did not engage in coercion or significant encour-

AMERICAN OVERSIGHT

agement and thus reversed the injunction as to them. J.A. 68-69.

c. On the equities, the Fifth Circuit determined that respondents likely would suffer irreparable harm absent a preliminary injunction because federal officials continue to communicate with the platforms. J.A. 71-74. The court acknowledged that an injunction could impair the government's legitimate interest "in engaging with social-media companies, including on issues such as misinformation and election interference," as well as "the Executive Branch's ability to 'persuade' the American public." J.A. 73-74. But the court believed it could address those "legitimate concerns" by "modifying the scope of the injunction." J.A. 74.

d. The Fifth Circuit acknowledged that the district court's original injunction was vague and overbroad, and accordingly vacated nine of the ten prohibitions and all of the carveouts. J.A. 74-79. The Fifth Circuit then rewrote the remaining prohibition to incorporate the broad concepts of "coercion" and "significant encouragement" reflected in its opinion:

> 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.

AMERICAN OVERSIGHT

J.A. 80-81. The court rejected the government's request to limit relief to actions seeking the removal or suppression of the respondents' own content, stating that broader relief was appropriate because "[t]he harms that radiate from [the challenged] conduct" affect "every social-media user." J.A. 82.

3. This Court granted the government's application to stay the injunction, as modified by the court of appeals; treated the application as a petition for a writ of certiorari; and granted the petition. 2023 WL 6935337.

SUMMARY OF ARGUMENT

The Fifth Circuit's decision is flawed three times over: The court erred in finding that respondents have standing, in holding that the government's challenged conduct transformed the platforms' content-moderation decisions into state action, and in concluding that a sweeping preliminary injunction is proper.

I. Respondents lack Article III standing because they have not shown any cognizable injuries that are fairly traceable to the government or redressable by judicial relief. Respondents principally rely on past instances when their posts and accounts were subject to moderation by private platforms. But those injuries are not fairly traceable to the government; to the contrary, the content moderation that injured respondents began long before most of the government conduct they challenge. In any event, those past injuries cannot support standing to seek prospective relief because they do not establish a real and immediate threat of future injury attributable to the government. Nor can respondents establish standing by asserting a generalized desire to listen to other social-media users—a limitless theory no court has endorsed. And state respondents also lack

AMERICAN OVERSIGHT

standing because they have no First Amendment rights to begin with.

II. Respondents' First Amendment claims lack merit. The Fifth Circuit held that the government's communications with private social-media platforms transformed the platforms' content-moderation decisions into state action attributable to the government and violated the First Amendment. But government officials are and must be free to inform, to persuade, and to criticize. Such government speech often prompts private entities to act, but that does not transform those entities into state actors. Were it otherwise, every successful public-awareness campaign or use of the bully pulpit would create state action.

Instead, this Court has emphasized that a private entity becomes a state actor only in "a few limited circumstances," such as when the government "compels the private entity to take a particular action." *Manhattan Community Access Corp.* v. *Halleck*, 139 S. Ct. 1921, 1928 (2019). Such compulsion requires either coercive threats or equivalent significant encouragement—that is, positive inducements that overwhelm the recipient's independent judgment and render its decisions fairly attributable to the government. Private entities that merely respond to information, persuasion, or criticism from government officials are not state actors.

Those principles resolve this case. The Fifth Circuit did not even purport to find that any government official offered the platforms any positive inducements to change their content-moderation decisions—much less the specific decisions that injured respondents. It also did not purport to conclude that officials from the FBI, CDC, CISA, or the Surgeon General's Office threatened platforms with adverse consequences if they failed to

AMERICAN OVERSIGHT

moderate content; instead, those agencies largely just provided the platforms with information. And although the Fifth Circuit stated that White House officials threatened the platforms with legal reforms, the only statements it identified were general responses to press questions untethered from any specific content-moderation request.

Rather than asking whether the government used threats or inducements to compel the specific content-moderation decisions that injured respondents, the Fifth Circuit deemed *all* of the private platforms' content-moderation activities to be state action by radically expanding the state-action doctrine. The court applied malleable standards to find coercion even absent any threat of adverse action. The court held, for example, that communications from the FBI were inherently coercive merely because the FBI is a law-enforcement agency. And the court conceived of significant encouragement as requiring nothing more than "entanglement" in the platforms' content-moderation efforts—a novel standard the court found satisfied simply because various government agencies met with the platforms, shared information within their respective areas of expertise, and responded to platforms' questions.

The implications of the Fifth Circuit's holdings are startling. The court imposed unprecedented limits on the ability of the President's closest aides to speak about matters of public concern, on the FBI's ability to address threats to the Nation's security, and on CDC's ability to relay public-health information. And the court's holding that platforms' content-moderation decisions are state action would subject that private conduct to First Amendment constraints—a result that is

AMERICAN OVERSIGHT

"especially problematic" because it would "eviscerate" the platforms' "rights to exercise editorial control over speech and speakers" they choose to present and promote. *Halleck*, 139 S. Ct. at 1932.

III. The injunction contravenes equitable principles. The Fifth Circuit did not identify any facts demonstrating that respondents will likely suffer irreparable injury in the future. The injunction is overbroad because it extends relief to nonparties and covers any governmental communication about moderation of content on any topic posted by any user on any platform. And because of its breadth and vagueness, the injunction would irreparably harm the government and the public by chilling a host of legitimate Executive Branch communications.

ARGUMENT

I. RESPONDENTS LACK ARTICLE III STANDING

Federal courts are limited to resolving "Cases" and "Controversies." U.S. Const. Art. III, § 2. "The doctrine of standing implements this requirement by insisting that a litigant 'prove that he has suffered a concrete and particularized injury that is fairly traceable to the challenged conduct, and is likely to be redressed by a favorable judicial decision.'" *Carney* v. *Adams*, 141 S. Ct. 493, 498 (2020) (citation omitted). "[S]tanding is not dispensed in gross; rather, plaintiffs must demonstrate standing for each claim that they press," "for each form of relief that they seek," and for each defendant against whom they seek it. *TransUnion LLC* v. *Ramirez*, 141 S. Ct. 2190, 2208 (2021).

"The principle of Article III standing is 'built on a single basic idea—the idea of separation of powers.'" *United States* v. *Texas*, 599 U.S. 670, 675 (2023) (citation omitted). Faithful adherence to Article III "helps safe-

AMERICAN OVERSIGHT

guard the Judiciary's proper—and properly limited—role in our constitutional system," *id.* at 675-676, by ensuring that the federal courts do not become "forums for the ventilation of public grievances," *Valley Forge Christian College* v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 473 (1982).

This case vividly illustrates the separation-of-powers problems that arise when federal courts fail to observe the limits of Article III. In a typical First Amendment challenge, the question is whether specific government action that affected specific expression by the parties before the court violated the Constitution. Here, in contrast, the lower courts undertook an audit of *all* of the federal government's dealings with *all* social-media platforms about *any* content posted by *any* user—and did so at the behest of a handful of plaintiffs who failed to establish any cognizable injury traceable to any particular government action.

A. Individual Respondents Lack Standing

As the Fifth Circuit recognized (J.A. 19-20), individual respondents assert standing principally based on platforms' past moderation of their social-media posts. The removal or demotion of respondents' content qualifies as an Article III injury. But respondents have not shown that those past actions by the platforms are fairly traceable to the government. And even if respondents had made that showing, those past incidents would not establish standing to seek prospective relief.

1. The Fifth Circuit recognized that the platforms adopted their content-moderation policies without government involvement; indeed, the court stated that respondents "do not challenge" the policies themselves. J.A. 25. Instead, the court held that respondents have standing to challenge alleged "government-coerced *en-*

AMERICAN OVERSIGHT

forcement of those policies." *Ibid.* But the court did not even purport to find that any particular act of enforcement affecting respondents was attributable to any particular conduct by any particular government official. Instead, the court simply presumed that *all* of what it called the platforms' "censorship decisions" were "likely attributable at least in part" to the government's challenged conduct, viewed in the aggregate. J.A. 26.

That loose, general approach improperly relieved respondents of the burden to establish traceability. As the Sixth Circuit explained in dismissing another case involving social-media content-moderation, "'an injury that results from a third party's voluntary and independent actions' does not establish traceability." *Changizi* v. *HHS*, 82 F.4th 492, 497 (2023) (citation omitted). Respondents were thus required to show that the government's challenged conduct caused a platform to take action with respect to their content that the platform would not otherwise have taken in the exercise of "its 'broad and legitimate discretion' as an independent company." *Ibid.* (citation omitted).

Respondents could not make that showing because the content moderation that injured them began long before most of the government conduct at issue here. The Fifth Circuit focused on the government's actions "since the 2020 presidential transition," which occurred in January 2021. J.A. 2. The court stated that officials in the White House and the Office of the Surgeon General "began communicating with social media companies" in "early 2021" and began discussing content moderation "[l]ater that year." J.A. 4-5. But respondents allege that the platforms began moderating their content months earlier. Respondents Bhattacharya and Kulldorf, for example, focus on the "Great Barrington

AMERICAN OVERSIGHT

Declaration," which was published in October 2020 and subject to moderation immediately. J.A. 584-585, 596-598. Respondent Hines alleges "social-media censorship beginning in October 2020." J.A. 630. And respondents Kheriaty and Hoft likewise describe moderation that "began in 2020." J.A. 622; see J.A. 608.

2. Even if respondents had identified past instances of content moderation that were fairly traceable to the government, that would not confer standing to seek prospective relief. "Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief"; rather, a plaintiff must establish a "real and immediate threat of repeated injury." *O'Shea* v. *Littleton*, 414 U.S. 488, 495-496 (1974); see *City of Los Angeles* v. *Lyons*, 461 U.S. 95, 101-108 (1983). Respondents thus had to show that they face an imminent threat of content moderation that the platforms would not undertake but for the government's challenged conduct.

The Fifth Circuit asserted that respondents' injuries "will reoccur," but that conclusion was based solely on the court's determinations that *the platforms* "continue[] to enforce a robust general misinformation policy" and that the government "continue[s] to be in regular contact with social-media platforms." J.A. 22-23. Neither the Fifth Circuit nor respondents established that any ongoing contact between the government and platforms will result in any moderation of respondents' content that the platforms would not otherwise have undertaken.

Respondents thus failed to establish any "real and immediate threat of repeated injury" fairly traceable to governmental action. *O'Shea*, 414 U.S. at 496; see *Lewis* v. *Casey*, 518 U.S. 343, 356-357 (1996) (two instances of

AMERICAN OVERSIGHT

past injury do not establish standing to seek sweeping injunctive relief). And for the same reason, respondents also failed to show that an injunction against *the government* would redress any future injuries caused by *the platforms'* content moderation. Cf. *Haaland* v. *Brackeen*, 599 U.S. 255, 294 (2023). The platforms could continue to enforce their current policies against respondents whether or not a court enjoins the Executive Branch from speaking with the platforms about those policies.

3. Finally, the Fifth Circuit held that respondents have standing because "prior censorship has caused [respondents] to self-censor." J.A. 20. But this Court has made clear that plaintiffs whose claims do not otherwise satisfy Article III "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." *Clapper* v. *Amnesty International USA*, 568 U.S. 398, 416 (2013).

B. State Respondents Lack Standing

The Fifth Circuit held that state respondents have standing based on a few past incidents involving the moderation of content posted by state officials or entities, as well as on an injury to the States' purported right "to listen to their citizens" on social media. J.A. 29. Neither theory has merit, and the States additionally lack standing because they have no First Amendment rights to begin with.

The first theory suffers from the same flaws as individual respondents' parallel theory: The States rely on a handful of past incidents of content moderation, unconnected to any specific governmental actions. J.A. 615-616, 635-636. Those past injuries cannot confer standing to seek forward-looking relief because the

AMERICAN OVERSIGHT

States have not identified any "real and immediate threat of repeated injury" traceable to the federal government. *O'Shea*, 414 U.S. at 496.

The second theory—based on the States' asserted "right to listen" to their residents on social media—is equally meritless. This Court has sometimes "referred to a First Amendment right to 'receive information and ideas.'" *Kleindienst* v. *Mandel*, 408 U.S. 753, 762 (1972) (citation omitted). But it has relied on that right to authorize suits only by intended recipients of speech who had some connection to the speaker and thus suffered some identifiable and particularized harm from the challenged act. See, *e.g.*, *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 756-757 (1976) (consumers challenging prohibition on advertising the price of prescription drugs); *Mandel*, 408 U.S. at 762 (professors challenging denial of visa to a person they planned to "hear, speak, and debate with" at a conference). And the Court has more recently observed that an "asserted informational injury that causes no adverse effects cannot satisfy Article III." *TransUnion*, 141 S. Ct. at 2214 (citation omitted).

