**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF OHIO**
**COLUMBUS DIVISION**

| | | |
|---|---|---|
| **MARK CHANGIZI,** | ) | |
| **MICHAEL SENGER,** | ) | |
| **DANIEL KOTZIN,** | ) | |
| **AMANDA J. KAY,** | ) | |
| *Plaintiffs*, | ) | **COMPLAINT** |
| | ) | **FOR DECLARATORY AND** |
| v. | ) | **INJUNCTIVE RELIEF** |
| | ) | |
| **DEPARTMENT OF HEALTH AND** | ) | |
| **HUMAN SERVICES;** | ) | |
| **VIVEK MURTHY, United States** | ) | Case No. 2:22-1776 |
| **Surgeon General, in his** | ) | |
| **official capacity, and** | ) | |
| **XAVIER BECERRA,** | ) | |
| **Secretary of the Department** | ) | JURY TRIAL DEMANDED |
| **of Health and Human Services,** | ) | |
| **in his official capacity; JOSEPH BIDEN,** | ) | |
| **United States President, in his official** | ) | |
| **capacity; DEPARTMENT OF** | ) | |
| **HOMELAND SECURITY; ALEJANDRO** | ) | |
| **MAYORKAS, Secretary of the** | ) | |
| **Department of Homeland Security, in his** | ) | |
| **official capacity;** | ) | |
| **CYBERSECURITY AND** | ) | |
| **INFRASTRUCTURE SECURITY** | ) | |
| **AGENCY, and JEN** | ) | |
| **EASTERLY, Director of the Cybersecurity** | ) | |
| **and Infrastructure Security Agency, in her** | ) | |
| **official capacity; and** | ) | |
| **the "DISINFORMATION** | ) | |
| **GOVERNANCE** | ) | |
| **BOARD,"** | ) | |
| | ) | |
| *Defendants*. | ) | |

## INTRODUCTORY STATEMENT

At its core, this case is about free speech in the age of the internet. In one respect, the arguments put forth are novel—by necessity, due to the newly charted terrain resulting from technological innovation. Yet at the same time, the fundamental tenets brought to the fore are those that Americans have been navigating since this nation's founding: the right of private citizens to voice unpopular opinions on the most controversial topics of the day, and the dangers posed by the Government's attempts to assert itself as the sole authority and arbiter of truth on a given subject and to prohibit the dissemination of viewpoints that criticize or oppose Government views.

The First Amendment to the United States Constitution was predicated on an understanding that no person or institution, including the Government, has a monopoly on the truth, and that viewpoint-based suppression of speech by the Government is dangerous and may even spell the death of a constitutional republic. As the Supreme Court wrote nearly a century ago:

> The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government.

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*De Jonge v. State of Oregon*, 299 U.S. 353, 365 (1937). *See New York Times v. United States*, 403 U.S. 713 (1971) (Black, J., concurring) ("Both the history and language of the First Amendment support the view that the press must be left free to publish news, whatever the source, without censorship, injunctions, or prior restraints."); *Wood v. Georgia*, 370 U.S. 375, 388 (1962) ("Those who won our independence had confidence in the power of free and fearless reasoning and communication of ideas to discover and spread political truth.") (quoting *Thornhill v. Alabama*, 310 U.S. 88, 95 (1940)).

In fact, the Executive Branch of the United States Government has demonstrated throughout this pandemic that not only does it not have a monopoly on the truth, but it does not even have a significant market share. For example, President Joseph Biden and CDC Director Rochelle Walensky stated just last summer that the vaccinated will not contract COVID-19. Every American who lived through the past winter knows that these representations proved untrue; they could have been catastrophic for vulnerable individuals who relied on these authority figures to provide accurate information. Just about a year ago, the theory that COVID-19 leaked from a Chinese lab was considered "misinformation" and censored as such on social media; the Biden Administration now acknowledges that the virus may indeed have originated in a lab in Wuhan, China. The refusal to acknowledge this possibility for over a year could have hampered scientific advances that likewise may have had life-or-death consequences. These examples starkly illustrate the reason that the Framers of the Constitution abhorred Government-sponsored censorship, *particularly* when it comes to debate on the most controversial topics of our time.

Plaintiffs in this case—Mark Changizi, Michael Senger, Daniel Kotzin, and Amanda J. Kay—became active on Twitter, one of the world's largest social media platforms, starting around March 2020. All four Plaintiffs focused their accounts on criticizing restrictions imposed by governments and public health authorities in response to COVID-19. Over the course of the pandemic, they accrued at least tens of thousands of followers and are influential on Twitter as well as other social media platforms. Mr. Changizi, a cognitive theoretical scientist, has respectable followings on YouTube and Instagram. Ms. Kay, a writer, posted essays on the website Medium.com, for thousands of paid subscribers. All of Plaintiffs' activities on social media provided them with a social network and the ability to express their views, to hear the perspectives of others, and to engage with detractors and fans alike.

Democrats in both Congress and the White House began a coordinated and progressively escalating public campaign to stop the flow of alleged "health misinformation" related to COVID-19 even before President Biden assumed office. For example, the President's former chief of staff made a statement in December of 2020 stating that social media companies should be held accountable for content published on their platforms. A House Subcommittee issued a joint statement in March of 2021 calling for "changing incentives" on social media companies to prevent the spread of "misinformation and disinformation."

On May 5, White House Press Secretary Jen Psaki stated that the President believed social media platforms have a responsibility to censor health "misinformation" related to COVID-19 vaccinations, they needed to do more to effectuate this end, and that the President believed "anti-trust" efforts were in order. This assertion clearly conveyed a not-so-thinly veiled threat that, if tech companies refused to censor, unwelcome consequences would ensue.

In July of 2021, Surgeon General Vivek Murthy of the Department of Health and Human Services (HHS) ratcheted up the pressure by, *inter alia*, issuing an advisory on the subject (July Advisory). At a press conference in mid-July, Murthy, Psaki, and Alejandro Mayorkas, Secretary of DHS, directed much of their ire towards social media platforms, which they largely blamed for the problem of ostensible "misinformation." They explicitly stated that they had ordered social media companies to remove certain posts, that they were continuing to direct this censorship, and that they were encouraging platforms to ban users who have been banned on other platforms.

Twitter began to suspend more and more accounts, some permanently, following this initiative and because of it. Between April and December 2021, Plaintiffs Changizi, Senger, and Kotzin were suspended from Twitter at least once for, *inter alia*, tweeting that the vaccines do not stop transmission of COVID-19 (*i.e.*, are not sterilizing vaccines), children face a lower risk from

COVID-19 than from the flu, and that masks do not work and are harmful. The suspensions ranged from 12 hours to 7 days. None of the Plaintiffs was ever suspended on Twitter prior to April 2021, although the content of their Twitter accounts remained consistent since March of 2020.

Mr. Changizi was permanently suspended from Twitter in December of 2021 for stating that the seasonal flu is more deadly to children than COVID-19, the vaccines had not been studied long-term for that age group, asymptomatic individuals rarely spread the virus, and vaccines do not slow the spread. All of these views are backed by statistics and shared by other scientists, including CDC Director Rochelle Walensky, who remarked in August of 2021 that the vaccines were not, in fact, stopping transmission. Mr. Changizi was reinstated following an appeal. However, he learned that his account had been deplatformed—the Twitter algorithm was hiding his Tweets from followers not to mention the general public—beginning in May of 2021. His YouTube videos and Instagram posts have been censored; like his Twitter account, his accounts on both of these sites have been deplatformed.

In September of 2021, Medium removed Ms. Kay's entire account for a piece she had published two months earlier about the harms that lockdowns inflict upon children. As a result, she lost an important source of income. This incident occurred at the same time—as revealed by documents declassified just last week—that DHS had deemed COVID-19 "misinformation" a "homeland security risk" and stated an intention to "work closely" with private sector partners to combat it, through a "Disinformation Governance Board."

Meanwhile, the Surgeon General, President Biden, and other members of the Administration continued to blame social media companies for the spread of misinformation and to threaten legal liability and "accountability." On March 3, 2022, the Surgeon General demanded that technology platforms, *inter alia*, turn over "information about sources of COVID-19

misinformation" by May 2, 2022 (the RFI). *See* Dep't of Health & Hum. Servs., Docket HHS-OASH-2022-0006, Impact of Health Misinformation in the Digital Information Environment in the United States Throughout the COVID-19 Pandemic Request for Information (Mar. 10, 2022) *available at* https://www.regulations.gov/document/HHS-OASH-2022-0006-0001 (COVID-19 RFI).[1]

Just days after the COVID-19 RFI was issued, Mr. Kotzin was suspended from Twitter for 7 days, allegedly for a Tweet stating that the pandemic would end not because of vaccination, but when most people have been infected (a view held by many epidemiologists). Around the same time, on March 8, 2022, Mr. Senger was permanently suspended—meaning he is never permitted to create another Twitter account—for voicing his opinion that COVID-19 mitigation measures do not work (which numerous studies, including a recent one from Johns Hopkins University, have found to be the case). Mr. Kotzin was then permanently suspended, *after testifying at an April 29, 2022 hearing on the preliminary injunction in this case*. Ms. Kay's Shopify account was deactivated in April of 2022, although it was restored after she protested. On May 4, 2022, her Twitter account was suspended for 12 hours, for tweeting about the Shopify incident.

In May of 2022, the Administration announced the creation of a "Disinformation Governance Board," or DGB, which was to operate as part of DHS. The Board's mission is to combat "misinformation" about such topics as safe drinking water and human trafficking. However, the Board's purview is not limited to these topics. Particularly in combination with the threatening statements made by Biden, Psaki, Murthy, Mayorkas, and various members of Congress, the message conveyed to users of social media (and all Americans) is that they should

[1] Collectively, Psaki's May statements, the July Advisory and the March RFI, along with presumptive efforts by the Biden Administration that occurred in the interim and also preceded Psaki's statements, will be referred to as "the Surgeon General's initiative" or "the initiative."

be careful not to say anything that offends the Government. In fact, the operations of the Board were suspended, and its head resigned, in response to public outcry and deserved ridicule. Nevertheless, the Board has not been dismantled, and the Biden Administration has made clear this is merely a pause, during which it has worked on recruiting a new head for the DGB. The newly declassified documents described above also documented a plan for Twitter executives and DHS officials to meet and discuss "operationalizing public-private partnerships between DHS and Twitter" as part of DHS's effort to combat so-called COVID-19 misinformation.

No statute endows the Surgeon General with the authority to direct social media companies to censor individuals or viewpoints that the Biden Administration considers problematic. Indeed, Congress could not adopt such a statute because of the constitutional violations such a law would entail (*see infra*). Accordingly, this initiative constitutes *ultra vires* action. In sum, to the extent that the Surgeon General is interpreting the statute that empowers him to stem the spread of communicable diseases, 42 U.S.C. § 264, to encompass this initiative, then he is either misconstruing the statute or else it violates Article I, § 1 of the U.S. Constitution, which vests all legislative power in Congress. That there is no explicitly stated penalty for noncompliance is irrelevant. The Biden Administration, and Members of Congress, have made clear that they intend to punish technology companies that do not do as they are told. In this environment, the effect is obviously coercive—on both the companies themselves and on end users of their platforms.

Furthermore, the facts laid out above demonstrate that since early 2021, the Surgeon General, HHS, DHS, the Biden Administration, and various Democratic members of Congress are not simply colluding with, but instrumentalizing Twitter and other technology companies to effectuate their goal of silencing opinions that diverge from the White House's messaging on COVID-19. That commandeering transforms the Surgeon General's initiative into state action.

This sort of publicly directed censorship, which strikes at the heart of what the First Amendment to the United States Constitution was designed to protect—free speech, *especially* political speech—constitutes unlawful government action. Likewise, the Surgeon General's demand that social media platforms, including Twitter, turn over information about users *to the Government* that *the Government* has deemed problematic, constitutes a warrantless search in violation of the Fourth Amendment to the United States Constitution (nor does any statute give the Surgeon General authority to demand such information—voluntarily or otherwise).

Finally, this action exceeds the Surgeon General's and HHS's powers under the Administrative Procedure Act (APA). Because this initiative constitutes final agency action—certainly for the purposes of determining whether the initiative constitutes a proper exercise of HHS's power—this Court should find it unlawful and invalid, set aside the RFI, and order the government to destroy all records of the information it received from or as a result of the RFI.

## JURISDICTION AND VENUE

1. This Court has federal question and supplemental jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1367 because the federal law claims arise under the Constitution and statutes of the United States and pursuant to 28 U.S.C. § 1402 because the United States is a defendant in this action.

2. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because Plaintiff Mark Changizi resides in this District.

3. This Court may issue a declaratory judgment and grant permanent injunctive relief pursuant to 28 U.S.C. §§ 2201-2202.

## PARTIES

4. Plaintiff Mark Changizi is a theoretical cognitive scientist. He resides in Columbus, Ohio.

5. Plaintiff Michael P. Senger is an attorney and author of *Snake Oil: How Xi Jinping Shut Down the World*. He resides in San Francisco, California.

6. Plaintiff Daniel P. Kotzin is a stay-at-home father. He resides in Denver, Colorado.

7. Plaintiff Amanda J. Kay is a writer. She lives in Phoenix, Arizona.

8. Defendant HHS is a cabinet level executive agency of the United States of America.

9. Defendant Dr. Vivek Murthy is Surgeon General of the United States. He is sued in his official capacity.

10. Defendant Xavier Becerra is Secretary of HHS. He is sued in his official capacity.

11. Defendant Joseph Biden is President of the United Sates. As President of the United States, he is responsible for execution and enforcement of laws created by Congress, and to that end maintains control of executive agencies, including HHS and DHS. He is sued in his official capacity.

12. Defendant Alejandro Mayorkas is Secretary of DHS. He is sued in his official capacity.

13. Defendant DHS is a cabinet-level executive agency within the Government of the United States and contains within it Defendant "Disinformation Governance Board."

14. Defendant Cybersecurity and Infrastructure Security Agency (CISA) is an agency within DHS that is charged with protecting the United States' cybersecurity and physical infrastructure.

15. Defendant Jen Easterly is the Director of CISA within DHS. She is sued in her official capacity.

## BASIC PRINCIPLES

### I. AGENCIES ARE ONLY PERMITTED TO EXERCISE CONGRESSIONALLY DELEGATED AUTHORITY

16. "[A]gency actions beyond delegated authority are *ultra vires* and should be invalidated." *Detroit International Bridge Company v. Government of Canada*, 192 F.Supp.3d 54 (D.D.C. 2016). *See National Federation of Independent Business v. OSHA*, 595 U.S.___, Nos. 21A244 and 21A247 (2022) (OSHA vaccine mandate "extends beyond the agency's legitimate reach" as evidenced by the "lack of historical precedent coupled with the breadth of authority that the Secretary now claims"; internal citations and quotation marks omitted).

17. Courts look to an agency's enabling statute and subsequent legislation to determine whether the agency has exceeded its authority. *See Tiger Lily LLC v. U.S. Dep't of Housing and Urban Development*, 525 F.Supp.3d 850, 861 (W.D. Tennessee), *aff'd*, 5 F.4th 666 (6th Cir. 2021) (determining that CDC eviction moratorium was unlawful, as "to hold otherwise would be to construe the statute so broadly as to grant this administrative agency unfettered power to prohibit or mandate anything, which would ignore the separation of powers and violate the non-delegation doctrine.").

18. "A reviewing court owes no deference to the agency's pronouncement on a constitutional question and must make an independent assessment of a citizen's claim of constitutional right when reviewing agency decision-making." *Poett v. United States*, 657 F.Supp. 230, 241 (D.D.C. 2009) (internal citations and quotation marks omitted).

19. The statute which endows the Surgeon General and HHS with authority authorizes these entities only to:

> make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. For purposes of carrying out and enforcing such regulations, the Surgeon General may provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and other measures, as in his judgment may be necessary.

U.S.C. § 264(a).

20. In *Alabama Association of Realtors v. Department of Health and Human Services*, the Supreme Court held that CDC's claim that the same statute at issue here granted it authority to halt evictions nationwide "strain[ed] credulity." *See* 141 S.Ct. 2485 (2021). *See also Tiger Lily*, 5 F.4th at 670 ("We cannot read § 264(a) to grant the CDC the power to insert itself into the landlord-tenant relationship without clear textual evidence of Congress's intent to do so.").

21. This action is also invalid under the Administrative Procedure Act (APA).

22. Under the APA, this Court is authorized to hold unlawful and set aside agency action, findings, and conclusions that it determines to be contrary to constitutional rights or in excess of statutory jurisdiction, authority, or limitations, or short of statutory right. *See* 5 U.S.C. §§ 706(2)(B), (C).

23. Also under the APA, agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. *See* 5 U.S.C. § 704.

24. Agency action is final if first, it "marks the 'consummation' of the agency's decisionmaking process." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (quoting *Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103. 113 (1948)).

25. Second, the action must be one by which "'rights or obligations have been determined,' or from which 'legal consequences will flow.'" *Bennett*, 520 U.S. at 178 (quoting *Port of Boston Marine Terminal Assn. v. Rederiaktiebolaget Transatlantic*, 400 U.S. 62, 71 (1970)).

26. In the Sixth Circuit, even if an agency's advisory is not final for purposes of the opinions contained in it, "it can still be considered final for determining whether the agency had the authority to take the action in the first instance." *Lasmer Industries, Inc. v. Defense Supply Center Columbus*, 2008 WL 2457704, at 6 (S.D. Ohio 2008).

## II. THE FIRST AMENDMENT PROTECTS AMERICANS' RIGHTS TO EXPRESS AND TO HEAR PERSPECTIVES THAT ARE CONTROVERSIAL, OUTSIDE THE MAINSTREAM, AND DIFFER FROM THE GOVERNMENT'S MESSAGING

27. The First Amendment to the United States Constitution prohibits Congress from making laws "abridging the freedom of speech." U.S. Const., amend. I.

28. "The First Amendment gives freedom of mind the same security as freedom of conscience …. And the rights of free speech and free press are not confined to any field of human interest." *Thomas v. Collins*, 323 U.S. 516, 531 (1945); *see also Knight First Amend. Inst.*, 928 F.3d 226, 237 (2d Cir. 2019), *vacated on other grounds* 141 S.Ct. 1220 (2021) ("As a general matter, social media is entitled to the same First Amendment protections as other forms of media.").

29. The prohibition against restrictions on speech applies to all branches of government. *See Matal v. Tam*, 137 S.Ct. 1744, 1757 (2017) ("The First Amendment prohibits Congress and other government entities and actors from 'abridging the freedom of speech[.]'"); *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971) (holding that Nixon Administration's attempt to prevent publication of classified information violated the First Amendment).

30. "Debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co.*, 376 U.S. at 270. *See Brown v. Entm't Merchants Ass'n*, 564 U.S. 786, 790 (2011) ("The Free Speech Clause exists principally to protect discourse on public matters[.]").

31. "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).

32. The First Amendment also protects the right to receive information. *See Martin v. U.S. E.P.A.*, 271 F.Supp.2d 38 (2002) (quoting *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 756 (1976) ("where a speaker exists …, the protection afforded is to the communication, to its source and to its recipients both.").

33. 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." *Board of Educ., Island Trees Union Free Sch. Dist. Number 26 v. Pico*, 457 U.S. 853, 867 (1982) (emphasis in original). *See also id.* (quoting *Lamont v. Postmaster General*, 381 U.S. 301, 308 (1965) (Brennan, J., concurring) ("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.").

34. As the Supreme Court has recognized, "[a] fundamental principle of the First Amendment is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more." *Packingham v. North Carolina*, 127 S.Ct. 1730, 1735 (2017).

35. "[A]s a general matter, … government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 573 (2002).

36. Labeling disfavored speech "disinformation" or "misinformation" does not strip it of First Amendment protection.

37. Indeed, the Supreme Court has rejected the argument that "false statements, as a general rule, are beyond constitutional protection." *United States v. Alvarez*, 567 U.S. at 718 (2012).

38. "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.* (quoting *United States v. Stevens*, 559 U.S. 460, 470 (2010)).

39. "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)).

40. "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.

41. "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)).

42. "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.

## III. UNDER THE FOURTH AMENDMENT, THE GOVERNMENT MAY NOT OBTAIN INFORMATION ABOUT OR FROM AMERICANS GIVEN TO PRIVATE COMPANIES

43. The Fourth Amendment to the United States Constitution prohibits "unreasonable searches and seizures," and provides that "no warrants shall issue, but upon probable cause."

44. The purpose of this prohibition is to "secure the privacies of life against arbitrary power." *See Carpenter v. United States*, 138 S.Ct. 2206, 2214 (2018) (internal citations and quotation marks omitted).

45. The central aim of the Fourth Amendment was to "place obstacles in the way of a too permeating police surveillance." *United States v. Di Re*, 332 U.S. 581, 595 (1948).

46. A search occurs when an individual has a subjective expectation of privacy, and that expectation of privacy is one that society views as reasonable. *California v. Ciraolo*, 476 U.S. 207 (1986); *United States v. Jacobson*, 466 U.S. 109 (1984).

47. Courts, including the Supreme Court, widely recognize that individuals have a reasonable expectation of privacy in digital records, including those given to private companies or other third parties. *See Carpenter*, 138 S.Ct. 2206.

48. "A person does not surrender all Fourth Amendment protection by venturing into the public sphere." *Id.* at 2217.

49. On the contrary, "what [one] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected." *Katz v. United States*, 389 U.S. 347, 351-52 (1967).

50. Nor does the fact that the information in question may have been voluntarily given to third parties mean that the Fourth Amendment is inapplicable when the Government seeks that data. *See Carpenter*, 138 S.Ct. at 2219 (rejecting Government's contention that cell-site records are "fair game" because they are "business records" created and maintained by wireless carriers and finding that a warrant is needed for such a search).

## IV. THE GOVERNMENT MAY NOT USE PRIVATE COMPANIES TO ACCOMPLISH WHAT IT CANNOT DO DIRECTLY

51. 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). *See also Knight First Amendment Institute*, 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.").

52. "Particularly repugnant to the First Amendment is when the government forces a private party to voice the government's compelled message, not merely in private or in direct dealings with government itself[.]" *Bongo Productions, LLC v. Lawrence*, 2022 WL 1557664 (M.D. Tenn. May 17, 2022) *13 (citing *Wooley v. Maynard*, 430 U.S. 705, 714-15 (1977)).