The state respondents have established no such adverse effects here. Indeed, they disavow the need to do so. In opposing a stay in this Court, respondents asserted (at 15) that "the only 'connection' required" is that "the listener would otherwise hear the speaker's message." That all-encompassing theory would give anyone standing to challenge any alleged abridgment of the First Amendment rights of any speaker whose speech she "would otherwise hear." If accepted, it would mean that anyone could sue whenever a city council denied a parade permit, a transit authority rejected a bus advertisement, or a district attorney's office pro-

AMERICAN OVERSIGHT

hibited an employee from writing an intemperate op-ed—even if the plaintiff had no connection to the aggrieved party other than the desire to hear him. That is the sort of "boundless theory of standing" this Court has consistently rejected. *Already, LLC* v. *Nike, Inc.*, 568 U.S. 85, 99 (2013). And where, as here, such a theory is invoked by States against the federal government, it is also "a thinly veiled attempt to circumvent the limits on *parens patriae* standing." *Brackeen*, 599 U.S. at 295 n.11.

Finally, state respondents cannot satisfy Article III for an additional reason: Just as Texas lacked standing to assert equal protection claims in *Brackeen* because it had "no equal protection rights of its own," 599 U.S. at 294, state respondents lack standing here because they do not have First Amendment rights. "The Free Speech Clause of the First Amendment constrains governmental actors and protects private actors." *Manhattan Community Access Corp.* v. *Halleck*, 139 S. Ct. 1921, 1926 (2019). States thus cannot assert First Amendment claims. Cf. *United States* v. *American Library Association*, 539 U.S. 194, 210-211 (2003) (plurality opinion) (noting this issue without resolving it). And because state respondents have not asserted any injury to a "legally cognizable right," they lack Article III standing. *McConnell* v. *FEC*, 540 U.S. 93, 227 (2003), overruled on other grounds by *Citizens United* v. *FEC*, 558 U.S. 310 (2010).[1]

---

[1] State respondents' lack of First Amendment rights could be viewed as another reason why their claims fail on the merits rather than another reason why they lack standing. Cf. Resp. C.A. Br. 28. Either way, the result is the same: State respondents' clai ms cannot support the lower courts' entry of injunctive relief.

AMERICAN OVERSIGHT

II. RESPONDENTS' FIRST AMENDMENT CLAIMS LACK MERIT

A. Government Speech Does Not Create State Action Unless It Involves Compulsion By Threats Or Inducements

1. As this Court has long recognized, "the government can speak for itself." *Board of Regents* v. *Southworth*, 529 U.S. 217, 229 (2000). When it does, "the Free Speech Clause has no application." *Pleasant Grove City* v. *Summum*, 555 U.S. 460, 467 (2009). The government "'is entitled to say what it wishes' and to select the views that it wants to express" free from "'First Amendment scrutiny.'" *Id.* at 467-468 (citations omitted). Indeed, it is often "the very business of government to favor and disfavor points of view." *National Endowment for the Arts* v. *Finley*, 524 U.S. 569, 598 (1998) (Scalia, J., concurring in the judgment). "The Constitution * * * relies first and foremost on the ballot box," not the First Amendment, "to check the government when it speaks." *Shurtleff* v. *City of Boston*, 596 U.S. 243, 252 (2022). "If the citizenry objects, newly elected officials later could espouse some different or contrary position." *Summum*, 555 U.S. at 468-469 (citation omitted).

Of course, the government may not punish people for disagreeing with it or use its authority to suppress contrary views. *Ashcroft* v. *American Civil Liberties Union*, 535 U.S. 564, 573 (2002). Nor may the government circumvent that limitation by compelling a nominally private party to do the suppression for it. But those principles limit only compulsion through threats or inducements, not the government's own speech. Government officials may "vigorously criticize a publication" or speaker "for any reason they wish." *Penthouse International, Ltd.* v. *Meese*, 939 F.2d 1011, 1015 (D.C. Cir. 1991), cert. denied, 503 U.S. 950 (1992). And throughout

AMERICAN OVERSIGHT

our Nation's history, "corporations and other institutions" have been "criticized by government officials" for "speech protected by the First Amendment." *Id.* at 1016.

Presidents, for example, have long used the bully pulpit to shape private conduct and influence the public on the issues of the day—including by criticizing private speech. Theodore Roosevelt (who coined the term "bully pulpit") famously lambasted "muck-raking" journalists, belittling the media's coverage of political scandals as "not a help to society, not an incitement to good, but one of the most potent forces for evil."[2] In addressing reporting he viewed as false and dangerous, Woodrow Wilson said "[w]e ought not to permit that sort of thing to use up the electrical energy of the wires, because its energy is malign, its energy is not of the truth, its energy is of mischief."[3] Calling it a "matter[] of life and death" and "of national survival," Ronald Reagan "bluntly" stated that media executives who "value[d]" "human dignity" and "human worth" should "tak[e] active steps against drugs or drug use," including through "tough reporting" on drugs.[4] And George W. Bush denounced pornography for its "debilitating effects on communities, marriages, families, and children." Presidential Proclamation No. 7725, *Protection from Por-*

---

[2] The American Presidency Project, *Remarks at the Laying of the Cornerstone of the Office Building of the House of Representatives: "The Man with the Muck-Rake"* (Apr. 14, 1906), perma.cc/7WMN-8ELF.

[3] The American Presidency Project, *Address at the Associated Press Luncheon in New York City* (Apr. 20, 1915), perma.cc/3XLL-VCFK.

[4] Ronald Reagan Presidential Library & Museum, *Remarks to Media Executives at a White House Briefing on Drug Abuse* (Mar. 7, 1988), perma.cc/QFL7-D4GQ.

AMERICAN OVERSIGHT

nography Week, 2003, 3 C.F.R. 129 (2003 comp.). All of those presidential statements, and countless others, strongly criticized protected speech. All of them may well have caused private actors to refrain from creating, distributing, or promoting that speech. But none of them violated the First Amendment.

2. This Court's state-action precedents reflect the same fundamental distinction between persuasion and compulsion.

a. The "Free Speech Clause does not prohibit *private* abridgment of speech." *Halleck*, 139 S. Ct. at 1928. Instead, that Clause "can be violated only by conduct that may be fairly characterized as 'state action.'" *Lugar* v. *Edmondson Oil Co.*, 457 U.S. 922, 924 (1982). A private entity engages in state action if its conduct is "fairly attributable to the [government]." *Id.* at 937. And this Court has recognized only a "few limited circumstances" in which that might be true, including "(i) when the private entity performs a traditional, exclusive public function," "(ii) when the government compels the private entity to take a particular action," and "(iii) when the government acts jointly with the private entity." *Halleck*, 139 S. Ct. at 1928.

The challenged content-moderation actions in this case indisputably were taken by private social-media platforms, not by the government. The Fifth Circuit nevertheless held that the platforms were engaged in state action. J.A. 32-48, 69-71 & n.22. The court did not suggest that hosting and moderating speech by others is a traditional, exclusive public function. See *Halleck*, 139 S. Ct. at 1930-1931. And the court disclaimed reliance on a "joint action" theory, which demands a "*very high*" degree of "integration" between the government and the private party. J.A. 36 n.11. Instead, the court

AMERICAN OVERSIGHT

reasoned that the government's communications compelled the platforms to undertake the challenged content moderation. J.A. 32-48.

b. Under this Court's compulsion test for state action, the government "normally 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 in law be deemed to be that of the [government]." *Blum* v. *Yaretsky*, 457 U.S. 991, 1004 (1982); see *Halleck*, 139 S. Ct. at 1928 (citing *Blum*).

Coercion giving rise to state action requires an express or implicit "threat of invoking legal sanctions." *Bantam Books, Inc.* v. *Sullivan*, 372 U.S. 58, 67 (1963). "Mere approval of or acquiescence in the initiatives of a private party is not sufficient." *Blum*, 457 U.S. at 1004. And even general pressure or incentives created by government action are likewise insufficient; instead, the government must compel "the *specific* conduct of which the plaintiff complains." *Ibid.* (emphasis added).

In *Bantam Books*, for example, the Court found state action where a state agency identified certain publications as "'objectionable'" in notices to distributors and retailers; asked for "'cooperation in removing the listed and other objectionable publications'"; emphasized the agency's "duty to recommend to the Attorney General prosecution of purveyors of obscenity"; assured that "'[c]ooperative action will eliminate the necessity of our recommending prosecution'"; and had a police officer visit to assess compliance. 372 U.S. at 62-63 & n.5. The Court found that distributors' and retailers' decisions to stop selling the identified publications were the product of the agency's "intimidation and

AMERICAN OVERSIGHT

threat of prosecution," converting them into state action. *Id.* at 64.

In *Blum*, by contrast, the Court found no state action when private nursing homes transferred certain Medicaid patients to facilities offering lower levels of care, even though the "nursing homes in [the State were] extensively regulated," 457 U.S. at 1004; those regulations placed pressure (backed by "a range of penalties") on nursing homes to discharge or transfer patients, see *id.* at 1009; and the State was obliged to review and "approve or disapprove continued payment of Medicaid benefits" following a transfer, *id.* at 1010. Notwithstanding those general pressures, the Court explained that the nursing homes' specific "decision[s] to discharge or transfer particular patients" were not state action because they "ultimately turn[ed] on medical judgments made by private parties," *id.* at 1008.

This Court has never found state action based on "significant encouragement," but that concept is merely the other side of the same coin: Offers of positive inducements ("significant encouragement"), like threats of negative consequences ("coercive power"), may overwhelm a private party's independent judgment, such that its choices must be attributed to the government. *Blum*, 457 U.S. at 1004. Indeed, the same conduct can often be framed as either a threat or an inducement: The Constitution does not distinguish between "comply or I'll prosecute" and "comply and I'll look the other way." Cf. *National Rifle Association* v. *Cuomo*, 525 F. Supp. 3d 382, 392 (N.D.N.Y. 2021) (describing an alleged offer "not to prosecute [certain] violations" in exchange for compliance), reversed, 49 F.4th 700 (2d Cir. 2022), cert. granted, No. 22-842 (Nov. 3, 2023).

AMERICAN OVERSIGHT

Critically, "significant encouragement" does not exist when the government merely urges a private party to act—even repeatedly or in strong terms. Instead, the sort of "significant encouragement" that transforms private conduct into state action occurs only through "the [government's] use of positive incentives" to "overwhelm the private party and essentially compel the party to act in a certain way." *O'Handley* v. *Weber*, 62 F.4th 1145, 1158 (9th Cir. 2023), petition for cert. pending, No. 22-1199 (filed June 8, 2023). To hold otherwise would untether the significant-encouragement inquiry from its purpose: to determine whether the government has "*compel[led]* the private entity to take a particular action." *Halleck*, 139 S. Ct. at 1928 (emphasis added). Courts have thus "drawn a sharp distinction" between governmental attempts to compel and "attempts to convince," holding that only the former render the government responsible for choices that a private party makes in response. *O'Handley*, 62 F.4th at 1158 (collecting cases). "The First Amendment does not interfere" with government speech so long as the recipient is free to "make its own independent judgment about whether to comply with the government's request," and there is "no reason to draw the state action line in a different place." *Ibid.*

After all, "[g]overnment officials and agencies spend a great deal of time urging private persons and firms and other institutions to change their behavior ." *Peery* v. *Chicago Housing Authority*, 791 F.3d 788, 790 (7th Cir. 2015). "Physically fit young men and women are encouraged to enlist in the armed forces, " but "it would be absurd to claim that encouraging enlistment is the equivalent of forcing people to serve." *Ibid.* Absent a coercive threat for noncompliance or inducement for

AMERICAN OVERSIGHT

compliance, those kinds of exhortations do not transform private choices—even choices made at the government's urging—into state action.

That distinction holds whether the communications are public, private, or a combination of the two. Presidents, for example, have long stepped in to help resolve labor disputes. Bill Clinton famously "ordered a Federal mediator to bring baseball's players and owners back to the bargaining table" when he felt that "the major league baseball strike was trying Americans' patience and imperiling thousands of jobs."[5] In 1989, George H.W. Bush sent Labor Secretary Elizabeth Dole to organize the "first face-to-face negotiations" between the United Mine Workers and the chairman of the Pittston Company in six months.[6] Other examples abound. See Adam S. Zimmerman, *Presidential Settlements*, 163 U. Pa. L. Rev. 1393, 1414-1418 (2015). The resulting agreements might be said to have been "significantly encouraged" by the government in a colloquial sense. But no one would suggest that they qualified as state action merely because the President or his representatives urged the parties to come to terms.

B. The Government Did Not Compel The Challenged Content-Moderation Decisions Through Threats Or Inducements

The lessons of this Court's precedents for this case are clear: Government officials do not violate the First Amendment when they speak in public or in private to inform, to persuade, or to criticize speech by others.

---

[5] Douglas Jehl, *Clinton Warns Major Leagues To Settle Strike*, N.Y. Times, Jan. 27, 1995, at A1.

[6] Steven Greenhouse, *Labor Secretary Gets 2 Sides to Meet in Long Coal Strike*, N.Y. Times, Oct. 14, 1989, at A9.

AMERICAN OVERSIGHT

And even when officials specifically "request that a private intermediary not carry a third party's speech," they do not violate the First Amendment so long as they neither "threaten adverse consequences if the intermediary refuses to comply" nor offer "positive incentives" sufficient to "overwhelm the private party and essentially compel the party to act in a certain way." *O'Handley*, 62 F.4th at 1158. Those principles resolve this case: No such inducements or threats occurred here.