53. In fact, "such compulsion so plainly violates the Constitution" that it is rarely necessary for courts to have to step in. *Janus v. Am. Fed'n of State, Cnty.*, 138 S.Ct. 2448, 2464 (2018).

54. In a similar vein, private actors are considered governmental when jointly engaged with state actors to deprive an individual of his constitutional rights, *Dennis v. Sparks*, 449 U.S. 24 (1980), or where the state compels the act or controls the private actor.

55. Threats of adverse regulatory or other action, to induce private actors to censor third parties' speech, violate the First Amendment. *See Hammerhead Enters. v. Brezenhoff*, 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.").

56. Plaintiffs need not establish that they were censored directly because of Government action, provided Defendants' comments have a chilling effect (which any threatening or coercive statement by nature has). *See also Okwedy v. Molinari*, 333 F.3d 339, 342 (2d Cir. 2003) (holding that letter written by city borough president to billboard company criticizing display of religious organization's signs proclaiming homosexuality to be a sin and requesting removal of the signs, which were then removed, could be found to contain implicit threat of retaliation in violation of the First Amendment); *Rattner v. Netburn*, 930 F.2d 204, 209-10 (2d Cir. 1991) (declining to dismiss Plaintiff's First Amendment claim as the record viewed in the light most favorable to him "reveal[ed] statements by [Defendant] that a reasonable factfinder could … interpret as intimating some form of punishment or adverse regulatory action w[ould] follow" if the local newspaper continued to air Plaintiff's views.).

## FACTS OF THE CASE

### I. SOCIAL MEDIA COMPANIES IN THE TWENTY-FIRST CENTURY

57. Social media is widely understood to be "the modern public square." *Packingham*, 137 S.Ct. at 1737 (2017).

58. Social media platforms provide "perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard." *Id.*

59. On information and belief, Facebook has close to 3 billion registered users worldwide, and over 124 million users throughout the United States.

60. Sixty-six percent of adults report using Facebook, and 31 percent of U.S. adults say they regularly obtain information about current events from the site.[2]

61. On information and belief, Twitter has more than 340 million users worldwide, including approximately 70 million users in the United States.[3] Around 500 million tweets are posted on Twitter every day, and they are accessible to non-Twitter users on the internet.

62. Moreover, a significant number of politicians, journalists, and public figures use Twitter, so the social media site's impact on public discourse is even larger than its numbers alone reflect.[4]

63. Twenty-three percent of U.S. adults say that they use Twitter, and 13 percent of U.S. adults say they regularly get news on Twitter.[5]

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[2] *See* Mason Walker & Katerina Eva Matsa. *News Consumption Across Social Media in 2021*, Pew Res. Ctr. (Sept. 20, 2021), *available at* https://www.pewresearch.org/journalism/2021/09/20/news-consumption-across-social-media-in-2021/.

[3] Adam Hughes and Stefan Wojcick, *10 Facts about Americans and Twitter*, Pew Res. Ctr. (Aug. 2, 2019), *available at* https://www.pewresearch.org/fact-tank/2019/08/02/10-facts-about-americans-and-twitter/.

[4] *See* Walker, *News Consumption Across Social Media in 2021*.

[5] *Id.*

64. Forty-one percent of U.S. adults say they use Instagram, and 11 percent of U.S. adults say that they regularly get news from the site.[6]

65. 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.

66. 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.

67. Seventy-two 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.[7]

68. Twitter users can accrue followers. Follower size is one indication of an account's impact and reach, but engagements (likes and retweets) and impressions (views) are likewise measures of influence.

69. On information and belief, Twitter collects information from individuals who create accounts, including information that is otherwise not public, including a user's "name and phone number or email address."[8]

70. On information and belief, Twitter can access direct messages and group messages (or group chats) that users exchange on the platform.

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[6] *Id.*

[7] *Id.*

[8] Twitter, *How to sign up for a Twitter account*, Help Center, https://bit.ly/3KS0MtH (last visited Mar. 17, 2022).

71. In March of 2020, formerly having eschewed censorship, Twitter announced that it was "[b]roadening its definition of harm to address content that goes directly against guidance from authoritative sources of global and local public health information" and that it would censor information that fell into this category.[9]

72. On information and belief, Twitter only rarely suspended users for spreading "misleading information" about COVID-19, per its policy, before March 1, 2021.

73. On that date, Twitter announced that it was instituting a new policy: after five or more infractions, permanent suspension would result.[10]

74. Permanent suspension means not only that a user's account is permanently disabled, but that he or she may never create another Twitter account.

75. Medium.com is an online publishing platform that allows both professional and amateur writers to publish their work.

76. Users can follow individual writers and publications.

77. Writers can charge for subscriptions to their work, or per article.

78. Shopify is an e-commerce company that allows individuals to open online stores.

[9] Vijaya Gadde (@Vijaya) & Matt Derella (@Derella), *An update on our continuity strategy during COVID-19*, Twitter Blog (last updated Apr. 1, 2020), https://blog.twitter.com/en_us/topics/company/2020/An-update-on-our-continuity-strategy-during-COVID-19.

[10] Twitter, COVID-19 misleading information policy, Help Center General guidelines and policies (Mar. 1, 2021), https://help.twitter.com/en/rules-and-policies/medical-misinformation-policy [https://web.archive.org/web/20210827062904/https://help.twitter.com/en/rules-and-policies/medical-misinformation-policy].

## II. INDICATIONS THAT CONGRESS AND THE BIDEN ADMINISTRATION ARE USING TECH COMPANIES TO ACCOMPLISH THEIR AIM OF CENSORING DIVERSE PERSPECTIVES ON COVID-19 AND RELATED ISSUES

79. During the presidential transition, on December 2, 2020, President Biden's former chief of staff and top technical advisor, Bruce Reed, publicly stated that it was "long past time to hold the social media companies accountable for what's published on their platforms."[11]

80. This comment specifically referred to the amendment or repeal of Section 230 of the Communications Decency Act, and established that the threat of adverse legal consequences for social media companies that did not censor disfavored viewpoints was part of the Biden Administration's incoming public messaging.[12]

81. In March of 2021, the Communications and Technology Subcommittee held a hearing at which the Committee chairs (who are members of Defendant Biden's political party) issued a joint statement: "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."[13]

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[11] *Biden Tech Advisor: Hold Social Media Companies Accountable for What Their Users Post*, CNBC.com (Dec. 3, 2020), *available at* https://www.cnbc.com/2020/12/02/biden-advisor-bruce-reed-hints-that-section-230-needs-reform.html

[12] *Id.*

[13] Yael Einstate & Justin Hendrix, *A Dozen Experts with Questions Congress Should Ask Tech CEOs—On Disinformation and Extremism*, JUST SECURITY (Mar. 25, 2021), *available at* https://www.justsecurity.org/75439/questions-congress-should-ask-the-tech-ceos-on-disinformation-and-extremism/

82. On May 5, 2021, White House Press Secretary Jen Psaki gave a press conference where she stated that:

> 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 Covid19 vaccinations …. 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, sometimes life-threatening information, is not going out to the American public (emphasis added).[14]

83. On July 15, 2021, the Surgeon General released an advisory (the July Advisory) aimed at censoring purported "misinformation" (according to the Government) about COVID-19. *See* U.S. Surgeon General's Advisory, Confronting Health Misinformation (July 15, 2021), https://www.hhs.gov/sites/default/files/surgeon-general-misinformation-advisory.pdf (COVID-19 Advisory).

84. According to the Surgeon General's advisory, "[m]isinformation" 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.

85. The advisory identifies social media platforms as major sources of "misinformation." *Id.* at 3-4.

86. Among other things, the Surgeon General's advisory commands technology platforms to:

a. Collect data on the "spread and impact of misinformation."

b. "Strengthen the monitoring of misinformation."

[14] Press Briefing by Press Secretary Jen Psaki, THE WHITE HOUSE (May 5, 2021, 1:32 PM EDT), *available 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/

> c. "Prioritize early detection of misinformation 'super-spreaders' and repeat offenders" by "impos[ing] clear consequences for accounts that repeatedly violate platform policies."
>
> d. "Proactively address information deficits" by "[p]rovid[ing] information from trusted and credible sources[.]"
>
> e. "Amplify communications from trusted messengers and subject matter experts."

*Id.* at 12.

87. The COVID-19 Advisory also appeared on the HHS website and stated, *inter alia*, that "American lives are at risk. From the *tech and social media companies who must do more* to address the spread on their platforms…" (emphasis added).[15]

88. That day, Press Secretary Jen Psaki gave a joint briefing along with the Surgeon General and DHS Secretary Alejandro Mayorkas to discuss the advisory.[16]

89. Murthy acknowledged that:

> 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*.

90. Murthy continued:

> 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*

[15] Press Release, OFFICE OF THE SURGEON GENERAL, US Surgeon General Issues Advisory During COVID-19 Vaccination Push Warning American Public About Threat of Health Misinformation (July 15, 2021), https://www.hhs.gov/about/news/2021/07/15/us-surgeon-general-issues-advisory-during-covid-19-vaccination-push-warning-american.html.

[16] Press Briefing by Press Secretary Jen Psaki and Surgeon General Dr. Vivek H. Murthy, THE WHITE HOUSE (July 15, 2021, 1:05 PM EDT), 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/.

> *them to consistently take action against misinformation super spreaders* on their platforms.

*Id.* (emphasis added).

91. Secretary Mayorkas announced that DHS was working directly with social media companies to censor disfavored speech on social media platforms. He encouraged them to "use their terms of use to really strengthen the legitimate use of their very powerful platforms and prevent harms from occurring."

92. In response to a reporter's question about whether the federal government had taken action to ensure cooperation of tech companies, Ms. Psaki stated:

> In terms of actions, Alex, that we have taken—or we're working to take, I should say—from the federal government: *We've increased disinformation research and tracking within the Surgeon General's office. We're flagging problematic posts for Facebook that spread disinformation* (emphasis added).
>
> * * *
>
> 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.
>
> That will help us ensure we're getting accurate information to people. This should be provided not just to researchers, but to the public so that the public knows and understands what is accurate and inaccurate.
>
> 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 (emphasis added).
>
> 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 (emphasis added).
>
> Finally, we have *proposed they promote quality information sources* in their feed algorithm.

93. On July 16, 2021, a reporter asked Ms. Psaki to elaborate on the Government's role in flagging Facebook "disinformation."[17]

94. Ms. Psaki responded:

> it shouldn't come as any surprise that we're in regular touch with social media platforms—just like we're in regular touch with all of you and your media outlets—about areas where we have concern, information that might be useful … so we are regularly making sure social media platforms are aware of the latest narratives dangerous to public health that we and many other Americans … are seeing across all of social and traditional media. And we work to engage with them to better understand the enforcement of social media platforms.

95. Ms. Psaki called on social media companies to ban users who had also been banned from other platforms for ostensible misinformation and to "tak[e] faster action against harmful posts" and "promot[e] quality information algorithms."

96. On information and belief, Twitter and other social media platforms had no policy of banning users who had been banned on other websites prior to July of 2021.

[17] Press Briefing by Press Secretary Jen Psaki, THE WHITE HOUSE (July 16, 2021, 1:20 PM EDT), https://www.whitehouse.gov/briefing-room/press-briefings/2021/07/16/press-briefing-by-press-secretary-jen-psaki-july-16-2021/.

97. A reporter stated that "yesterday after the press briefing" Facebook said that it had removed 18 million pieces of COVID misinformation and asked whether the White House found that sufficient.

98. Ms. Psaki responded, "[c]learly not, because we're talking about additional steps that *should* be taken" (emphasis added).

99. She also reiterated that "we are in regular touch with social media platforms."

100. Ms. Psaki told the reporter that "I, frankly, think it should be your biggest concern … the number of people who are dying around the country because they're getting misinformation[.]"

101. When the reporter stated that people were concerned about "Big Brother" watching them through Facebook, Ms. Psaki responded that it was "unlikely" that the surveillance issue concerned people more than "people dying across the country because of a pandemic where misinformation is traveling on social media platforms."

102. The reporter pointed out that there were videos of Dr. Fauci saying in 2020 that there was no reason to mask and asked whether the administration was going to ask Facebook to remove that material.

103. Ms. Psaki responded that science and information "evolves," to which the reporter responded "exactly," and went on to make the point that Facebook used to prevent people from posting that COVID-19 may have originated in a lab, something President Biden now admitted was a possibility.

104. That day, in response to a reporter who asked, "On COVID misinformation, what's your message to platforms like Facebook," President Biden said, "They're killing people."[18]

105. President Biden's statement caused other media to conclude that the government "blamed" social media companies "for spreading misinformation about the coronavirus and vaccines" creating "stalling U.S. vaccine rates."[19]

106. Four days after President Biden's comments, USA Today reported that "[t]he White House is assessing whether social media platforms are legally liable for misinformation spread on their platforms."[20]

107. The report noted: "[r]elations are tense between the Biden administration and social media platforms," and that the government was "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.*

108. On October 29, 2021, the Surgeon General tweeted from his *official* account (as opposed to his personal one, 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.

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[18] C-Span, *President Biden: "They're killing people."*, YouTube (July 16, 2021), https://www.youtube.com/watch?v=gJoOtLn4goY.

[19] Lauren Egan, *"They're killing people": Biden blames Facebook, other social media for allowing Covid misinformation*, NBC News (July 16, 2021, 4:10 PM EDT), https://www.nbcnews.com/politics/white-house/they-re-killing-people-biden-blames-facebookother-social-media-n1274232.

[20] Matthew Brown, *"They should be held accountable": White House reviews platforms' misinformation liability*, USA Today (July 20, 2021, updated 8:06 PM ET), https://www.usatoday.com/story/news/politics/2021/07/20/whitehouse-reviews-section-230-protections-covid-misinformation/8024210002/.

> We need transparency and accountability now. The health of our country is at stake.[21]

109. In a January 2022 interview on MSNBC, Murthy stated that social media "platforms still have not stepped up to do the right thing[,]" that the focus in stopping the spread of "misinformation" should be on these companies, and that "this is actually about what government can do. This is about companies and individuals recognizing that the only way we get past misinformation is if we are careful about what we say and we use the power that we have to limit the spread of that misinformation."[22]

110. Mere days after the Surgeon General listed his "recommendations" for tech companies in mid-July 2021, Facebook Vice President of Integrity Guy Rosen authored a blog post on Facebook's official website stating that the company had "already taken action on all eight of the Surgeon General's recommendations on what tech companies can do to help."[23]

111. Recently, on a podcast, former White House Pandemic Advisor Andy Slavitt reminisced about how, in the summer of 2021 while still working for the Biden Administration, he had warned Facebook Vice President of Global Affairs, Nick Clegg, that "in eight weeks' time, Facebook will be the number 1 story of the pandemic."[24] Slavitt also made a comment about how he had been in contact with Clegg about which pieces of misinformation to take down.

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[21] Dr. Vivek Murthy, U.S. Surgeon General (@Surgeon_General), Twitter (October 29, 2021, 4:19PM), https://twitter.com/Surgeon_General/status/1454181191494606854.

[22] Tom Elliott (@tomselliott), Twitter (Jan. 25, 2022, 10:03 AM), bit.ly/3CGcncD.

[23] https://about.fb.com/news/2021/07/support-for-covid-19-vaccines-is-high-on-facebook-and-growing/

[24]https://podcasts.apple.com/us/podcast/is-covid-misinformation-killing-people-facebooks-nick/id1504128553?i=1000529558554

112. Defendant Biden's political allies have frequently used congressional hearings as forums to advance threats of adverse legislation if social media platforms do not increase censorship of speakers and viewpoints that they disfavor. At these hearings, they have condemned many of the most prominent heads of large tech companies, such as Mark Zuckerberg of Facebook, Jack Dorsey of Twitter, and Sundar Pichai of Google and YouTube, and threatened 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.

113. On March 3, 2022, the Surgeon General formally demanded that major tech platforms submit information regarding COVID-19 misinformation.[25]

114. According to the *New York Times*, Murthy "demanded" information about the major sources of COVID-19 misinformation by May 2, 2022.[26]

115. Technically, refusing to provide the information does not carry a penalty, but this is the first such formal request, and was made in the coercive atmosphere described above.

116. Furthermore, Plaintiffs had no way to refuse to provide the information, which neither Twitter nor any of the other social media companies would have turned over without being asked.

117. The "Request for Information" webpage created to facilitate this reporting asks for information from technology platforms, *inter alia*, about "sources of COVID-19 misinformation"

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[25] *See* Davey Alba, *The surgeon general calls on Big Tech to turn over Covid-19 misinformation data*, The New York Times (Mar. 3, 2022), https://www.nytimes.com/2022/03/03/technology/surgeon-general-covid-misinformation.html; *see also* COVID-19 RFI.

[26] *Id.*

including "specific, public actors that are providing misinformation[.]" HHS Request for Information on Mar. 7, 2022, *available at* https://www.federalregister.gov/documents/2022/03/07/2022-04777/impact-of-health-misinformation-in-the-digital-information-environment-in-the-united-states.

118. The term is defined as: "both specific, public actors that are providing ['health information that is false inaccurate, or misleading according to the best available evidence at the time'], as well as components of specific platforms that are driving exposure to information" dating back to January 2020. *See* COVID-19 RFI at 4, 5, 7-9.

119. The technology platforms covered by the RFI are broad and include "general search engines, content sharing platforms, social media platforms, e-commerce platforms, crowd sourced platforms, and instant messaging systems." *Id.* at 6.

120. While this purports to be a mere information-gathering initiative, the language—along with previous and contemporaneous statements by Murthy, Psaki, and Biden—establishes that the RFI is a demand masquerading as a "request."

121. On information and belief, agencies typically issue RFIs as a first step in the process of implementing regulations on an industry.

122. Thus, on information and belief, users and technology companies are on notice that the Government's involvement in social media censorship is likely to escalate, causing a chilling effect on speech and prompting technology companies to ramp up censorship for fear of adverse action against them by the Government, including, but not limited to, regulation.

123. A Facebook spokesperson stated that the company intended to comply with the RFI. Twitter and YouTube did not respond to requests for comment.[27]

124. On April 29, 2022, Robert Califf, FDA commissioner, tweeted that "I believe that misinformation is now our leading cause of death, and we must do something about it."[28]

125. On or around April 25, 2022, Ms. Psaki was asked to comment upon free speech advocate Elon Musk's prospective acquisition of Twitter.

126. She responded by reiterating the threat of adverse legal consequences to Twitter and other social media platforms, specifically referencing antitrust enforcement and Section 230 repeal: "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."[29]

127. In response to a question about whether Ms. Psaki was "concerned about the kind of purveyors of" "misinformation, disinformation, health falsehoods … having more of an opportunity to speak there on Twitter," she stated that the President had "long talked about his

[27] *See* Hiawatha Bray, "Lawsuit challenges federal crackdown on COVID-19 misinformation on social media," The Boston Globe (Mar. 31, 2022), https://www.bostonglobe.com/2022/03/31/business/lawsuit-challenges-federal-crackdown-internet-misinformation/.

[28] Dr. Robert M. Califf, (@DrCaliff_FDA), Twitter (April 29, 2022, 2:38 PM), https://twitter.com/DrCaliff_FDA/status/1520110323444985856.

[29] White House, Press Briefing by Press Secretary Jen Psaki (April 25, 2022) *available at* https://www.whitehouse.gov/briefing-room/press-briefings/2022/04/25/press-briefing-by-press-secretary-jen-psaki-april-25-2022/

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."[30]

128. She also affirmed that senior officials within the Biden Administration "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."[31]

## III. THE BIDEN ADMINISTRATION'S "DISINFORMATION GOVERNANCE BOARD" WITHIN DHS

129. Very recently, the Biden Administration announced formation of a "Disinformation Governance Board" (or "DGB") within DHS.

130. As background, on December 10, 2020, nine House Members in the "Congressional Task Force on Digital Citizenship" sent a letter to then President-elect Biden, calling for the incoming Administration to create task forces that would increase censorship of "disinformation and misinformation" on social media.[32]

131. The letter observed that the COVID-19 pandemic has been called an "infodemic" by the World Health Organization, ostensibly because of "rampant disinformation and misinformation that has spread surrounding it, particularly online."[33]

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[30] *Id.*

[31] *Id.*

[32] Dec. 10, 2020 Letter of Rep. Wexton, et al., *available at* https://wexton.house.gov/news/documentsingle.aspx?DocumentID=431 (last visited May 18, 2022).

[33] *Id.*

132. While social media platforms had taken "some steps" to limit the spread of "harmful disinformation and misinformation," the Task Force observed that financial incentives often led tech companies to eschew censorship, so they had "at times refused to take action."[34]

133. The Task Force recommended that the Administration launch a "digital democracy task force" to counter "misinformation," and create programs within DHS to "deradicalize individuals in online communities."[35]

134. When releasing the letter, its lead signatory, Rep. Wexton, stated his opinion that Americans are unable to make judgments about truth and falsity of speech online, so government should be involved. "[W]hile 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."[36]

135. Documents declassified just last week reveal that DHS, as of September 13, 2021 (if not earlier), had deemed "disinformation relating to the origins and effects of Covid-19 vaccines or the efficacy of masks" a "serious homeland security risk."[37]

136. The September 13, 2021 DHS memorandum went on to detail the significant and diverse efforts that DHS intended to take to combat such alleged misinformation, describing it as the Department's "mission."[38]

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[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] https://www.grassley.senate.gov/imo/media/doc/grassley_hawley_to_deptofhomelandsecuritydisinformationgovernanceboard.pdf

[38] *Id.*

137. The DHS memorandum expressly and repeatedly acknowledged that, in pursuit of its efforts to combat Covid-related "misinformation," the Department ran the risk of violating the First Amendment.[39]

138. The memorandum further explicated the importance of "work[ing] closely" with "private sector partners" in order to successfully combat and otherwise prevent dissemination of so-called Covid-related misinformation.[40]

139. The DHS memorandum also outlined the importance of sharing information, as the Department had done in the past, with "social media platform operators."[41]

140. The newly declassified documents also reveal that the DGB was tasked with designing "guidelines for procuring counter-disinformation services from the private sector." [42]

141. The documents outlining the creation of the DGB expressly acknowledged that the "component" governmental agencies tasked with combating misinformation, such as DHS, could "engage private sector services" and otherwise foster partnerships with "private sector entities [and] tech platforms" to help achieve the DHS mission of combating and suppressing so-called Covid-related misinformation.[43]

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.*

142. In November of 2021, the Director of the Cybersecurity and Infrastructure Security Agency (CISA) (an agency within DHS), Jen Easterly, announced that the agency was going to "grow and strengthen" its "misinformation and disinformation team."[44]

143. A CISA publication decries the spreading of "false treatment and prevention measures [for COVID-19], unsubstantiated rumors regarding the origin of the virus, and more." On information and belief, the latter part of the sentence refers to the lab-leak theory of COVID-19's origins, which many public figures and scientists, including former CDC Director Robert Redfield,[45] now believe is the most likely explanation.[46]

144. CISA released a bulletin on April 12, 2022, in which it announced that it was coordinating directly with social media platforms to police "Mis, Dis, Malinformation" (MDM). It reports that its "mission evolved" during the Biden Administration, to address the new "information environment."[47]

145. The bulletin states that the "MDM team serves as a switchboard for routing disinformation concerns to appropriate social media platforms" and it has expanded its reporting to "include … more social media platforms."