1. The Fifth Circuit did not identify *any* positive inducements offered to the platforms—much less inducements tied to the moderation of respondents' content. The court also did not purport to conclude that officials from the FBI, CDC, CISA, or the Surgeon General's Office threatened platforms with adverse consequences if they failed to moderate content. Nor could the court have done so: Those agencies largely provided the platforms with information, leaving it up to the platforms to decide what action to take, if any. As explained in Part II.C, *infra*, the Fifth Circuit concluded that those communications gave rise to state action only by applying novel, malleable standards for coercion and significant encouragement that extend the state-action doctrine far beyond the boundaries set by this Court's precedents.

2. The Fifth Circuit did assert that officials from the White House threatened platforms with adverse consequences if the platforms failed to moderate content related to COVID-19. J.A. 49-50, 56-59. But again, the court did not even purport to conclude that those statements were tied to the moderation of respondents' posts in particular. And even taken on its own generalized terms, the court's analysis does not withstand scrutiny.

a. The Fifth Circuit focused almost entirely on a discrete period in 2021 when White House officials work-

AMERICAN OVERSIGHT

ing on the rollout of the COVID-19 vaccines were communicating with Facebook and other social-media companies about vaccine-related falsehoods. J.A. 4-12. The companies had stated that they were working to combat the spread of such falsehoods on their platforms. *E.g.*, J.A. 653-656. White House officials, for their part, were trying to understand the factors affecting their efforts to persuade Americans to get vaccinated. The officials viewed the platforms as a significant vector for the spread of harmful falsehoods. They asked the platforms for information, and they publicly and privately criticized the platforms for what the officials perceived as a lack of transparency and a failure to live up to the platforms' commitments. *E.g.*, J.A. 10-11.

The Fifth Circuit stated that during those interactions, White House officials crossed the line from persuasion to coercion by "threaten[ing]—both expressly and implicitly—to retaliate against inaction." J.A. 50. In particular, the court repeatedly asserted, without citation, that officials "threw out the prospect of legal reforms and enforcement while subtly insinuating it would be in the platforms' best interests to comply" with requests to moderate content. *Ibid.*; see *ibid.* ("promises of legal regime changes, enforcement actions, and other unspoken threats"); J.A. 57 ("threats of 'fundamental reforms' like regulatory changes and increased enforcement actions"). But the court did not identify even a single communication in which officials threatened the platforms with legal reforms, enforcement action, or any other adverse consequence for failing to moderate content. Indeed, the Fifth Circuit discussed just two White House statements that even mentioned any of those topics. Neither was a threat of any

AMERICAN OVERSIGHT

kind; to the contrary, they were general responses to press questions about matters of public policy.

First, during a July 2021 appearance on a cable news program, the White House Communications Director was asked whether the President was "open to amending [47 U.S.C.] 230" to allow platforms to be sued for "spread[ing] false information that cause[s] Americans harm." C.A. ROA 19,400. She declined to take a position on Section 230, stating only that "we're reviewing that." *Ibid.* She added that platforms "should be held accountable" in a general sense, emphasizing that "everybody bears responsibility to ensure that we are not providing people with bad information about a vaccine that will save their lives." *Id.* at 19,401; see J.A. 11.

Second, in April 2022—long after the other events on which the Fifth Circuit focused—the White House Press Secretary was asked to comment on the sale of Twitter and responded that "[n]o matter who owns or runs Twitter, the President has long been concerned about the power of large social media platforms," "has long argued that tech platforms must be held accountable for the harms they cause," and "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." C.A. ROA 784-785; see J.A. 12.

Those fleeting and general statements cannot plausibly be characterized as coercive threats tied to specific content-moderation requests. Presidents and their surrogates are entitled to respond to questions and express their views about important public issues of the day, including potential legislative reforms. Those statements of policy did not retroactively transform other officials' requests into coercion. And the fact that those general,

AMERICAN OVERSIGHT

off-the-cuff statements by the Communications Director and the Press Secretary were the Fifth Circuit's *strongest* evidence of coercive threats only underscores that this case is nothing like *Bantam Books*.

b. The handful of other statements that the Fifth Circuit plucked from the record underscore the court's erroneous view of what constitutes a coercive threat. The court cited, for example, an email referring to "easy, low-bar things you guys do to make people like me think you're taking action." J.A. 722; see J.A. 50. But that email contains no express or implied threat. It came in the context of a May 2021 exchange in which Facebook volunteered to "preview" its "press outreach" touting "what we've been doing to help meet vaccination goals." J.A. 725. The government official simply made clear that the platform's attempt to impress the public had not impressed him. See J.A. 722, 724 (official's statement that he found it "[h]ard to take any of this seriously when you're actively promoting anti-vaccine pages in search" and that "'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"). That message surely expressed frustration, but it contained no threat of adverse action.

The same is true of the Fifth Circuit's reliance on White House officials' alleged "persistent and angry" communications or requests to remove or demote certain content posted on the platforms "'ASAP'" and "'immediately.'" J.A. 50. By the Fifth Circuit's own recounting, "[w]hen the platforms did not comply, officials followed up by asking" more questions—not by making threats or taking any adverse action. *Ibid.* And in any event, many of those statements are stripped of context. For example, many of the messages the Fifth Circuit

AMERICAN OVERSIGHT

quoted expressed frustration at what officials viewed as a platform's lack of candor, not its failure to moderate content. See, *e.g.*, J.A. 5-7. And the quoted message relating to removing an account "immediately" involved not any of the sort of content moderation that respondents complain about, but rather frustration by a White House official about his difficulty proving to Twitter's satisfaction that he was "an authorized representative" of the President's granddaughter for the purpose of asking the platform to remove an impostor account. J.A. 642.

c. Rather than any pattern of coercive threats, the record of the White House's communications with platforms in 2021 reflects a back-and-forth—one in which officials and platforms often educated and informed each other, sometimes disagreed, and occasionally became frustrated—as all parties articulated and pursued their own goals and interests. See J.A. 5-12. Government officials believed that false information circulating on the platforms was causing preventable deaths. They said so publicly, and in strong terms. And officials sought to understand the platforms' publicly announced efforts to fight such falsehoods and to identify content that violated the platforms' own policies. The platforms, in turn, sought to address those concerns and may well have been motivated in part by a desire to avoid further public criticism from senior government officials. But that sort of successful use of the bully pulpit has never been regarded as violating the First Amendment or transforming private action into state action. As Judge Silberman observed, "[w]e know of no case in which the first amendment has been held to be implicated by governmental action consisting of no more

AMERICAN OVERSIGHT

than governmental criticism of the speech's content." *Penthouse*, 939 F.2d at 1016 (citation omitted).[7]

C. The Fifth Circuit Found State Action Only By Embracing Malleable, Overbroad Standards For Coercion And Significant Encouragement

Although the Fifth Circuit purported to find that White House officials had compelled the platforms to act with threats of adverse action, the rest of its analysis applied a far looser standard lacking any foundation in this Court's precedents. Most fundamentally, the Fifth Circuit again ignored this Court's directive that the state-action analysis "begins by identifying 'the *specific* conduct of which the plaintiff complains.'" *American Manufacturers Mutual Insurance Co.* v. *Sullivan*, 526 U.S. 40, 51 (1999) (emphasis added; citation omitted). Here, respondents claim to have been injured by specific instances of content moderation, but the Fifth Circuit did not ask whether the government compelled those particular actions; instead, it presumed that *all* moderation decisions by *all* platforms are attributable to the government.

The implications of that holding are profoundly disruptive. If the platforms are state actors when they

---

[7] The Fifth Circuit purported to find that the Surgeon General's Office engaged in coercion as well, lumping it in with the White House because of their allegedly "close cooperation and the ministerial ecosystem." J.A. 4. The court did not explain what it meant by "ministerial ecosystem," and the only "close cooperation" it cited was a July 2021 White House press conference at which the Surgeon General answered questions about an "advisory on health misinformation" he had published earlier that day. C.A. ROA 624. Neither his remarks nor the advisory contains anything remotely like a threat, much less a threat related to content moderation. See *id.* at 624-630 (transcript of remarks); *id.* at 651-672 (advisory).

AMERICAN OVERSIGHT

moderate content, they are subject to First Amendment constraints—including prohibitions on viewpoint discrimination. And users affected by the platforms' content-moderation decisions could thus secure, on First Amendment grounds, injunctions compelling the platforms to restore content that they chose to delete. Cf. *Adickes* v. *S.H. Kress & Co.*, 398 U.S. 144, 171 (1970) (allowing claims against private party "compelled" and "commanded" to act by the government). That could include content from spammers, trolls, or worse, see pp. 3-5, *supra*.

The Fifth Circuit erred in imposing those federal constitutional requirements on decisions by private social media companies about the content they choose to present on their own platforms. This Court has emphatically rejected sweeping state-action theories that would "eviscerate certain private entities' rights to exercise editorial control over speech and speakers on their properties or platforms" by subjecting those choices "to the constraints of the First Amendment." *Halleck*, 139 S. Ct. at 1932-1933. The Fifth Circuit's decision rests on just that sort of theory: The court embraced loose, malleable standards for coercion and significant encouragement that contradict this Court's precedents and radically extend the state-action doctrine.

1. The Fifth Circuit erroneously applied a four-factor test unmoored from the proper coercion inquiry

At times, the Fifth Circuit recognized that coercion occurs only if the government "intimat[es] that some form of punishment will follow a failure to comply." J.A. 46. To identify such threats, the court looked to a four-factor test developed by other circuits. See J.A. 47. The unweighted, "non-exclusive" factors are "(1) the

AMERICAN OVERSIGHT

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.'" J.A. 42 (brackets and citations omitted). Properly understood and applied, those factors may be relevant in determining whether a communication constitutes a coercive threat of adverse government action.

Here, however, the Fifth Circuit erred by unmooring those factors from the ultimate coercion inquiry and instead refashioning them into an amorphous standard that can be satisfied by government speech unaccompanied by any threat. Instead of using tone to distinguish expressions of concern from veiled threats, the court found coercion based on nothing more than strong language. Rather than an objective test, the court gave dispositive weight to the recipient's subjective perceptions. The court considered not the speaker's authority to carry out a threat, but the government's general law-enforcement and regulatory authority. And the court relied on general public statements about potential legislative changes that were not connected to any content-moderation request.

a. *Tone.* Properly understood, a statement's tone sometimes can be probative: "That's a nice business you've got there; it'd be a shame if something happened to it" can be a genuine expression of concern or a veiled threat, depending on the delivery. But that is not how the Fifth Circuit conceived of "tone." Instead, it viewed the mere use of strong language, untethered from any intimation of a threat, as sufficient to imply coercion. See J.A. 51-52.

For example, the Fifth Circuit stated that White House officials and the President made "inflammatory

AMERICAN OVERSIGHT

accusations, such as saying that the platforms were 'poisoning' the public, and 'killing people,'" and that they "needed to take greater responsibility and action." J.A. 57 (brackets omitted). Indeed, the Fifth Circuit appeared to view the critical events in the White House's 2021 interactions with the platforms as a series of public statements in which the President, the Press Secretary, and the Surgeon General strongly criticized the platforms and called on them to do more. J.A. 10-11. But as explained above, the government is entitled to forcefully "advocate and defend its own policies," *Southworth*, 529 U.S. at 229, including by using strong language to criticize others' constitutionally protected speech, without converting any responsive private conduct into state action. See pp. 23-29, *supra*.

b. *Perception.* Instead of undertaking an objective evaluation of the government's communications, the Fifth Circuit focused on "how the platforms perceived" them. J.A. 52. In the analogous context of "true threats," this Court has relied on an objective test and, in criminal cases, the speaker's subjective perception—not the recipient's perception. See *Counterman* v. *Colorado*, 600 U.S. 66, 72-78 (2023). Here, too, while the platforms' subjective perceptions might be evidence of how a reasonable person would have understood the communications, the Fifth Circuit's singular focus on the platforms' perceptions was misplaced.

In any event, the Fifth Circuit did not cite evidence establishing that the government's communications were objectively threatening. The court instead relied almost exclusively on the platforms' "subsequent conduct." J.A. 52. In the court's view, "the platforms were *influenced* by" the government because they took action in response to governmental requests and pledged

AMERICAN OVERSIGHT

to work and communicate with White House officials. J.A. 53 (emphasis added). The court similarly relied on evidence that "the FBI warned the platforms of 'hack and dump' operations from 'state-sponsored actors' that would spread misinformation through their sites," and that the "platforms reacted * * * by taking down content." J.A. 64; see *ibid.* (asserting that some platforms changed their terms of service "to capture 'hack-and-leak' content after the FBI asked them to do so").

But influence is also the natural result of successful efforts to inform, to persuade, or to criticize. That the platforms often acted in response to the government's communications thus does not remotely show that those communications were coercive. See *O'Handley*, 62 F.4th at 1159. More telling is that the platforms routinely *declined* to act. Emails between the White House and the platforms contain several examples of the platforms' explaining that content would not be removed because "it does not violate [the platforms' policies]." J.A. 701; see, *e.g.*, J.A. 731, 748, 754. Similarly, platforms frequently chose not to remove content flagged by CISA. See, *e.g.*, C.A. ROA 23,234-23,235, 23,240-23,243, 23,245-23,256. And the platforms opted not to remove content that the FBI had flagged roughly *half* the time. J.A. 15, 165, 218.

That the platforms often declined to remove flagged content further confirms that the government was seeking to inform or persuade—not to coerce. And despite the platforms' routine refusals to act in response to the government's outreach, neither respondents nor the Fifth Circuit have identified even a single instance in which the government imposed *any* adverse consequences in retaliation. Indeed, Twitter ceased enforcement of its COVID-19 misinformation policy in Novem-

AMERICAN OVERSIGHT

ber 2022, yet suffered no adverse consequences from the federal government. C.A. ROA 22,536.

c. *Authority.* A speaker's authority may be relevant context because threats or inducements are more (or less) likely to be coercive if the speaker actually has (or lacks) the authority to carry out the threat or grant the inducement. But that is not how the Fifth Circuit understood the relevant authority; instead, it relied on generalized law-enforcement or regulatory authority.

For example, the Fifth Circuit held that because the FBI is "the lead law enforcement, investigatory, and domestic security agency for the executive branch," its "message[s]" are "'*inherently coercive*.'" J.A. 54 (citation omitted). Similarly, the court held that the White House "clearly" has authority over social-media companies because it "wields significant power in this Nation's constitutional landscape," including by "direct[ing] an army of federal agencies that create, modify, and enforce federal regulations." J.A. 53-54. That cannot be right. "Agencies are permitted to communicate in a non-threatening manner with the entities they oversee without creating a constitutional violation." *O'Handley*, 62 F.4th at 1163. Democracies could not function were it otherwise.

The Fifth Circuit's reasoning, if taken seriously, would mean that White House personnel and anyone in the FBI—not to mention every other law-enforcement agency in the country—could never ask *anyone* for *anything* without the request's being deemed coercive, and thereby transforming the recipient into a state actor if it took the requested action. This Court has already rejected that premise in other contexts. For example, *Colorado* v. *Connelly*, 479 U.S. 157 (1986), held "that coercive police activity is a necessary predicate to

AMERICAN OVERSIGHT

the finding that a confession is not 'voluntary.' " *Id.* at 167. And *Schneckloth* v. *Bustamonte*, 412 U.S. 218 (1973), held that consent to a police search cannot "be coerced, by explicit or implicit means, by implied threat or covert force." *Id.* at 228. Those holdings would be nonsensical if all law-enforcement requests were inherently coercive. And if requests to a *criminal suspect* are not always coercive, *a fortiori* the same is true of communications with sophisticated businesses.

The Fifth Circuit's contrary view—that all messages from the FBI are "'inherently coercive'"—led it to find coercion despite acknowledging that the FBI "alerted [platforms] to misinformation" in ways that were not "threatening" and did not "reference adverse consequences." J.A. 62-63 (citation omitted). Indeed, the court did not identify any specific FBI request to remove content in the first place. The court described only efforts to share information and flag activity to which the platforms could apply their own policies. See J.A. 14-15 (stating that the FBI "shared" information, "tipped the platforms off," "alerted the platforms," and conducted "flagging operations"). Similarly, unrebutted testimony makes clear that the FBI did not ask platforms to change their policies—as respondents themselves acknowledged below. See C.A. ROA 16,640 (respondents' proposed statement of facts asserting that "the FBI repeatedly inquired of the social-media platforms *whether* their policies would allow for or require the censorship of hacked materials," even if the FBI did not itself "urge[] the platforms to change their terms of service to address hacked materials"); see also *id.* at 10,355 (FBI official's testimony).

But even if the FBI had made such requests, the fact that the social-media companies agreed that they did

AMERICAN OVERSIGHT

not want to host content posted by foreign malign actors on their platforms—an eminently reasonable course of action—would not itself have transformed the companies' decisions into the government's. And it certainly would not have had that transformative effect merely because the FBI is a law-enforcement agency.

d. *Adverse consequences.* The Fifth Circuit described the fourth factor as asking "whether the speaker 'refers to adverse consequences that will follow *if the recipient does not accede to the request*.'" J.A. 56 (emphasis added; citation omitted). But the court effectively ignored the italicized phrase in its application of this factor, finding it satisfied (J.A. 56-57) based on generic references to proposed legislative changes and antitrust reforms that were untethered from any specific request for content moderation. See pp. 30-34, *supra*. The court cited no precedent suggesting that such general references to potential legislative changes can transform other communications into coercive threats.

* * *

The Fifth Circuit's unmooring of the four-factor test from the ultimate coercion inquiry rendered that test profoundly malleable. The court approvingly cited (*e.g.*, J.A. 39-45, 51-59) other decisions applying the same factors, yet arrived at very different results. In the court's view, for example, the White House Director of Digital Strategy "clearly" "wields significant power" over social-media companies, but a United States Senator is "'removed from the relevant levers of power.'" J.A. 53-54 (quoting and attempting to distinguish *Kennedy* v. *Warren*, 66 F.4th 1199, 1210 (9th Cir. 2023)). And while statements like "'you are hiding the ball'" and "you are not 'trying to solve the problem'" reflect "hyper-critical phraseology" that violates the court's tone threshold,

AMERICAN OVERSIGHT

J.A. 51, the Senator's "chastis[ing]" a company "for 'peddling misinformation about COVID-19 vaccines and treatments'" and thereby causing "countless illnesses and deaths," *Kennedy*, 66 F.4th at 1207-1208, poses no tone problem, see J.A. 51. This Court should reject the Fifth Circuit's novel theory of coercion as both unsound and unworkable.

2. The Fifth Circuit erred in finding significant encouragement based only on mere entanglement

The Fifth Circuit also adopted an impermissibly broad definition of "significant encouragement," holding that it can be established merely by a government official's "entanglement in a party's independent decision-making." J.A. 36.

a. As an initial matter, the Fifth Circuit's "entanglement" standard is incompatible with this Court's precedents defining the "joint action" theory of state action. In those decisions, the Court has used the word "entwinement" (akin to "entanglement") to describe such joint action. For example, in *Brentwood Academy* v. *Tennessee Secondary School Athletic Association*, 531 U.S. 288 (2001), the Court held that a school athletic association, though "nominally private," should be considered a state actor because of "the pervasive entwinement of public institutions and public officials in its composition and workings." *Id.* at 298. But as the Fifth Circuit recognized here, a plaintiff cannot show that sort of "joint action" unless the government is "deeply intertwined with the private actor as a whole." J.A. 36 n.11.

Yet the Fifth Circuit stated that its conception of "entanglement" for "significant encouragement" purposes requires a much lower "level of integration" than required by the "joint action test." J.A. 36 n.11. Ac-

AMERICAN OVERSIGHT

cording to the court, "entanglement" could constitute "significant encouragement" even when it is limited to "one facet of the private actor's operations." *Ibid.* At the same time, the court did not identify any other elements required to satisfy its conception of the "significant encouragement" test. If accepted, therefore, the Fifth Circuit's formulation would render this Court's joint-action test superfluous because the watered-down "significant encouragement" test would always be satisfied first.

b. The Fifth Circuit's application of its novel "entanglement" standard further illustrates that standard's flaws. For example, the court reasoned that White House officials "significantly encouraged the platforms to moderate content" because they "monitored" the platforms' "moderation activities"; because they "repeatedly communicated their concerns, thoughts, and desires to the platforms"; and because the platforms "invited the officials to meetings, roundups, and policy discussions" and sometimes "complied with the officials' requests." J.A. 59-60. Similarly, the court held that "CDC was entangled in the platforms' decision-making processes" because "the platforms asked CDC officials to decide whether certain claims were misinformation," which led to a working relationship in which "the platforms came to *heavily rely* on the CDC" to provide public-health information that informed the platforms' content-moderation decisions. J.A. 65-66. And the court reasoned that CISA engaged in significant encouragement because "CISA officials affirmatively *told* the platforms whether the content they had 'switchboarded' was true or false," J.A. 68, which in turn "ap-

AMERICAN OVERSIGHT

parently led to moderation polices being altered and content being removed or demoted," J.A. 15-16.[8]

The Fifth Circuit cited no precedent for its conclusion that if private companies communicate with and choose to follow advice from the government (including advice they solicit), the companies thereby become state actors. Government officials are free to express their views without violating the First Amendment or creating state action. See *Summum*, 555 U.S. at 468. And this Court has emphasized that "[a]ction taken by private entities with the mere approval or acquiescence of the [government] is not state action." *American Manufacturers*, 526 U.S. at 52. The Fifth Circuit's contrary view would subject a wide range of private conduct to constitutional standards ordinarily applicable only to the government. And it would obliterate the settled principle that the government can permissibly "attempt[] to convince" a private party to undertake actions that the government believes will advance the public interest. *O'Handley*, 62 F.4th at 1158; see *Penthouse*, 939 F.2d at 1016.

III. THE LOWER COURTS' INJUNCTION IS INEQUITABLE

"An injunction is a matter of equitable discretion; it does not follow from success on the merits as a matter of course." *Winter* v. *NRDC, Inc.*, 555 U.S. 7, 32 (2008). Here, the injunction is unnecessary to prevent irreparable injury to respondents, is overbroad, and will irreparably harm the government and the public.

---

[8] The Fifth Circuit cited no evidence to support its assertion that CISA "affirmatively" provided information about the veracity of content. The record contains only one incident where a CISA employee provided his understanding of an official statement from Pennsylvania—and that was only after the platform asked him for his views. See C.A. ROA 13,421-13,424.

AMERICAN OVERSIGHT

A. Although First Amendment injuries may be irreparable when they occur, *Elrod* v. *Burns*, 427 U.S. 347, 373 (1976) (plurality opinion), a plaintiff seeking a preliminary injunction still must make "a clear showing," *Winter*, 555 U.S. at 22, that such injuries are "imminent," *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 141 S. Ct. 63, 74 (2020) (per curiam) (Kavanaugh, J., concurring). Neither the district court nor the Fifth Circuit substantiated any finding that respondents face ongoing or imminent First Amendment injuries. The Fifth Circuit found that respondents "are likely to suffer an irreparable injury" because "their First Amendment interests are either threatened or impaired." J.A. 72-73. But that is conclusory, and the court did not cite anything in the record to support the conclusion that an injunction is necessary to prevent any imminent First Amendment injury to respondents. The court stated (J.A. 73) that "the officials' challenged conduct has not stopped," but that is not a finding that *these respondents* are likely to suffer imminent harm as a result of that conduct.

B. Because a federal court's "constitutionally prescribed role is to vindicate the individual rights of the people appearing before it," "[a] plaintiff's remedy must be tailored to redress the plaintiff's particular injury." *Gill* v. *Whitford*, 138 S. Ct. 1916, 1933-1934 (2018). Principles of equity reinforce that constitutional limit: Injunctive relief may "be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano* v. *Yamasaki*, 442 U.S. 682, 702 (1979); see *United States* v. *Texas*, 599 U.S. 670, 702-703 (2023) (Gorsuch, J., concurring in the judgment).

AMERICAN OVERSIGHT

The injunction here flouts those principles. Despite the denial of respondents' motion for class certification, the injunction covers communications with and about *all* social-media platforms (not just those used by respondents, see J.A. 281 n.2) regarding content moderation with respect to *all* posts by *any* person (not just respondents) on *all* topics (including national security and criminal matters, which even the district court recognized were improper to include, see J.A. 283-284). Cf. *Lewis*, 518 U.S. at 357 (even when "a plaintiff demonstrate[s] harm from one particular inadequacy," courts are not "authorized to remedy *all* inadequacies").

The Fifth Circuit attempted to justify that sweeping relief on the ground that an injunction may incidentally benefit nonparties "if such breadth is necessary to give prevailing parties the relief to which they are entitled." J.A. 82 (citation omitted). But the court did not find—and on this record could not have found—that this injunction's breadth was needed to provide full relief to respondents. Instead, the court reasoned that "[t]he harms that radiate from [the government's alleged] conduct extend far beyond just [respondents]" and affect "every social-media user." *Ibid.* That is a non sequitur. Whether a defendant's conduct also might have harmed nonparties has no bearing on whether more limited relief would adequately redress *the plaintiffs*' cognizable injuries.

C. If permitted to take effect, the injunction would impose grave harms on the government and the public because it could chill vital governmental communications. See *Nken* v. *Holder*, 556 U.S. 418, 435 (2009) (harms to government and public "merge").

Given the Fifth Circuit's view that any request from a law-enforcement agency is inherently coercive, see

AMERICAN OVERSIGHT

J.A. 62-63, the FBI would need to tread carefully in its interactions with social-media companies, potentially eschewing communications that protect national security or public safety. For example, in the early stages of an investigation, law-enforcement officials may be uncertain whether a post involves unprotected criminal activity (such as a true threat). But the injunction leaves them guessing what quantum of certainty they must possess before reaching out, potentially leading to disastrous delays. The injunction also could preclude otherwise lawful reciprocal exchanges of information to determine whether a crime occurred, including disclosures under 18 U.S.C. 2702.