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[44] *Cyber agency beefing up disinformation, misinformation team,* THE HILL (Nov. 10, 2021), *available at* https://thehill.com/policy/cybersecurity/580990-cyber-agency-beefing-up-disinformation-misinformation-team/

[45] *Ex-CDC chief Robert Redfield explains belief COVID came from China lab,* NEW YORK POST (Jun. 15, 2021), *available at https://nypost.com/2021/06/15/ex-cdc-chief-explains-belief-covid-19-came-from-china-lab/*

[46] CISA, "We're in This Together. Disinformation Stops with You," *available at* https://www.cisa.gov/sites/default/files/publications/SLTTCOVIDToolkit_FINAL_508.pdf (last visited May 18, 2022).

[47] CISA, *Mis, Dis, Malinformation*, *available at* https://www/cisa.gov/mdm (last visited May 18, 2022).

146. It also states that the "MDM team supports the interagency and private sector partners' COVID-19 response efforts via regular reporting and analysis of key pandemic-related MDM trends."[48]

147. On April 27, 2022, Secretary Mayorkas announced that DHS was creating a "Disinformation Governance Board" to combat "misinformation" and "disinformation."

148. It was to be headed by Nina Jankowicz, who has openly called for government actors to be able to edit Tweets to provide "context."

149. The Board's mission is to combat "misinformation," with specific examples given about safe drinking water and human trafficking.[49]

150. However, the Board's purview is not limited to these topics.[50]

151. As revealed by the newly declassified documents discussed above, on April 28, 2022, DHS officials met—in secret ("off the record and closed press")—with Twitter executives to discuss "operationalizing public-private partnerships between DHS and Twitter," as part of DHS's efforts to combat so-called misinformation.[51]

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[48] *Id.*

[49] "Fact Sheet: DHS Internal Working Group Protects Free Speech and Other Fundamental Rights When Addressing Disinformation That Threatens the Security of the United States," DEPARTMENT OF HOMELAND SECURITY (May 2, 2022), *available at* https://www.dhs.gov/news/2022/05/02/fact-sheet-dhs-internal-working-group-protects-free-speech-other-fundamental-rights

[50] *Id.*

[51] Memorandum for the Secretary of DHS on "Organizing DHS Efforts to Counter Disinformation" from Robert Silvers, Under Secretary, and Samantha Vinograd, Senior Counsel for National Security (September 13, 2021), *available at* https://www.grassley.senate.gov/imo/media/doc/grassley_hawley_to_deptofhomelandsecuritydisinformationgovernanceboard.pdf (last visited June 10, 2022).

152. The unnamed recipient of the letter was told that he or she was to "meet in person with Twitter executives Nick Pickles, Head of Policy, and Yoel Roth, Head of Site Integrity, … on public-private partnerships, MDM[.]"[52]

153. "Key objectives" were identified as "an opportunity to discuss operationalizing public-private partnerships between DHS and Twitter, as well as inform Twitter executives about DHS work on MDM, including the creation of the Disinformation Governance Board and its analytic exchange[.]"[53]

154. In addition to confirming the intent to hold the April 28, 2022 meeting, the newly declassified documents reveal that one reason the meeting was held was so that DHS could use Twitter to combat misinformation.[54]

155. The memorandum also contemplates a "centralized approach" and creation of a position for a coordinator for countering disinformation, who would work with other entities, including the private sector.[55]

156. The week of May 16, 2022, the Biden Administration announced that Jankowicz had resigned and that it was suspending operations of the Board, following unexpected public outcry. However, the Board has not been permanently dismantled, and it will "continue the work," according to the Biden Administration.[56]

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[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] Theo Wayt, Mark Lungariello, and Samuel Chamberlain, "Biden puts disinfo 'Mary Poppins' on ice, scraps Orwellian DHS Board," THE NEW YORK POST (May 18, 2022), *available at* https://nypost.com/2022/05/18/biden-admin-pauses-disinformation-governance-board-report/

## IV. THE PLAINTIFFS' SOCIAL MEDIA ACCOUNTS

157. All four Plaintiffs maintain(ed) active Twitter accounts since at least March of 2020.

158. While the content of each is or was unique, all four Plaintiffs regularly used their accounts to: (1) question the wisdom, efficacy, and morality of government responses to the pandemic, specifically lockdowns and mask and vaccine mandates; (2) read other users' views on the same or similar subjects; and (3) engage with other users on the same or similar topics.

159. Before his permanent suspension, Mr. Senger had 112,000 followers on Twitter. Beginning in 2020, up until his permanent suspension, he maintained a very active Twitter account. *See* 5/19/22 Declaration of Michael P. Senger, Exhibit A at ¶ 3.

160. On a regular basis, Mr. Senger uses Facebook, Amazon, Reddit, Google, YouTube, Instagram, and LinkedIn.

161. Mr. Kotzin had around 31,900 followers prior to permanent suspension of his account. *See* 5/19/22 Declaration of Daniel P. Kotzin, Exhibit B at ¶ 3.

162. Mr. Kotzin regularly uses Instagram, Yahoo, Google, Facebook Messenger, Amazon, and LinkedIn. Exhibit B at ¶ 4.

163. Mr. Changizi has 37,000 followers on Twitter, having created his account in April 2013. *See* Declaration of Mark Changizi, Exhibit C at ¶ 7.

164. In addition to Twitter, Mr. Changizi regularly uses YouTube, Facebook, Instagram, Google, Signal, Telegram, Messenger, Amazon, WhatsApp, GETTR, Gab, Parler, and TruthSocial. Exhibit C at ¶ 47.

165. Mr. Changizi has his own YouTube Series. Exhibit C at ¶ 4.

166. Until September of 2021, Ms. Kay regularly published articles on the website Medium.com. Exhibit D at ¶¶ 6, 17.

167. She published 85 articles between April 2018 (when she opened her account) and September of 2021. Exhibit D at ¶ 6.

168. Seventy-eight of these articles were on subjects unrelated to COVID-19. Exhibit D at ¶ 18.

169. Ms. Kay was designated a "Top Writer" in several categories, had thousands of paid subscribers, and wrote for six of Medium's most successful publications. Exhibit D at ¶ 6.

170. Publishing on Medium provided her with a significant source of income. Exhibit D at ¶ 17.

171. Ms. Kay began a Twitter account in 2018, and now has over 44,000 followers. Exhibit D at ¶ 31.

172. On April 13, 2022, Ms. Kay opened an online store called "Protest Masks," featuring her own cloth masks, which she designed. Exhibit D at ¶ 21.

173. The masks contained messages that provided travelers with a way to peacefully protest the federal mask mandate. Exhibit D at ¶ 23.

174. Ms. Kay also regularly uses Facebook, Instagram, YouTube, SquareSpace, Wordpress, SubStack, Yelp, Quora, EventBrite, Evite, Google, Signal, Telegram, Pinterest, NextDoor, Amazon/AWS, WhatsApp, Grammarly, and Pocket. Exhibit D at ¶ 35.

175. Upon information and belief, all four Plaintiffs' Twitter accounts are (or were) considered influential given the size of their followings, as well as the level of engagement with their accounts.

176. Mr. Senger was suspended from Twitter twice for 12 hours, on October 27 and 29, 2021. *See* Exhibit A at ¶¶ 4, 6.

177. The first Tweet that led to a suspension read: "so the FDA granted an emergency use authorization to give kids mRNA vaccines, with unknown risks, for a virus that accounts for significantly fewer than 1% of deaths in that age group? Where's the 'emergency'?" *See* Exhibit A at ¶ 5.

178. The second Tweet read: "Blistering video documents in meticulous detail how official media and public health statements gradually walked back COVID vaccine efficacy from '100%' to under '33%'—one percentage point at a time." *See* Exhibit A at ¶ 6; Screenshot 1, attached to Exhibit A.

179. On March 8, 2022, Twitter permanently suspended Mr. Senger's account. Exhibit A at ¶ 7.

180. The Tweet cited for this harsh penalty had linked to an *Atlantic* article by Ed Yong that bore the headline: "*How Did This Many Deaths Become Normal?*" Exhibit A at ¶ 7.

181. Mr. Senger had remarked: "How did this many 'deaths' become normal? Because, though they may not yet be willing to face it, the vast majority have realized that every COVID policy—from the lockdowns and masks to the tests, death coding, and vaccine passes—has been one, giant fraud." Exhibit A at ¶ 7(a).

182. Twitter notified Mr. Senger that his account had been suspended for "violating the Twitter Rules" by "spreading misleading and potentially harmful information related to COVID-19." Exhibit A at ¶ 7(b).

183. The notification further stated that "if you attempt to evade a permanent suspension by creating new accounts, we will suspend your new accounts. If you wish to appeal this

suspension, please contact our support team." Exhibit A at ¶ 7(c); Screenshot 2, attached to Exhibit A.

184. Mr. Senger's appeal of his suspension was immediately denied, with only a *pro forma* explanation that his account had been permanently suspended for "multiple or repeat violations of the Twitter rules" and "will not be restored." Exhibit A at ¶¶ 11-12.

185. Twitter's COVID-19 misleading information policy states that it is *not* a violation to post "Strong commentary, opinions, and/or satire, provided these do not contain false or misleading assertions of fact." *See* Exhibit A at ¶ 9.

186. This suspension also departed somewhat from Twitter's ordinary disciplinary process, which typically involves a 7-day suspension prior to permanent suspension, except in extreme circumstances. Exhibit A at ¶ 10.

187. Upon information and belief, the abrupt nature of the permanent suspension which followed on the heels of the Surgeon General's RFI, combined with the fact that this post expressed an opinion that is shared and expressed on social media by many individuals around the world, indicates that Twitter suspended Mr. Senger because of the Surgeon General's initiative.

188. Mr. Kotzin has been suspended four times. *See* Exhibit B at ¶ 11.

189. There was no difference between the content of his Tweets before September 24, 2021, and those for which he was initially censored. Exhibit B at ¶¶ 5-10. As Mr. Kotzin put it, "Before September of 2021, despite my unremitting criticisms of government policy, I was never suspended." Exhibit B at ¶ 11.

190. For example, on September 27, 2020, he tweeted: "Come on San Francisco! It's a beautiful day out there. Let's take the masks off and get outside. Look for me and my kids at the playgrounds. #Resist." Exhibit B at ¶ 7.