Or suppose the White House Press Secretary says that the President condemns the role that social media has played in harming teenagers' mental health, calls on platforms to exercise greater responsibility, and mentions the possibility of legislative reforms. Such statements might be viewed as coercion or significant encouragement under the Fifth Circuit's novel understanding of those concepts. The court's reasoning likewise suggests that CDC or CISA would risk contempt if they simply answered platforms' inquiries about matters within their respective expertise, if the platforms later rely on the answers in making content-moderation decisions. Cf. J.A. 65-68.

Respondents have protested that those examples are hypotheticals. Cf. 10/20/23 Order 3-4 (Alito, J., dissenting from grant of application for stay). But it is hardly speculative that Executive Branch officials will speak on those and other topics of public concern. Indeed, the Surgeon General recently appeared on a popular podcast to discuss the risks that social media poses to chil-

AMERICAN OVERSIGHT

dren.[9] And the White House recently condemned as "'repugnant'" and "'evil'" certain speech that was circulating online, which "TikTok sought to block." Sapna Maheshwari, *Bin Laden Videos Go Viral on App*, N.Y. Times, Nov. 17, 2023, at A12. Even the potential that the lower courts might construe the injunction to limit the Executive Branch's communications on issues of public consequence could chill those communications. Such an "intrusion by a federal court into the workings of a coordinate branch of the Government" would irreparably harm the Executive Branch and raise serious separation-of-powers concerns. *INS* v. *Legalization Assistance Project*, 510 U.S. 1301, 1306 (1993) (O'Connor, J., in chambers).

Those separation-of-powers concerns are especially salient given the Fifth Circuit's focus (*e.g.*, J.A. 2, 16, 23) on "regular contact" between the government and platforms. Governments and private parties have long worked together, especially in times of crisis. For example, during the Ebola crisis, "CDC conduct[ed] daily and weekly calls and webinars to provide a forum for partners to have questions answered."[10] Here, the social-media platforms themselves have said they value continued engagement with the government, noting that "[s]haring information between tech companies, governments and law enforcement * * * can be particularly critical in disrupting malicious foreign campaigns by sophisticated threat actors." Meta, *Adversarial*

---

[9] See Emily Oster, *How to Weigh the Risks of Social Media: A conversation with the surgeon general* (Nov. 16, 2023), parentdata.org/weigh-risks-social-media.

[10] Obama White House Archives, *Fact Sheet: Progress in Our Ebola Response at Home and Abroad* (Feb. 11, 2015), perma.cc/LE9J-FKB5.

AMERICAN OVERSIGHT

Threat Report 17 (Nov. 2023), perma.cc/Z6HZ-LJWW. Given the Fifth Circuit's evident disapproval of regular contact, the injunction could chill those collaborative relationships as well.

All of the harms described above are aggravated by the injunction's broad, general terms. Cf. Fed. R. Civ. P. 65(d). The injunction relies on contestable legal terminology to describe its prohibitions: The government may not "coerce or significantly encourage" platforms with respect to "protected free speech." J.A. 80. The legal meaning of "coercion" and "significant encouragement" in this context is at the very heart of the parties' dispute, and the definition of "protected free speech" has been hotly debated since the Founding. Yet the Fifth Circuit's decision compels thousands of government officials to parse those concepts and tailor their speech accordingly, lest they violate the injunction's terms.

This Court has observed that even the "fear of being sued" can "'dampen the ardor of all but the most resolute, or the most irresponsible public officials, in the unflinching discharge of their duties.'" *Harlow* v. *Fitzgerald*, 457 U.S. 800, 814 (1982) (brackets and citation omitted). The fear of being held in contempt is no less crippling. See *Schmidt* v. *Lessard*, 414 U.S. 473, 476 & n.2 (1974) (per curiam). And it is especially inequitable to grant sweeping injunctive relief imposing those harms on the government and the public in a suit brought by a few social-media users whose claimed injuries consist primarily of years-old incidents.

AMERICAN OVERSIGHT

CONCLUSION

This Court should reverse the judgment of the court of appeals in relevant part and direct that the district court's preliminary injunction, as modified by the court of appeals, be vacated in its entirety.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
BRIAN H. FLETCHER
Deputy Solicitor General
SOPAN JOSHI
Assistant to the Solicitor General
DANIEL TENNY
DANIEL WINIK
SIMON C. BREWER
Attorneys

DECEMBER 2023

AMERICAN OVERSIGHT

To: Glenn, Tammy[Tammy.Glenn@ago.mo.gov]
From: Scott, Todd[/O=MO AGO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1DAF1E35615D4B2E8DBB3F318306291A-SCOTT, TODD]
Sent: Wed 12/20/2023 7:39:54 AM (UTC-06:00)
Subject: FW: 23-411 - Murthy v. Missouri
23-411ts Murthy.pdf
23-411 J.A. - Murthy FILE.pdf

In case you need these to build our file.Thanks.

Todd Scott | Senior Counsel
Missouri Attorney General's Office
207 West High St
Jefferson City, MO 65101
(573) 751-8366
Todd.Scott@ago.mo.gov

From: John Sauer <john.sauer@james-otis.com>
Sent: Tuesday, December 19, 2023 6:36 PM
To: Short, Tracy <ShortT@ag.louisiana.gov>; murrille@ag.louisiana.gov; Ken Capps <Ken.Capps@james-otis.com>; Divine, Josh <Josh.Divine@ago.mo.gov>; Scott, Todd <Todd.Scott@ago.mo.gov>; John Vecchione <john.vecchione@ncla.legal>; jenin.younes@ncla.legal; Zhonette Brown <Zhonette.Brown@ncla.legal>; john@burns-law-firm.com
Subject: FW: 23-411 - Murthy v. Missouri
FYI, here is the opening brief and joint appendix for Murthy v. Missouri

---

From: Williams, Cheri (OSG) <Cheri.Williams2@usdoj.gov>
Sent: Tuesday, December 19, 2023 6:31 PM
To: John Sauer <john.sauer@james-otis.com>; josh.divine@ago.mo.gov; john.vecchione@ncla.onmicrosoft.com; MURRILLE@AG.LOUISIANA.GOV
Cc: Kinkade, Judith L (JMD) <Judith.L.Kinkade@usdoj.gov>; Goodwin, Charlene W (OSG) <Charlene.W.Goodwin@usdoj.gov>
Subject: 23-411 - Murthy v. Missouri

NOTE: PLEASE E-MAIL BRIEFS TO THE SOLICITOR GENERAL AT SUPREMECTBRIEFS@USDOJ.GOV

Dear Counsel,

Attached please find a PDF version of the **Brief for the Petitioners** and **Joint Appendix,** filed today, December 19, 2023, in the above-captioned case.Hard copies have been sent via first-class mail.

Cheri T. Williams
Case Management Specialist
Office of the Solicitor General
U.S. Department of Justice
(202) 514-2217/2218

AMERICAN OVERSIGHT

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

ELIZABETH B. PRELOGAR
Solicitor General
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

Counsel of Record
for Petitioner

ANDREW BAILEY
Attorney General
JOSHUA M. DIVINE
Solicitor General
Office of the Attorney General
207 West High Street
Jefferson City, MO 65102
Joshua.Divine@ago.mo.gov
(573) 751-8870

Counsels of Record
for Respondent Missouri

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

Additional Counsel Listed on Inside Cover

AMERICAN OVERSIGHT

JEFF LANDRY
Attorney General
ELIZABETH BAKER MURRILL
Solicitor General
Louisiana Department of Justice
1885 N. Third Street
Baton Rouge, LA. 70802
murrille@ag.louisiana.gov
(225) 326-6766

Counsels of Record for Respondent Louisiana

JOHN JULIAN VECCHIONE
The New Civil Liberties Alliance
1225 19th Street, N.W.
Suite 450
Washington, D.C. 20036
john.vecchione@ncla.onmicrosoft.com
(202) 918-6902

Counsel of Record for Respondents Jayanta Bhattacharya, Martin Kulldorff, Aaron Kheriaty, Jim Hoft, and Jill Hines

AMERICAN OVERSIGHT

TABLE OF CONTENTS

Page

Court of appeals revised panel opinion (C.A. Doc. 268-1) (Oct. 3, 2023) 1

District court opinion (D. Ct. Doc. 293) (July 4, 2023) 85

District court judgment (D. Ct. Doc. 294) (July 4, 2023) 278

District court opinion denying stay (D. Ct. Doc. 301) (July 10, 2023) 286

District court judgment on motion to stay (D. Ct. Doc. 302) (July 10, 2023) 303

Court of appeals original panel opinion (C.A. Doc. 238-1) (Sept. 8, 2023) 305

Third amended complaint (D. Ct. Doc. 268) (filed May 5, 2023) 388

Declaration of Jayanta Bhattacharya (D. Ct. Doc. 10-3) (filed June 14, 2022) 580

Declaration of Martin Kulldorff (D. Ct. Doc. 10-4) (filed June 14, 2022) 593

Declaration of Jim Hoft (D. Ct. Doc. 10-5) (filed June 14, 2022) 604

Declaration of Patrick Flesch (D. Ct. Doc. 10-6) (filed June 14, 2022) 613

Declaration of Aaron Kheriaty (D. Ct. Doc. 10-7) (filed June 14, 2022) 619

Declaration of Jill Hines (D. Ct. Doc. 10-12) (filed June 14, 2022) 626

Declaration of Ashley Bosch (D. Ct. Doc. 10-13) (filed June 14, 2022) 633

White House emails (D. Ct. Doc. 174-1) (filed Jan. 11, 2023) 637

Supplemental Declaration of Jayanta Bhattacharya (D. Ct. Doc. 227-5) (filed Mar. 20, 2023) 766

AMERICAN OVERSIGHT

MO-AG-24-0028-A-002380

Table of Contents—Continued: Page

Supplemental Declaration of Martin Kulldorff (D. Ct. Doc. 227-6) (filed Mar. 20, 2023) 770
Supplemental Declaration of Aaron Kheriaty (D. Ct. Doc. 227-7) (filed Mar. 20, 2023) 773
Supplemental Declaration of Jim Hoft (D. Ct. Doc. 227-8) (filed Mar. 20, 2023) 777
Supplemental Declaration of Jill Hines (D. Ct. Doc. 227-9) (filed Mar. 20, 2023) 781
Second Supplemental Declaration of Jill Hines (D. Ct. Doc. 274-3) (filed May 20, 2023) 786
Second Supplemental Declaration of Jim Hoft (D. Ct. Doc. 274-4) (filed May 20, 2023) 796

AMERICAN OVERSIGHT

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: Oct. 3, 2023

OPINION

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.

* * * * *

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

---

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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 addressin g 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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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'

AMERICAN OVERSIGHT

"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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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).

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

---

[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).

AMERICAN OVERSIGHT

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.

---

[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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

"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.

AMERICAN OVERSIGHT

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,

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

AMERICAN OVERSIGHT

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 wh en 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

[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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

[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.

AMERICAN OVERSIGHT

"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

AMERICAN OVERSIGHT

(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

---

[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.

AMERICAN OVERSIGHT

. . . "). 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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

---

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.

AMERICAN OVERSIGHT

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

[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.").

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

---

[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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

"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

---

[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

AMERICAN OVERSIGHT

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*

---

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.*

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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 —

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

---

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 avail able").

[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).

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

---

[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).

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

---

[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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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).

AMERICAN OVERSIGHT

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).

---

[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.").

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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).

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

[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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

No. 3:22-CV-01213

STATE OF MISSOURI ET AL.

v.

JOSEPH R. BIDEN, JR, ET AL.

Filed: July 4, 2023

MEMORANDUM RULING ON REQUEST FOR PRELIMINARY INJUNCTION

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

[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"),

AMERICAN OVERSIGHT

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

---

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]

AMERICAN OVERSIGHT

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 desc ribed 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 constitu tes 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

AMERICAN OVERSIGHT

> 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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

---

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

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

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

[32][Id.]

[33][Id.]

AMERICAN OVERSIGHT

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]

---

[34] [Doc. No. 10-12

[35] [Id.]

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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,

---

[37] [Doc. No. 1]

[38] [Doc. No. 45]

[39] [Doc. No. 84]

[40] [Doc. No. 268]

AMERICAN OVERSIGHT

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,

[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.

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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]

---

[45] [Id. at 2]

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

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

AMERICAN OVERSIGHT

(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.

---

[48] [Id. at 5-8]

[49] [Id. at 6-8]

[50] [Id.]

[51] [Id.]

AMERICAN OVERSIGHT

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

---

[52] [Id.]

[53] [Id. at 6]

[54] [Id. at 5]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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

---

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

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

[61] [Id.]

[62] [Id.at 11]

[63] [Id. at 11-12]

AMERICAN OVERSIGHT

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

---

[64] [Id.]

[65] [Id. at 11]

[66] [Id. at 11]

[67] [Id. at 11]

[68] [Id. at 10]

AMERICAN OVERSIGHT

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 platform 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.]

AMERICAN OVERSIGHT

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]

---

[75] [Id.]