191. On October 26, 2020, he tweeted: "We are treating young people not as human beings but as automata. I keep hearing how "resilient" they are. That is what abusers say. They are suffering. We are committing mass, systemic child abuse." Exhibit B at ¶ 8.

192. On December 24, 2020, he tweeted: "Dr Fauci admitted lying to the American people about masks, in order to conserve them for health workers. He has now admitted lying about the herd immunity threshold, so that we would be more likely to get vaccinated. What else is he lying to us about?" Exhibit B at ¶ 9.

193. On February 16, 2021, he tweeted: "Let us not forget that we fight for nothing less than human rights, human freedom, and human dignity. We must resist immunity passports and digital credentials and vaccine mandates and mask mandates and testing regimes and surveillance regimes and digital life and hysteria." Exhibit B at ¶ 10.

194. The first Tweet leading to suspension, posted on September 24, 2021, stated: "There is not now, nor has there ever been, evidence that the Covid shots reduce infection or transmission. Vaccine passports; vaccine mandates; vaccine requirements—they are all an abomination." Exhibit B at ¶ 13.

195. Mr. Kotzin received an email notification stating that his account had been locked for "violating the policy on spreading misleading and potentially harmful information related to COVID-19." Exhibit B at ¶¶ 12-13.

196. He was warned that "repeated violations may lead to permanent suspension of your account." Exhibit B at ¶ 13.

197. The second tweet, posted on March 7, 2022, read: "It is important to never lose sight of the fact that the global pandemic is ending not because of the vaccines, but because almost everyone on the planet got infected with covid." Exhibit B at ¶ 14.

198. After labeling the tweet "misleading," Mr. Kotzin was again notified by Twitter that he was being locked out of his account for 7 days in an email that was identical to the first one. Exhibit B at ¶ 15.

199. Mr. Kotzin's Twitter account was once again locked for 7 days and he was threatened with permanent suspension, on Monday, April 11, 2022 for a Tweet reading:

> "The vast majority have realized that every COVID policy—from the lockdowns and masks to the tests. Death coding, and vaccine passes—has been one, giant fraud." Michael Senger was banned forever by Twitter for writing that, so it must be true. Pass it on.

*Id.* at ¶ 16.

200. Mr. Kotzin was permanently suspended by Twitter on April 29, 2022 for a tweet posted on April 22 stating that: "Myocarditis, pericarditis, blood clots, and strokes are known potential side effects of covid vaccination. That is not my idea of 'safe.'" *Id.* at ¶ 18.

201. He appealed the suspension on May 2, 2022, but to date has received no response. *Id.* at ¶ 19.

202. On information and belief, for the same reasons discussed *supra* ¶ 67, Mr. Kotzin's suspension resulted from the Surgeon General's initiative.

203. Beginning in March of 2020, Mr. Changizi focused the content of his Twitter account on criticizing societal and governmental responses to COVID-19 and trying to explain why they were misguided. *See* Exhibit C at ¶ 8.

204. Many of his Tweets were considered extremely controversial, particularly at the time, but he was never suspended for any of them. *See* Exhibit C at ¶ 8.

205. On March 17, 2020, for example, he tweeted: "the moral of coronavirus19 will be that social contagion via social networks is more dangerous than biological contagion." Exhibit C at ¶ 10.

206. On April 27, 2020, Mr. Changizi tweeted that "Lockdowns were NOT common sense measures. They were hysterical reactions out of fear." Exhibit C at ¶ 11.

207. On May 24, 2020, Mr. Changizi tweeted: "The Lockdown religious cult. Believed initially on faith ("common sense"); impervious to evidence they did nothing; Demand that all else must be sacrificed; Requires unrelenting devotion and asceticism; Promises forever life; Moral outrage for any who protest." Exhibit C at ¶ 12.

208. On July 23, 2020, Mr. Changizi tweeted "New study a TOTAL surprise to sufferers of The Illusion of Control. 'Rapid border closures, full lockdowns, & wide-spread testing were not associated with COVID-19 mortality per million people.'" Exhibit C at ¶ 13.

209. On September 9, 2020, he tweeted that the infection fatality rate for the flu in the United States ranges from 0.1% to 0.18%, while COVID was in the range of 0.1% to 0.3%. Exhibit C at ¶ 14.

210. On November 21, 2020, he tweeted "Breaking: Another study finds no benefit from lockdowns." Exhibit C at ¶ 15.

211. On December 2, 2020, he tweeted that "ASYMPTOMATIC TRANSMISSION RATE. Transmission rate increased with the severity of index cases," and cited some statistics. Exhibit C at ¶ 16.

212. That same day, he tweeted that covid "spread via smoke like aerosols" which is "why masks are useless." Exhibit C at ¶ 17.

213. Mr. Changizi first was suspended by Twitter for 12 hours on April 20, 2021, for linking to an article finding that masks were "ineffective, harmful." Exhibit C at ¶ 18.

214. By way of explanation for the suspension, Twitter stated that his account had been locked for "violating the Twitter rules" by "spreading misleading and potentially harmful information related to COVID-19." Exhibit C at ¶ 19.

215. On June 25, 2021, Mr. Changizi was suspended again, but the message did not contain the ostensibly offending Tweet, so he does not know why. Exhibit C at ¶ 19.

216. Around December 1, 2021, Mr. Changizi learned, after being alerted by followers, that his account was heavily censored and "de-boosted" (this means that the user's tweets are de-platformed—they appear in Twitter feeds much less frequently and replies to other posts may be hidden). Exhibit C at ¶ 20.

217. Mr. Changizi aggregated his monthly impressions, establishing that the de-boosting actually began much earlier, around May of 2021. His engagements dropped precipitously at that time and continued to decline, and he was no longer gaining followers. The only explanation for this sudden change was the de-boosting to which Mr. Changizi was subsequently alerted. *See* Exhibit C at ¶¶ 20-22, 30.

218. Twitter began censoring Mr. Changizi's direct messages in August 2021. Put otherwise, Twitter is preventing him from sending certain links, as shown in the screenshot included in his declaration. *See* Exhibit C at ¶¶ 33-34.

219. Likewise, his followership on YouTube plateaued and declined, despite the fact that he was very active and prior to the censorship period had steadily gained followers. *See* Exhibit C at ¶¶ 30-31.

220. Two of his YouTube videos were censored, on October 12 and 27, 2021, one on the meaning of the Precautionary Principle and the other on the evolution of political purity tests. Exhibit C at ¶ 36.

221. One of his Instagram posts was taken down on December 6, 2021. That post cited the infection fatality rate for COVID in each age bracket, compared to that of the flu. *See* Exhibit C at ¶ 37.

222. Mr. Changizi was permanently suspended on December 18, 2021, again for "spreading misleading and potentially harmful information related to COVID-19." The following two Tweets were cited as the cause:

> Covid is 10 to 20 times less dangerous than flu for kids. Get. A. Grip. There is NO long[-] term data for the shot. And even the short[-] and medium[-]term data for that age group are ambiguous at best.
>
> Asymptomatics rarely spread it ~ Vaccinations don't slow spread ~ unvaxed pose no threat to vaxxed ~ Risks are broadly flu like (and safer than flu for < 40) ~ Huge % of unvaxxed have superior natural immunity via recovery [*sic*].

Exhibit C at ¶ 23.

223. The email to Mr. Changizi notifying him of the suspension was identical to that received by Mr. Senger and warned him that any "attempt to evade a permanent suspension by creating new accounts" would result in suspension of those accounts. *See* Exhibit C at ¶ 24.

224. Mr. Changizi appealed the suspension Christmas Day of 2021. He wrote that:

> You have permanently suspended me for speaking out as a scientist concerning the evidence-based dangers of Covid and the efficacy & ethics of the interventions.
>
> Ironically, I am one of the few scientists studying the importance of free expression, and how it is an absolutely crucial part of the mechanism society—and science—uses to stumble toward the truth.
>
> I am an academic with a number of well known discoveries, my sixth book appearing in a few months, and am also perhaps the only person arguing against the interventions that understands there was no "plandemic," and has tried to educate people against their bias toward conspiracy-theory thinking.

> You have made a huge mistake in suspending so many voices, including mine.
>
> And, that is true whether or not what we're saying is true! Of course, I believe my statements are true, and always provide argument & evidence. Remember: nearly every journal article in the academic literature is false. But that doesn't mean it gets cancelled. It is part of the truth-discovery process itself.
>
> Don't become part of the problem by encouraging censorship and groupthink.

Exhibit C at ¶ 25.

225. On December 27, 2021, presumably as a result of his appeal, Twitter unsuspended Mr. Changizi without further explanation, although he had to delete the two Tweets that led to the suspension. *See* Exhibit C at ¶ 26.

226. Nevertheless, his account is heavily censored: his Tweets are typically labeled "age-restricted adult content" that require an explicit effort to read them (in contrast to the vast majority of Twitter accounts). *See* Exhibit C at ¶¶ 27-28. He does not occur in a search unless his name is fully typed, and the same is true of his Instagram account (Instagram and Facebook share an owner). *See* Exhibit C at ¶ 27.

227. The number of followers Mr. Changizi acquired on YouTube and Twitter accounts have plateaued, despite the fact that Mr. Changizi is very active, and prior to the censorship period had steadily gained followers. Exhibit C at ¶ 15.

228. Although he operated a Twitter account that criticized governmental and societal responses to COVID-19 since March of 2020, he was never suspended before April 20, 2021. Exhibit C ¶¶ 8-9. He had repeatedly tweeted, for instance, that lockdowns were: a hysterical reaction, a religious cult, ineffective, and harmful. *See* Exhibit C at ¶¶ 10, 12, 16. On many occasions, Mr. Changizi had tweeted that the infection fatality rates of COVID-19 and the flu were

similar, that masks were ineffective, and that asymptomatic transmission of the virus was rare. *See* Exhibit C at ¶¶ 11, 13, 14, 17, 18.

229. Beginning in January of 2021, Mr. Changizi documented his belief that the government was behind big tech censorship.

230. On January 5, 2021, he tweeted: "IT'S ACTUALLY GOVERNMENT CENSORSHIP. Much of the reason why big tech is engaged in censorship is pressure from the government itself … They're not acting as a private company, but are a de facto arm of the state." Exhibit C at ¶¶ 42-43.

231. Within hours of Press Secretary Psaki's May 5, 2021 speech, he tweeted: "FREE EXPRESSION ALERT! Amazing! She specifically threatens Big Tech here to censor or risk greater regulation." Exhibit C at ¶¶ 44. Mr. Changizi even penned an article in July of 2021 entitled "Big Tech Censorship is Actually Government Censorship." Exhibit C at ¶ 45.[57]

232. He concluded that "the draconian censorship we've been experiencing by Big Tech is not even censorship via a private company …. It's government censorship, plain and simple."[58]

233. Notably, the Surgeon General's initiative included demands that social media platforms make algorithms that promote favored accounts (those that endorse the Government's message).

234. Thus, on information and belief, for reasons similar to those discussed *supra* ¶¶ 141, 156, and given the points at which Mr. Changizi's account was de-boosted and suspended,

[57] Dr. Mark Changizi, "Big Tech Censorship is Actually Government Censorship," *FreeX Newsletter* (July 5, 2021), *available at* https://www.getrevue.co/profile/markchangizi/issues/big-tech-censorship-is-actually-government-censorship-597190 (last visited Apr. 20, 2022).

[58] *Id.*

Mr. Changizi's de-boosting and suspension resulted from the Biden Administration and Surgeon General's initiative.

235. On April 6, 2020, Medium removed a piece that Ms. Kay had published two days prior, entitled "The Curve is Already Flat: Evidence suggests that COVID-19 was here in November." Exhibit D at ¶¶ 7-8.

236. Medium claimed that the article violated its prohibition on "health claims or advice which, if acted on, are likely to have detrimental health effects on persons or public safety," although the piece contained no health advice. Exhibit D at ¶¶ 8-9.

237. Ms. Kay posted two COVID-19 related pieces in June and October of 2020, entitled "Lockdowns are Killing More People than COVID" and "How Would You Spend Your Last Thanksgiving?" respectively. Exhibit D at ¶ 14.

238. The latter went viral after it was quote-tweeted by Dr. Scott Atlas, former advisor on the White House Coronavirus Task Force. *See* Exhibit D at ¶ 14.

239. Neither was censored.

240. On July 25, 2021, Ms. Kay published a piece about the harms that lockdowns have done to children entitled "Childhood, Interrupted: Ruining young lives will not quell our existential fears." Exhibit D at ¶¶ 15-16.

241. On September 7, 2021, she received an email from "Medium Trust & Safety" informing her that her entire account—all 85 articles—were being removed. Exhibit D at ¶¶ 17-18.

242. September of 2021 is also when DHS apparently began to assemble the Disinformation Governance Board, and to implement plans to partner with Twitter and other social

media companies to censor perspectives with which the government disagrees. All of these actions were done in secret.

243. Ms. Kay's articles had been widely republished and linked back in various online publications and blogs, and she lost them all when her account was deleted. It was a significant professional setback. Exhibit D at ¶ 19.

244. The day after Ms. Kay opened her Shopify account, it was suspended, although it broke none of the platform's rules. Exhibit D at ¶¶ 21-22.

245. After Ms. Kay protested, her account was reinstated, although she was never told why it had been removed. Exhibit D at ¶ 24.

246. On May 4, 2022, Ms. Kay's Twitter account was suspended, for 12 hours, for the first and only time, for tweeting about the closure of her online store on Shopify. Exhibit D at ¶¶ 25-26.

247. Twitter claimed that she had been suspended for "Violating the policy on spreading misleading and potentially harmful information related to COVID-19." Exhibit D at ¶ 27.

248. The offending Tweet, which followed a remark that: "They don't want you to show up at the airport with a mask that lets people know you oppose them. Other people might join you …. And they'd have a civil rebellion on their hands" read:

> And then nothing related to Covid would happen because masks don't work, and the entire farce would be laid bare. And they can't have that, now can they? This is about control; getting you to go along with the lies. 'Censorship is the tool used when the lie loses its power.'

Exhibit D at ¶¶ 28-29.

249. Since her Twitter suspension, Ms. Kay has noticed that her account has lost substantial engagement, as her profile, Tweets, and replies have been hidden from public view. Exhibit D at ¶ 32.

250. Mr. Senger, because of Government action, has been permanently stripped of his voice on Twitter, carrying negative implications for his personal and professional life: he promoted his ideas and his work on the platform, and engaged with others—both those with whom he agreed and detractors. Exhibit A at ¶ 8.

251. In his own words:

> I discovered a gift 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 completely 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.
>
> Regardless of motivation, this power to create a false consensus in political discourse by systematically silencing the most articulate voices from one side of any given debate, unbeknownst to 99% of Twitter users, is unprecedented in American history: it is a power that has historically only been held by authoritarian regimes. We are expected to believe that Twitter and the Surgeon General will use this unprecedent[ed] power only for good, based on nothing but their promise that they will do so. Historically, such promises have proven empty—and destructive—every single time.

Exhibit A at ¶¶ 13-14.

252. Since his suspension, Mr. Changizi has become very careful about what he says on Twitter to avoid permanent loss of his account. For example:

a. He never discusses early treatments, as that leads to immediate suspensions.

b. He avoids linking to studies and makes very general statements when referring to the vaccines, which makes his Tweets vague and more difficult to comprehend.

c. He fears engaging with those who have opposing views, as they may report him to Twitter, increasing the chance of suspension. *See* Exhibit C at ¶¶ 38-41.

253. Mr. Kotzin considered permanent suspension a prospect "so devastating that I self-censor" (once he had actually been censored for the first time). Exhibit B ¶ 28.

254. He contrived creative ways to avoid suspension, for example using hypotheticals and phrasing statements in question form. Exhibit B ¶ 29.

255. Although he believes he has valuable information and insight to share on the subjects of treatment options, vaccines, and risk factors for a severe COVID-19 outcome, he did not do so. Exhibit B at ¶ 30.

256. Now, of course, his fears have come true, and he has lost his voice on Twitter.

257. Ms. Kay has suffered professionally, and notes that "Authors' livelihoods depend on their ability to build an audience, and social media is integral to that process in the digital age." Exhibit D at ¶ 27.

258. The government's intervention was so punitive that it has resulted in the deletion of dozens of articles Ms. Kay wrote on non-COVID related subjects. Put otherwise, for the offense of having an opinion on COVID issues that differed from the government's, Ms. Kay was entirely deprived of the ability to reach her audience on Medium.

259. She also self-censors on Twitter in the interest of preserving her Twitter account. Exhibit D at ¶ 34.

260. Twitter's COVID-related suspensions have been one-sided, in favor of the government. Twitter suspends only those who question the wisdom and efficacy of government restrictions or the government's messaging on health matters related to COVID-19, especially but not limited to the vaccines.

261. Upon information and belief, there are no examples of Twitter suspending individuals who have spread misinformation that is Government approved—by, for example, exaggerating the efficacy of masks or the threat the virus poses to children.

262. For example, CDC Director Rochelle Walensky has tweeted that masks reduce the chance of COVID infection by over 80 percent, which is widely considered a falsehood.

263. Eric Feigl-Ding, a nutritionist who is considered a COVID "expert" and has publicly embraced the idea of stirring panic as a motivating force, has made untrue claims, including that Omicron is more severe in children than adults, and that if 30 unmasked children are in a classroom, about 4 will suffer from long covid.

264. Robert Califf, FDA commissioner has tweeted that "misinformation is now our leading cause of death, and we must do something about it," an utterly baseless claim that is entirely contradicted by all of the information we have about the primary causes of death in the United States.

265. Rather than having their accounts locked or suspended, Twitter has promoted their Tweets.

## V. THE SURGEON GENERAL'S STATUTORY AUTHORITY

266. 42 U.S.C. § 264(a) endows the Surgeon General of the United States with authority to:

> make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or

> possessions, or from one State or possession into any other State or possession. For purposes of carrying out and enforcing such regulations, the Surgeon General may provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and other measures, as in his judgment may be necessary.

267. In order to effectuate this goal, the statute provides for the Surgeon General to apprehend and detain individuals who are infected with a communicable disease in certain situations. 42 U.S.C. § 264(b).

268. On March 14, 2021, the undersigned counsel (Jenin Younes) wrote to Max Lesko, the individual within HHS designated to answer questions about the Surgeon General's RFI, and pointed out that 42 U.S.C. § 264 "pertains to the quarantining of individuals reasonably suspected to be infected with communicable diseases," and inquired whether there are "other statutes relied upon for this action of which we are unaware[.]" *See* Exhibit D.

269. Having received no response by the following day, Ms. Younes called and left a message to the same effect.

270. To date, Ms. Younes has received no response to this inquiry.

## CLAIMS FOR RELIEF

### COUNT I: THE SURGEON GENERAL'S INITIATIVE CONSTITUTES *ULTRA VIRES* ACTION

271. Plaintiffs incorporate by reference all of the preceding material as though fully set forth herein.

272. "An agency's power is no greater than that delegated to it by Congress." *Lyng v. Payne*, 476 U.S. 926, 937 (1986).

273. Nothing in this statute permits the Surgeon General to determine what constitutes health misinformation; to direct social media companies to censor ostensible "misinformation"; to

work with social media companies to censor this material and silence or de-boost accounts with which he disagrees; or to demand that an extremely wide array of technology companies turn over private (or public) information collected from users.

274. This case is very similar to *Alabama Association* and *Tiger Lily*. If it "strains credulity" that this statutory language authorizes a nationwide eviction moratorium, *a fortiori*, it strains credulity to say that this language authorizes the Surgeon General to urge Twitter and other speech platforms to take down speech with which the government disagrees in violation of those speakers' First Amendment rights. *See also Kentucky v. Biden*, __F.Supp.3d__, 2021 WL 5587446 (E.D. Kentucky 2021) (holding that Biden's vaccine mandate for federal contractors, which commandeered the Procurement Statute, exceeded authority delegated through the statute by Congress, as did the OSHA vaccine mandate, and was therefore invalid; "neither OSHA nor the executive branch is permitted to exercise authority it does not have.").

275. This conclusion is reinforced by the fact that, in the many decades since § 264 was enacted, the Surgeon General never before interpreted that statute to authorize the regulation of "misinformation." *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324, 134 S. Ct. 2427, 2444, 189 L. Ed. 2d 372 (2014) ("When an agency claims to discover in a long-extant statute an unheralded power to regulate … we typically greet its announcement with a measure of skepticism.").

276. Furthermore, the Constitution provides that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States." U.S. Const. Art. I § 1.

277. "The nondelegation doctrine bars Congress from transferring its legislative power to another branch of Government." *Gundy v. United States*, __U.S.__, 139 S.Ct. 2116, 2121 (2019).

278. Congress may seek assistance from another branch, provided it establishes through legislation "an intelligible principle to which the person or body authorized to [exercise the delegated authority] is directed to conform." *J.W. Hampton, Jr. & Co v. United States*, 276 U.S. 394, 406 (1928).

279. Not only is this action unauthorized by Congress, but it could not have been authorized by Congress, as it entails First and Fourth Amendment violations (*see supra*, Counts II and III). *See Poett*, 657 F.Supp. at 241.

280. Even if § 264 could somehow be construed as granting the Surgeon General with power to order technology companies to turn over information about individuals accused of spreading "misinformation"—it cannot—the lack of an intelligible principle regarding what constitutes misinformation means such an interpretation would violate the Constitution's nondelegation principle. *Gundy*, 139 S.Ct. at 2121.

281. Indeed, the absence of guidance would transform the Surgeon General's office into the Ministry of Truth. "A construction of the statute that avoids this kind of open-ended grant should certainly be favored." *Indus. Union Dep't, AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. 607, 646 (1980).

282. Relatedly, the Surgeon General's action is clearly *ultra vires* according to the major questions doctrine, which recognizes that Congress is expected "to speak clearly when authorizing an agency to exercise powers of vast economic and political significance." *Alabama Association of Realtors*, 141 S.Ct. at 2486.

283. An initiative that commandeers technology platforms to provide the Government with users' data (*see* Count III), that entails censoring speech and viewpoints on important, current

events and political issues, and that has a profound chilling effect (*see* Count II), is precisely such a major question.

284. Moreover, this is not just about social media companies. It includes e-commerce platforms such as Amazon, instant messaging systems such as Signal and Telegram, and search engines like Google.