[76] [Id. at 14]

[77] [Id. at 17]

[78] [Id. at 17]

[79] [Id. at 17-21]

[80] [Id. at 17]

AMERICAN OVERSIGHT

(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] Flaherty 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

---

[81] [Id. at 22]

[82] [Id. at 22]

[83] [Id. at 23]

[84] [Id. at 30-31]

[85] [Id. at 31]

AMERICAN OVERSIGHT

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

---

[86] [Id. at 31-32]

[87] [Id. at 24-25]

[88] [Id.]

[89] [Id. at 24-25]

[90] [Id. at 24]

AMERICAN OVERSIGHT

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]

---

[91] [Id. at 25-27]

[92] [Id. at 34]

[93] [Id. at 33]

[94] [*Id.* at 36]

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

[96] [*Id.*]

AMERICAN OVERSIGHT

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

---

[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.*]

AMERICAN OVERSIGHT

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"

---

[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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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

---

[114] [Id.]

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

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

[117] [Doc. No. 214-1 at ¶ 116]

AMERICAN OVERSIGHT

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,

---

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

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

[120] [Id.]

[121] [Id. at 42]

AMERICAN OVERSIGHT

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]

---

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

[123] [Id.]

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

[125] [Id.]

[126] [Id. at 55]

AMERICAN OVERSIGHT

(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]

---

[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]

AMERICAN OVERSIGHT

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,

---

[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.]

AMERICAN OVERSIGHT

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.]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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 journal ists.[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

---

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

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

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

[153] [Id.]

AMERICAN OVERSIGHT

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

---

[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").

AMERICAN OVERSIGHT

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]

---

[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]

AMERICAN OVERSIGHT

(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]

---

[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]

AMERICAN OVERSIGHT

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 nonprofit 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

---

[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]

AMERICAN OVERSIGHT

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]

---

[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.]

AMERICAN OVERSIGHT

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]

---

[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]

AMERICAN OVERSIGHT

(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

---

[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]

AMERICAN OVERSIGHT

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

---

[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.]

AMERICAN OVERSIGHT

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

---

[203] [Id.]

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

[205] [Id.]

[206] [Id.]

[207] [Id.]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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

---

[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.]

AMERICAN OVERSIGHT

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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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

---

[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.]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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]

---

[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]

AMERICAN OVERSIGHT

(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

---

[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]

AMERICAN OVERSIGHT

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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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]

AMERICAN OVERSIGHT

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);

---

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

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

[296] [Id.]

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

AMERICAN OVERSIGHT

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

---

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

[299] [Id. at 1-4]

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

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

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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 bio-weapons, 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

---

[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

AMERICAN OVERSIGHT

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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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]

---

[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]

AMERICAN OVERSIGHT

(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]

---

[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]

AMERICAN OVERSIGHT

(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

---

[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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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]

---

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

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

[355] [Id.]

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

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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]

---

[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.]

AMERICAN OVERSIGHT

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]

---

[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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

"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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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]

---

[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]

AMERICAN OVERSIGHT

(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-

---

[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]

AMERICAN OVERSIGHT

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

---

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

[429] (emphasis added)

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

AMERICAN OVERSIGHT

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

---

[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.]

AMERICAN OVERSIGHT

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]

---

[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.]

AMERICAN OVERSIGHT

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]

---

[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]

AMERICAN OVERSIGHT

(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

---

[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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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]

---

[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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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.]

AMERICAN OVERSIGHT

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]

AMERICAN OVERSIGHT

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

---

[488] [Id. at 41]

[489] [Id. at 46, 48]

[490] [Id. at 48]

[491] [Id. at 49-52]

[492] [Id. at 57]

AMERICAN OVERSIGHT

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]

---

[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]

AMERICAN OVERSIGHT

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]

AMERICAN OVERSIGHT

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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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"

---

[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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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]

---

[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]

AMERICAN OVERSIGHT

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

---

[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").

AMERICAN OVERSIGHT

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]

---

[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]

AMERICAN OVERSIGHT

(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

---

[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]

AMERICAN OVERSIGHT

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]

---

[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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

> 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]

---

[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]

AMERICAN OVERSIGHT

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-

[601] [Id. at 9]

[602] [Id.]

[603] [Id. at 12]

[604] [Id.]

[605] [Id. at 17]

[606] [Id. at 19]

AMERICAN OVERSIGHT

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]

---

[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]

AMERICAN OVERSIGHT

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

---

[616] [Id. at 86, 92]
[617] [Id.]
[618] [Id.]
[619] [Id. at 87-88]
[620] [Id. at 87]
[621] [Id. at 150]

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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).

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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).

AMERICAN OVERSIGHT

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 acti on 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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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).

AMERICAN OVERSIGHT

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

[623] [Doc. No. 288 at 164-65]

AMERICAN OVERSIGHT

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,

---

[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]

AMERICAN OVERSIGHT

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]

---

[626] [II. A.]

[627] [Id. A. (5)]

[628] [Id. A. (10)]

[629] [Id.]

[630] [Id. A. (11)]

[631] [Id. A. (12)]

AMERICAN OVERSIGHT

(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]

---

[632] [Id. A. (15)]

[633] [Id. A. (16)]

[634] [Id. A. (17)]

[635] [Id.]

[636] [Id at A. (19)]

AMERICAN OVERSIGHT

(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.]

AMERICAN OVERSIGHT

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]

---

[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]

AMERICAN OVERSIGHT

(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

---

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

---

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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 dis information 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.

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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

---

[650] Google English Dictionary

AMERICAN OVERSIGHT

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

---

[651] [Doc. No. 209-5 at 4]

AMERICAN OVERSIGHT

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

---

[652] [Doc. No. 209-2]

[653] [Id. at 9]

[654] [Id. at 12]

[655] [Id. at 20-21]

[656] [Id. at 30]

AMERICAN OVERSIGHT

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]

AMERICAN OVERSIGHT

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.

---

[658] [Doc. No. 209-5 at 4]

AMERICAN OVERSIGHT

(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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

---

[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.

AMERICAN OVERSIGHT

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).

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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]

AMERICAN OVERSIGHT

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]

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

---

[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

AMERICAN OVERSIGHT

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.

Facebook pages have faced increasing censorship penalties and that the latter pages were de-platformed completely), etc.]

[665] [Doc. No. 266, at 151]

AMERICAN OVERSIGHT

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

---

[666] [Doc. No. 214-1, at ¶¶1428-1430]]

[667] [Id. at ¶1428]

AMERICAN OVERSIGHT

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-

[668] [Id. at ¶1429]

[669] [Id. at ¶ 1430]

[670] [Doc. No. 214, at 20–33]

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

---

[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)]

AMERICAN OVERSIGHT

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

---

[676] *See* [Id. at ¶¶1397-1411]

AMERICAN OVERSIGHT

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

---

[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

AMERICAN OVERSIGHT

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

---

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]

AMERICAN OVERSIGHT

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)]

AMERICAN OVERSIGHT

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

---

[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)]

AMERICAN OVERSIGHT

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]

---

[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

AMERICAN OVERSIGHT

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).

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]

AMERICAN OVERSIGHT

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,

---

[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]

AMERICAN OVERSIGHT

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

---

[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."]

AMERICAN OVERSIGHT

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]

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

---

[701] [Doc. 289, at 2].

[702] [Doc. 224, at 215–26], *quoting Kentucky v. Biden*, 23 F.4th 585, 598 (6th Cir. 2022).

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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]

AMERICAN OVERSIGHT

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

---

[706] [Doc. No. 37]

[707] [Doc. No. 1]

[708] Plaintiffs allege actions occurring as far back as 2020.

AMERICAN OVERSIGHT

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*

AMERICAN OVERSIGHT

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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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.*

---

[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]

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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].

AMERICAN OVERSIGHT

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:
>
> (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;

---

[727] [Doc. No. 244].

AMERICAN OVERSIGHT

(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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

> 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]

AMERICAN OVERSIGHT

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

---

[730] [Doc. No. 244 at 7]

[731] Hearing Transcript at 181, line 15.

[732] [Id. at lines 16-18]

AMERICAN OVERSIGHT

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]

AMERICAN OVERSIGHT

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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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

---

[740] [Id.]

[741] [Id. at ¶491]

AMERICAN OVERSIGHT

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.]

AMERICAN OVERSIGHT

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

---

[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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

Case No. 3:22-CV-01213

STATE OF MISSOURI, ET AL.
JUDGE TERRY A. DOUGHTY

v.

JOSEPH R BIDEN JR., ET AL.
MAG. JUDGE KAYLA D. MCCLUSKY

Filed: July 4, 2023

JUDGMENT

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:

AMERICAN OVERSIGHT

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

---

[1] All individuals named in this Judgment are being sued in their official capacities.

AMERICAN OVERSIGHT

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**

AMERICAN OVERSIGHT

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]

---

[2] "Social-media companies" include Facebook/Meta, Twitter, You Tube/Google, WhatsApp, Instagram, WeChat, TikTok, SinaWeibo, 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.

AMERICAN OVERSIGHT

(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;

AMERICAN OVERSIGHT

(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;

AMERICAN OVERSIGHT

(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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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 ("Dehm low"), Elvis M.

AMERICAN OVERSIGHT

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

---

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 ("A deyemo"), 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.*]

AMERICAN OVERSIGHT

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

---

[5] [*Id.* at 4, n. 3]

[6] [Doc. No. 296]

[7] [Doc. No. 297]

AMERICAN OVERSIGHT

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

---

[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").

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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]

---

[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]

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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]

AMERICAN OVERSIGHT

"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

---

[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]

AMERICAN OVERSIGHT

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

---

[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))

AMERICAN OVERSIGHT

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

---

[37] [*Id.* at 126-135]

[38] [*Id.* at 139-140]

[39] [*Id.* at 144-45]

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

---

[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]

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

---

[42] [Doc. No. 294 at 6]

[43] [Doc. No. 293 at 118-119].

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

JUDGMENT ON MOTION TO STAY

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,

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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 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."

AMERICAN OVERSIGHT

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 All ergy 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 Secretar y 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 Comm erce; 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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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."

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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).

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

"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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

---

[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).

AMERICAN OVERSIGHT

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

---

[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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

---

[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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

> 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,

AMERICAN OVERSIGHT

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 "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-

[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.

AMERICAN OVERSIGHT

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

---

[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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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,

---

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.").

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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,"

AMERICAN OVERSIGHT

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

---

[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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

---

[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.*

AMERICAN OVERSIGHT

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."

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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"—

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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]

AMERICAN OVERSIGHT

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)

---

[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 avail able").

[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).

AMERICAN OVERSIGHT

(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

AMERICAN OVERSIGHT

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

---

[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,

AMERICAN OVERSIGHT

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.

---

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).

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

---

[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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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).

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

---

[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).

AMERICAN OVERSIGHT

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

---

[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.").

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

(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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

. . . 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).

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

[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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

> 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'

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

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,

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

Filed: May 5, 2023

THIRD AMENDED COMPLAINT

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.*

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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-,

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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.*

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.*

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.*

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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."

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.*

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

/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,

AMERICAN OVERSIGHT

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'

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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).

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

- 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

AMERICAN OVERSIGHT

& 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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

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.*

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.*

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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."

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

"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-

AMERICAN OVERSIGHT

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.*

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

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,"

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.*

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

/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-

AMERICAN OVERSIGHT

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 malinformation." *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-

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

"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-

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.*

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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*

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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."

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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*]."

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

"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

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

[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

AMERICAN OVERSIGHT

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).

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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 takedown 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-

AMERICAN OVERSIGHT

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."

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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."

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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*

AMERICAN OVERSIGHT

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.*

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

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).

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

¶¶ 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.

AMERICAN OVERSIGHT

¶¶ 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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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."

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

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 hasresulted policy and enforcement-practice changes at social-media platforms that have caused censorship affecting thousands if not millions of

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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*

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.*

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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).

AMERICAN OVERSIGHT

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."

AMERICAN OVERSIGHT

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:

AMERICAN OVERSIGHT

"(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

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

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).

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

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).

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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).

AMERICAN OVERSIGHT

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)

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

ANDREW BAILEY
Attorney General of Missouri

/s/CHARLES F. CAPPS
CHARLES F. CAPPS, Mo. Bar No. 72734*
Deputy Solicitor General
Joshua M. Divine, Mo. Bar No. 69875*
Solicitor General
Todd A. Scott, Mo. Bar No. 56614*
Senior Counsel
Kenneth C. Capps, Mo. Bar No. 70908*
Assistant Attorney General
Missouri Attorney General's Office
Post Office Box 899
Jefferson City, MO 65102
Tel: (573) 751-8870
charles.capps@ago.mo.gov
Counsel for State of Missouri

/s/JENIN YOUNES
JENIN YOUNES*
John J. Vecchione*
New Civil Liberties Alliance
1225 19th Street N.W., Suite 450
Washington, DC 20036
Direct: (202) 918-6905
E-mail: jenin.younes@ncla.legal
Counsel for Plaintiffs Dr. Jayanta Bhattacharya, Dr. Martin Kulldorff, Dr. Aaron Kheriaty, and Jill Hines

---

* admitted *pro hac vice*

AMERICAN OVERSIGHT

JEFFREY M. LANDRY
Attorney General of Louisiana

/s/D. JOHN SAUER
D. JOHN SAUER, Mo. Bar No. 58721†
Special Assistant Attorney General
Elizabeth B. Murrill (La #20685)
Solicitor General
Tracy Short (La #23940)
Assistant Attorney General
Louisiana Department of Justice
1885 N. Third Street
Baton Rouge, Louisiana
Tel: (225) 326-6766
murrille@ag.louisiana.gov
Counsel for State of Louisiana

/s/JOHN C. BURNS
JOHN C. BURNS
Burns Law Firm
P.O. Box 191250
St. Louis, Missouri 63119
P: 314-329-5040
E-mail: john@burns-law-firm.com
Counsel for Plaintiff Jim Hoft

AMERICAN OVERSIGHT

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

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

Filed: June 14, 2022

DECLARATION OF JAYANTA BHATTACHARYA

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

---

[1] Great Barrington Declaration, https://gbdeclaration.org/.

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

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."

AMERICAN OVERSIGHT

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

---

[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/

AMERICAN OVERSIGHT

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

---

[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

AMERICAN OVERSIGHT

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

---

[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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.*

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

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

Filed: June 14, 2022

DECLARATION OF MARTIN KULLDORFF

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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-

---

[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/livecensorship-of-science-with-dr-martin-kulldorff-dr-scott-atlas-and-dr-jay-bhattacharya_4343061.html.

[2] Great Barrington Declaration, https://gbdeclaration.org/.

AMERICAN OVERSIGHT

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]

---

[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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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."

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

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

Filed: June 14, 2022

DECLARATION OF JIM HOFT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

---

[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).

AMERICAN OVERSIGHT

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.

---

[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).

AMERICAN OVERSIGHT

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:

---

[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).

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

---

[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).

AMERICAN OVERSIGHT

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

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

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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]

---

[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-

AMERICAN OVERSIGHT

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

---

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/.

AMERICAN OVERSIGHT

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

---

[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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

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

Filed: June 14, 2022

DECLARATION OF AARON KHERIATY

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

---

[5] https://aaronkheriaty.substack.com/p/farewell-university-of-california

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

---

[6] Available at https://www.youtube.com/watch?v=Ts8Zx1z_wac

AMERICAN OVERSIGHT

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

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

Filed: June 14, 2022

DECLARATION OF JILL HINES

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

[7] https://legis.la.gov/legis/BillInfo.aspx?s=202ES&b=HB49&sbi=y

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

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

Filed: June 14, 2022

DECLARATION OF ASHLEY BOSCH

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-

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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



AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

--

–

[**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. This is particularly critical to resolve at large because if there is an issue

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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**]

--

AMERICAN OVERSIGHT

[**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,

AMERICAN OVERSIGHT

[**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 worldwide

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

AMERICAN OVERSIGHT

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?

AMERICAN OVERSIGHT

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]

AMERICAN OVERSIGHT

U.S. Public Policy

Facebook

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.

AMERICAN OVERSIGHT

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?

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

-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,

AMERICAN OVERSIGHT

[**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

AMERICAN OVERSIGHT

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**]

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**]

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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 th is 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 shou ld 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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

>>>https://about.fb.com/news/2021/03/mark-zuckerberg-announces-facebooks-plans-to-help-get-people-vaccinated-against-covid-19/<<<;;

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**]

AMERICAN OVERSIGHT

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**]

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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**]

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

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

AMERICAN OVERSIGHT

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**]

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.

AMERICAN OVERSIGHT

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**

AMERICAN OVERSIGHT

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?

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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 Tele mundo 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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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**]

AMERICAN OVERSIGHT

@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.

AMERICAN OVERSIGHT

Get Outlook for iOS

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>

AMERICAN OVERSIGHT

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

---

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

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

[**REDACTED**]

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.

AMERICAN OVERSIGHT

• 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.

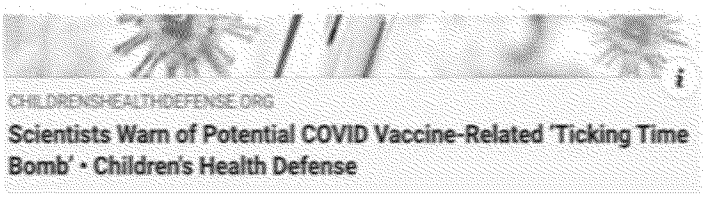
More broadly: we share [**REDACTED**] concern about knock-on effects and are curious to get a read from your CMU data about what you're seeing and with whom. Moreover, I want to make sure you have eyes on what might be spinning off the back end of this—that the news about J&J doesn't spin off misinformation. 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.

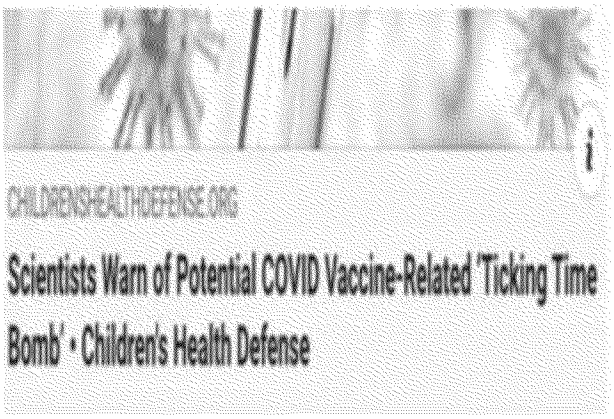
AMERICAN OVERSIGHT

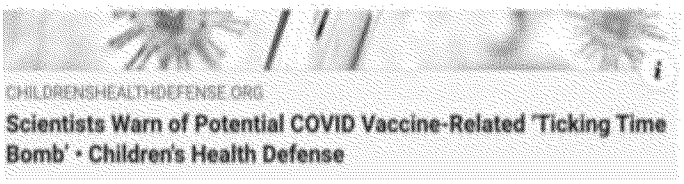
VACCINE HESITANCY EXAMPLES:

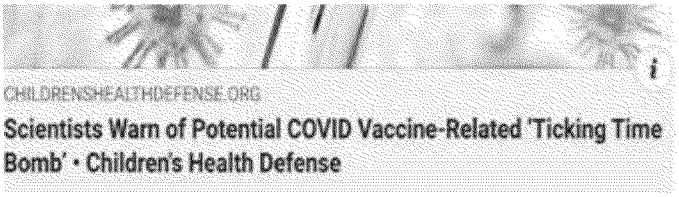
The following examples of content are those that do not violate our Misinformation and Harm policy, but may contribute to vaccine hesitancy or present a barrier to vaccination. This includes, for example, content that contains sensational or alarmist vaccine misrepresentation, disparaging others based 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.



AMERICAN OVERSIGHT







AMERICAN OVERSIGHT



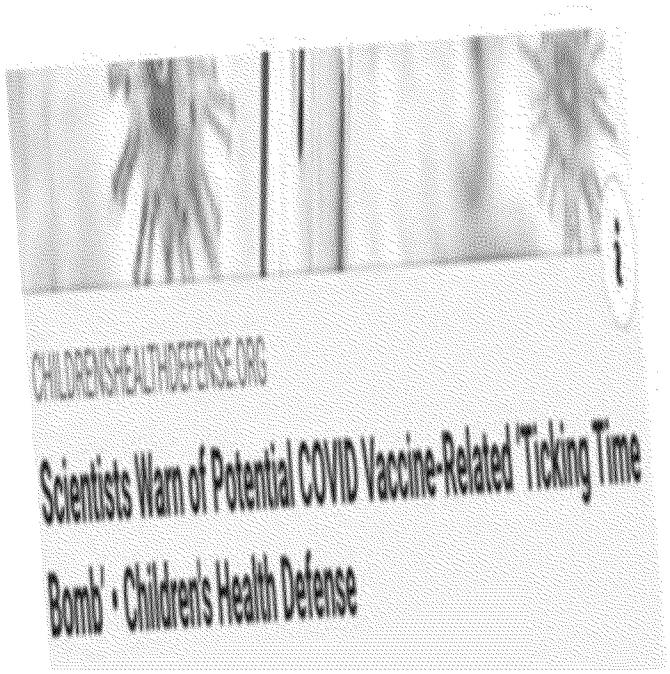
CHILDRENSHEALTHDEFENSE.ORG

Scientists Warn of Potential COVID Vaccine-Related 'Ticking Time Bomb' - Children's Health Defense

AMERICAN OVERSIGHT

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.



AMERICAN OVERSIGHT



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**] —

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

Given the timeline that was provided today for further decision about the J&J vaccine, it would be great to get your guidance about what affirmative messages we should amplify right now. Consistent with the message we heard at the press conferences, we're currently emphasizing the safety and efficacy of the Moderna and Pfizer vaccines in the Covid Information Center.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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 he lpful.

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

and evolving discussion. This new message is being rolled out and should appear instead of the generic label now.

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

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

Given the timeline that was provided today for further decision about the J&J vaccine, it would be great to get your guidance about what affirmative messages we should amplify right now. Consistent with the message we heard at the press conferences, we're currently emphasizing the safety and efficacy of the Moderna and Pfizer vaccines in the Covid Information Center.

AMERICAN OVERSIGHT

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:

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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)

AMERICAN OVERSIGHT

- 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?

AMERICAN OVERSIGHT

- 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**]

From: Flaherty, Rob EOP/WHO [**REDACTED**]

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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 . . .

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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"

AMERICAN OVERSIGHT

[**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.,

AMERICAN OVERSIGHT

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

>

AMERICAN OVERSIGHT

> 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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

- 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

AMERICAN OVERSIGHT

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-

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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**]

AMERICAN OVERSIGHT

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:

AMERICAN OVERSIGHT

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/

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

Best Regards,
[**REDACTED**]

--

[**REDACTED**] Government Affairs & Public Policy Manager,
YouTube [**REDACTED**]@google.com [**REDACTED**]

--

[**REDACTED** Government Affairs & Public Policy Manager,
YouTube [**REDACTED**]@google.com [**REDACTED**]

--

[**REDACTED**] Government Affairs & Public Policy Manager,
YouTube [**REDACTED**]@google.com [**REDACTED**]

AMERICAN OVERSIGHT

--

[**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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

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>

AMERICAN OVERSIGHT

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!

AMERICAN OVERSIGHT

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**]

AMERICAN OVERSIGHT

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**]

AMERICAN OVERSIGHT

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!

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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,

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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**]

From: [**REDACTED**]@twitter.com>

Sent: Wednesday, December 1, 2021 5:09 PM

AMERICAN OVERSIGHT

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**]

AMERICAN OVERSIGHT

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**]@

AMERICAN OVERSIGHT

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:

AMERICAN OVERSIGHT

>>>>>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 <<<;<<;

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

The White House

Press Secretary | Office of the First Lady

[**REDACTED**]@who.eop.gov

[**REDACTED**]

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:

AMERICAN OVERSIGHT

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

--

AMERICAN OVERSIGHT

Error! Filename not specified.

[**REDACTED**]

Public Policy

[**REDACTED**]

--

[**REDACTED**]

Public Policy

[**REDACTED**]

--

[**REDACTED**]

Public Policy

[**REDACTED**]

--

[**REDACTED**]

AMERICAN OVERSIGHT

Public Policy

[**REDACTED**]

--

[**REDACTED**]

Public Policy

[**REDACTED**]

--

[**REDACTED**]

Public Policy

[**REDACTED**]

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]

AMERICAN OVERSIGHT

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:

AMERICAN OVERSIGHT

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:

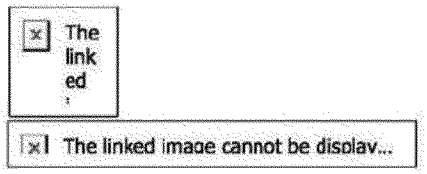
>

>Happy to connect you with some economists who can explain the basics to you guys

>

>https://mobile.twitter.com/gasbuddyguy/status/1555541573835886592/photo/1

--



[**REDACTED**]
Head of U.S. Public Policy
Follow me [**REDACTED**]

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

AMERICAN OVERSIGHT

> 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:

AMERICAN OVERSIGHT

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/1

AMERICAN OVERSIGHT

--



--



AMERICAN OVERSIGHT

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

SUPPLEMENTAL DECLARATION OF DR. JAYANTA BHATTACHARYA

---

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

Executed On: Mar. 15, 2023

/s/ JAYANTA BHATTACHARYA
JAYANTA BHATTACHARYA

AMERICAN OVERSIGHT

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

SUPPLEMENTAL DECLARATION OF DR. MARTIN KULLDORFF

---

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

AMERICAN OVERSIGHT

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 de-platforming, 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.

AMERICAN OVERSIGHT

I declare under penalty of perjury that the foregoing is true and correct.

Executed On: March 15, 2023

/s/ MARTIN KULLDORFF
DR. MARTIN KULLDORFF

AMERICAN OVERSIGHT

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

SUPPLEMENTAL DECLARATION OF DR. AARON KHERIATY

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT

Executed On: Mar. 16, 2023

/s/ JILL HINES
JILL HINES

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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.

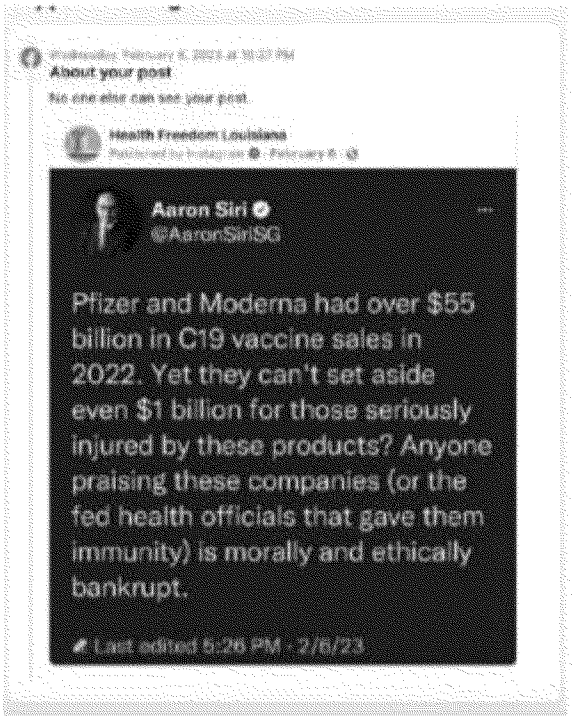
5. The harms I experience due to censorship of speech on social media are ongoing.

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.

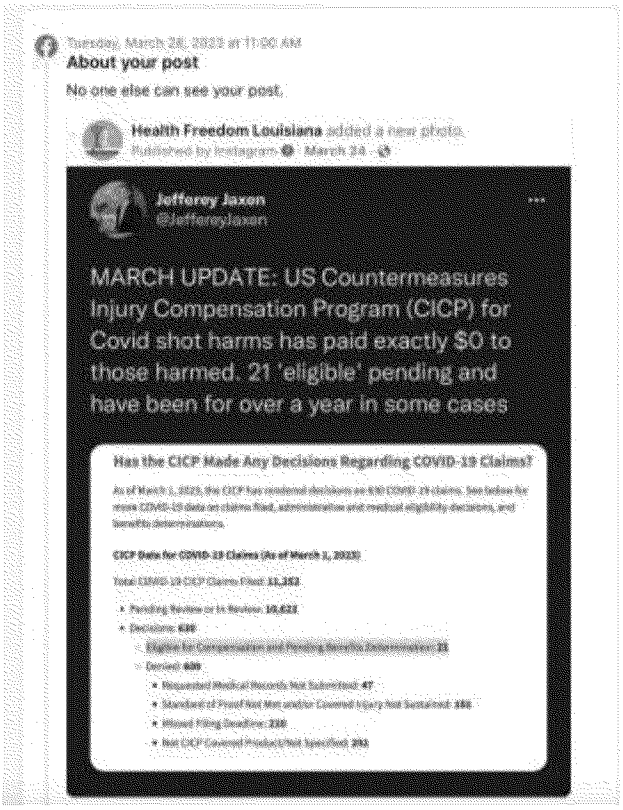
8. On February 8, 2023, my Health Freedom Louisiana page received a violation for simply sharing a Tweet from attorney Aaron Siri regarding the amount of money vaccine manufacturers grossed while setting no money aside for Covid vaccine injury victims. No one else was permitted to view or engage with the post.

AMERICAN OVERSIGHT



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.

AMERICAN OVERSIGHT



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

AMERICAN OVERSIGHT

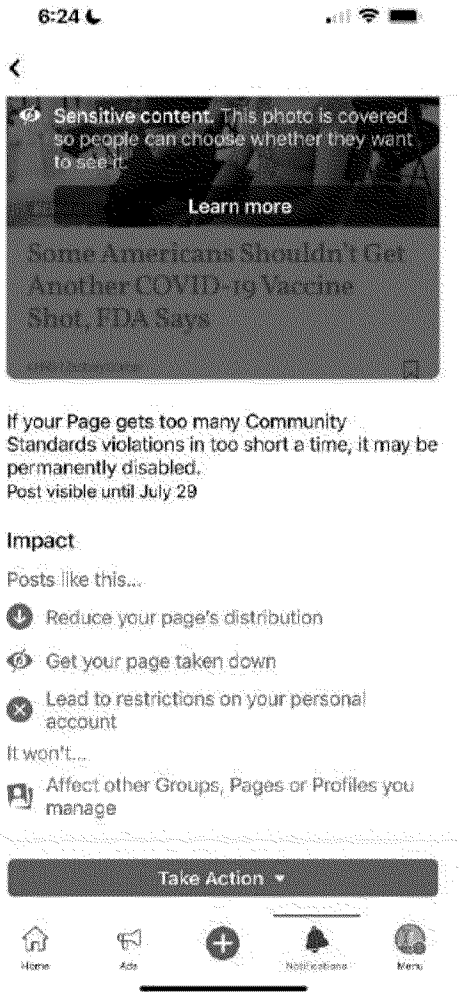
children factor into the business model of the pharmaceutical industry was issued a violation. No one else was permitted to view or engage with the post.



AMERICAN OVERSIGHT

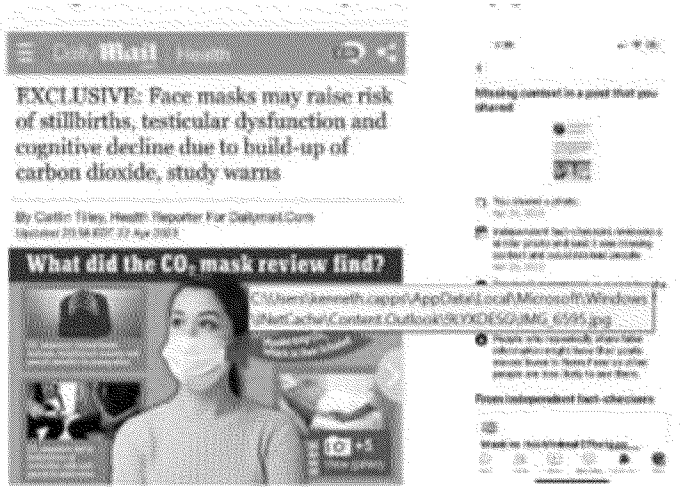


AMERICAN OVERSIGHT



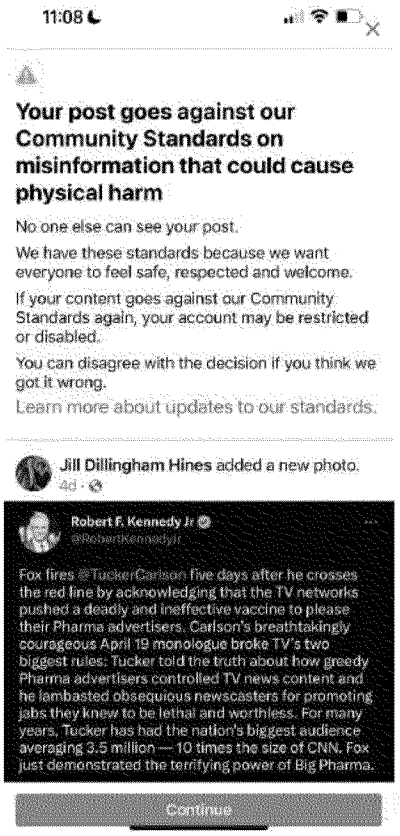
AMERICAN OVERSIGHT

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.

AMERICAN OVERSIGHT



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.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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: May 20, 2023

SECOND 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 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

AMERICAN OVERSIGHT

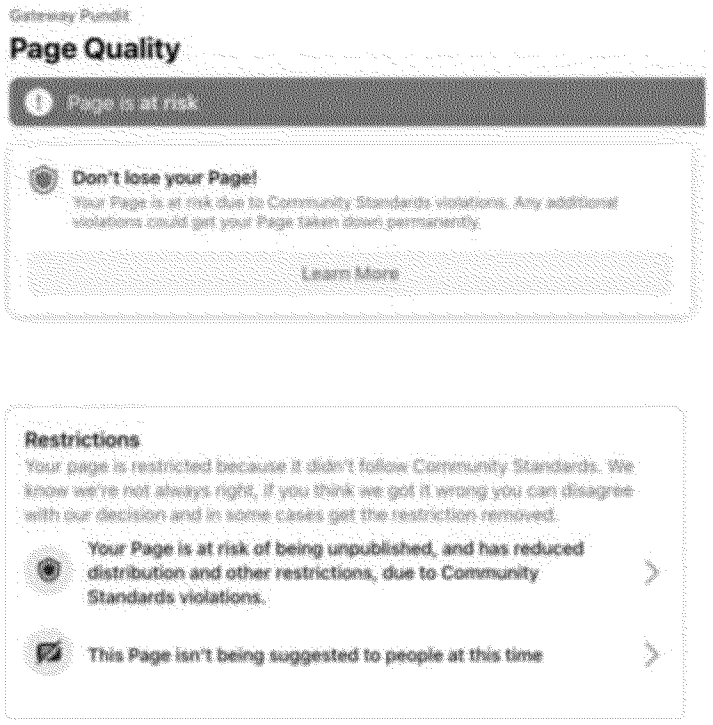
of my blog, The Gateway Pundit, for fear of retaliation from social media companies. They even detail self-censorship I have felt compelled to do to avoid further harm.

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.

AMERICAN OVERSIGHT

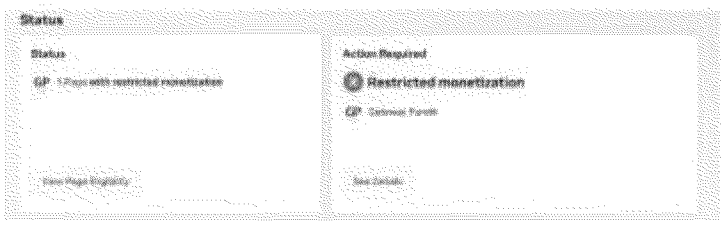


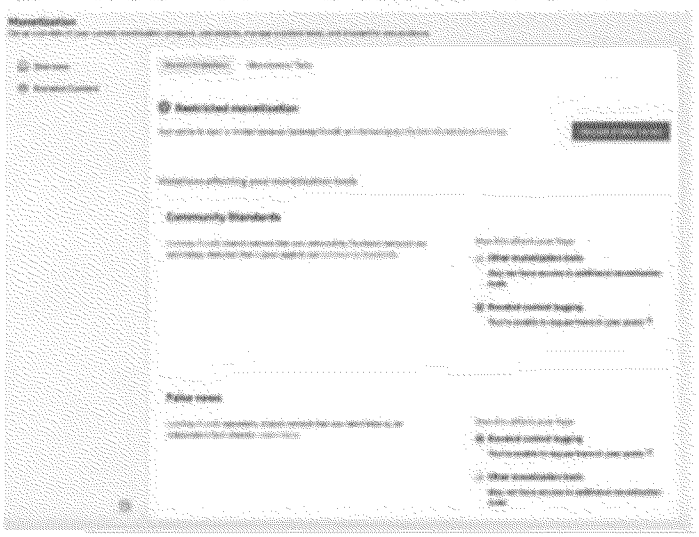
7. And not only have I withheld content, I have deliberately reduced *and continue to reduce* the volume of overall content posted to social media for the very same reasons.

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.

AMERICAN OVERSIGHT

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.





AMERICAN OVERSIGHT

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.

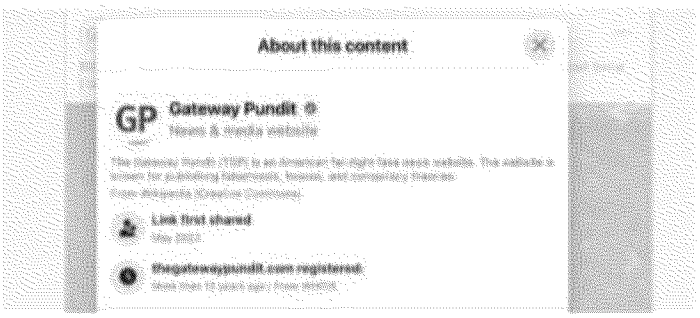
11. Despite my efforts at self-censorship, Gateway Pundit is also besieged by malicious government-funded propaganda outfits that style themselves "fact-checkers." As one recent example, Gateway Pundit published an article detailing the federal government provisioning thousands of illegal immigrants 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.

AMERICAN OVERSIGHT

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:





AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

1:57

5GE



Elon Musk

Hi Mr. Musk - this is AG Bailey's comms director, Maddie. I wanted to see if you had any interest in doing a space sometime around the Missouri v. Biden Supreme Court argument on March 18. A huge case that we couldn't haven't have gotten to this point without the Twitter Files

7:25 PM

Ok

7:29 PM

The AG would be honored to do one with you sometime the week of the 18th to recap the arguments and talk about what the case means for Americans and free speech! Let me know if a certain day or time works best for you

7:54 PM

Anytime after noon CT works

7:59 PM

Start a message

19

AMERICAN OVERSIGHT

Document is unavailable

AMERICAN OVERSIGHT