285. Its reach is vast, and essentially limitless.

286. As discussed above, Congress did not authorize the Surgeon General or HHS to develop such a program.

287. For these reasons, the Surgeon General and HHS have exceeded their delegated authority (which in fact Congress could not give them) and this action therefore is *ultra vires* and invalid.

**COUNT II: THE SURGEON GENERAL'S AND DHS'S INITIATIVES INSTRUMENTALIZE TECHNOLOGY COMPANIES TO CENSOR USERS, IN VIOLATION OF THE FIRST AMENDMENT**

288. Plaintiffs incorporate by reference all of the preceding material as though fully set forth herein.

289. Members of Congress, the Surgeon General, Secretary Mayorkas, DHS, President Biden, and other members of his administration have made clear that they blame social media companies for American deaths, and that they even consider COVID-19 "misinformation" a national security threat.

290. This conclusion is reached not from a few stray remarks by random government officials, but by myriad statements made by many government actors from both the congressional and executive branches of Government.

291. In countless public statements, through which they have sought to reach all Americans, these government actors have threatened the companies with criminal and regulatory

consequences unless those companies censor the views of individuals determined to be spreading what the *Government* deems to be "misinformation" in various ways that the Administration has identified.

292. It is evident that the technology companies fear those consequences, as they have ramped up censorship of users—including Plaintiffs—deemed to have spread COVID "misinformation" following various public statements of individuals within the Biden administration misusing the 'bully pulpit,' including Biden, Psaki, Mayorkas, and Murthy, and threats from Members of Congress.

293. The censorship is entirely viewpoint based and one-sided, as only individuals who oppose government-imposed COVID-19 mitigation measures and question the efficacy and safety of the vaccines are suspended.

294. The Biden Administration and members of Congress have made no secret of the fact that they are pressuring tech companies to censor speech Americans of which they disapprove.

295. Meanwhile, DHS has created the DGB and tasked it with stopping the spread of misinformation—barely veiled code for censorship—through partnership with private companies, including social media platforms.

296. DHS has documented meetings held—in secret—with Twitter executives to coordinate censorship of views the government has deemed dangerous.

297. Merely peppering internal memoranda with allusions to respecting Americans' First Amendment rights does not mean that this initiative does not violate Plaintiffs' First Amendment rights.

298. Indeed, that is why we have three branches of government, including a judiciary.

299. Half a century ago, had Members of Congress and the federal executive, including the President himself, instructed newspapers what views to print and what to censor, and whose voices to air and whose to silence, there would be no question that that was unconstitutional state action.

300. What is happening here is the equivalent of such unlawful state action in the digital age.

301. By instrumentalizing tech companies, including Twitter, Facebook, Instagram, Medium, and YouTube—through pressure, coercion, and threats—to censor viewpoints that the federal executive has deemed "misinformation," the Surgeon General and DHS have turned Twitter's censorship into State action. *See Hammerhead Enterprises v. Brezenoff*, 707 F.2d 33, 39 (1983) ("Where comments of a government official can reasonably be interpreted as intimating that some form of punishment or adverse regulatory action will follow the failure to accede to the official's request, a valid claim can be stated … Similarly, claimants who can demonstrate that the distribution of items containing protected speech has been deterred by official pronouncements might raise cognizable First Amendment issues."); *Bantam Books v. Sullivan*, 372 U.S. 58, 62 (1963) (finding First Amendment violation when a private bookseller stopped selling works that state officials deemed "objectionable" after they sent him a veiled threat of prosecution). *See also Knight First Amendment Institute*, No. 20-197, 593 U.S.___ (Thomas, J., concurring) (holding that the First Amendment is implicated "if the government coerces or induces [a private entity] to take action the government itself would not be permitted to do, such as censorship expression of a lawful viewpoint").

302. Twitter has permanently silenced Mr. Senger and Mr. Kotzin, and temporarily silenced Mr. Changizi and Ms. Kay, at Defendants' behest.

303. Mr. Changizi has also been censored on Instagram and YouTube, and de-boosted on Twitter and other social media platforms (YouTube, Instagram), as a result of Government action.

304. Ms. Kay permanently lost her account on Medium, which not only gave her an avenue to express her ideas, but provided her with a significant source of income.

305. Not only is the Government responsible for overt censorship, but the Surgeon General's and DHS's initiatives have had, and continue to have, a profound chilling effect, as all Plaintiffs have attested.

306. Government action that chills speech—especially political speech—by threat of imposing adverse consequences violates the First Amendment. *Citizens United v. Federal Election Com'n*, 558 U.S. 310, 329 (2010) (political speech "is central to the meaning and purpose of the First Amendment."). *See Virginia v. Black*, 538 U.S. 343, 365 (2003) (holding that a provision prohibiting flag-burning "chills constitutionally protected political speech … [which is] at the core of what the First Amendment is designed to protect.").

307. To the extent that Plaintiffs are still able to use social media and other tech platforms, they fear losing accounts and various other forms of reprisal, causing them to curtail expression accordingly. *Penny Saver Publications, Inc. v. Vill of Hazel Crest*, 905 F.2d 150, 154 (7th Cir. 1990) ("Constitutional violations may arise from the chilling effect of governmental regulations that fall short of a direct prohibition against the exercise of First Amendment rights.").

308. The RFI chills Plaintiffs' speech because they had no way to refuse to provide the information, which tech companies would not have turned over absent the government's demand.

309. DHS's involvement in social media censorship chills speech, because Americans are on notice that they are considered a threat to national security if they express views about COVID-19 (including questioning whether masks work) with which the government disagrees.

310. This chilling effect on Plaintiffs' and others' speech is *directly traceable* to the government's action, for all the reasons discussed above.

311. All Plaintiffs have been deprived of their First Amendment right to receive information, including from each other, due to the atmosphere of censorship created by the Government.

312. Once again, that is because social media companies are suspending accounts not only at the instruction of the Government and based on the Government's rubric, but also in an anticipatory or prophylactic fashion because they fear reprisal from the Government if they do not.

313. In sum, Defendants' coercive actions directed at tech companies have violated and are continuing to violate Plaintiffs' First Amendment rights to free speech and free expression, and to receive information.

## COUNT III: THE SURGEON GENERAL'S RFI CONSTITUTES A SEARCH IN VIOLATION OF THE FOURTH AMENDMENT

314. Plaintiffs incorporate by reference all of the preceding material as though fully set forth herein.

315. Defendants demanded that virtually all technology platforms, provide them with "sources of misinformation" by May 2, 2022 without a warrant or probable cause. *See Carpenter*, 138 S.Ct. at 2221.

316. This includes: general search engines, content sharing platforms, social media platforms, e-commerce platforms, crowd sourced platforms, and instant messaging systems.

317. The reach of the RFI is vast, as virtually everyone uses at least one of these sites and most people likely use more.

318. It certainly includes Twitter, YouTube, Facebook, Instagram, Google, Yahoo, Shopify, Medium, and Amazon.

319. In other words, the Government is seeking to collect information from virtually every type of online platform.

320. Defendants have provided no additional specific indication of precisely what information about users it is sought or planned to collect.

321. They do not have probable cause to believe Plaintiffs have committed any sort of crime, nor have they obtained a search warrant.

322. How this information may be used in the future is not clear.

323. Plaintiffs have a reasonable expectation of privacy in the information they provided to Twitter, Facebook, Instagram, Medium, YouTube, Google, Yahoo, Amazon, Shopify, and all other technology companies—and that they did not agree to make available to the United States Government. *See Riley v. California*, 573 U.S. 373, 403 (2014) (holding that warrants are required to search cell phones, as "[w]ith all they contain and all they may reveal, they hold for many Americans the privacies of life … The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought.") (internal citations and quotation marks omitted).

324. As mentioned, Twitter and other companies obtain access to users' information when they create their accounts—including that which is not made public—and which Plaintiffs did not agree to turn over to the Government.

325. That at this time the Government claims no one was specifically targeted is irrelevant.

326. The Government's collecting information about disfavored individuals has a chilling effect.

327. There is no guarantee this information will not be used against Plaintiffs (and others) at a later date, as often is the case when the Government collects information on Americans.

328. The Government's action thereby constitutes an unlawful search under the Fourth Amendment to the United States Constitution.

**COUNT IV: UNLAWFUL AGENCY ACTION IN VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**

329. Plaintiffs incorporate by reference all of the preceding material as though fully set forth herein.

330. The Surgeon General's initiative (encompassed by the July Advisory, the March RFI, and the continuous pressure exerted on social media companies at least throughout that time but likely before) constitutes final agency action under the APA.

331. In no uncertain terms, social media platforms have been instructed that they are to censor those who propagate what the Government has deemed "misinformation"—that constitutes an "obligation." *See Bennett*, 520 U.S. at 178.

332. Lest there be any doubt, consider the following statements pertaining to the Surgeon General's initiative:

a. "We're asking [tech companies] to consistently take action against misinformation superspreaders." (Murthy).

b. "We've increased disinformation research and tracking within the Surgeon General's office. We're flagging problematic posts for Facebook that spread disinformation." (Psaki).

c. "There are proposed changes that we have made to social media platforms," including "a robust enforcement strategy" and taking "faster action against harmful posts." (Psaki).

d. "Tech and social media companies must do more[.]" (Murthy).

e. "Clearly [they haven't done enough], because we're talking about additional steps that should be taken." (Psaki).

f. Social media companies are "killing people." (Biden).

333. For similar reasons, this action clearly constitutes "consummation" of the agency's decision-making process and is not tentative or interlocutory. *See Franklin v. Massachusetts*, 505 U.S. 788, 797 (1992) ("The core question is whether the agency has completed its decisionmaking process, and whether the result of that process is one that will directly affect the parties.").

334. In the Sixth Circuit, even if an agency's advisory is not final for purposes of the opinions contained in it, "it can still be considered final for determining whether the agency had the authority to take the action in the first instance." *Lasmer Industries, Inc. v. Defense Supply Center Columbus*, 2008 WL 2457704, at 6 (S.D. Ohio 2008).

335. As discussed in Count I, the Surgeon General does not have the authority to issue this RFI.

336. Furthermore, the Surgeon General's initiative is substantive, because it affects legal rights (*see* Counts II and III).

337. Substantive policies must undergo notice and comment. The Surgeon General has not subjected his initiative to notice and comment.

338. The Surgeon General's initiative is also arbitrary and capricious because it is being deployed to favor the Government's viewpoints.

339. The Plaintiffs in this case have obviously been affected by the agency's actions, as they have all been suspended from Twitter and censored on Twitter, Instagram, and YouTube for spreading "misinformation" related to COVID-19 in the period when Twitter and other social media companies stepped up its enforcement in response to the Surgeon General's threats.

340. All Plaintiffs use many websites and are disturbed by the Government's initiative—enough to self-censor.

341. Nothing in the governing statute gives or purports to give HHS or the Surgeon General the power or authority to coerce technology companies to censor users or to demand that they hand their private user information (or even their publicly posted Tweets) over to the Government.

342. Furthermore, for the reasons discussed in Counts II and III, the Surgeon General's actions violate Plaintiffs' constitutional rights.

343. In sum, the entire initiative is in excess of any statutory authority and therefore invalid under the APA. *See* 5 U.S.C. §§ 706(2)(B), (C).

## PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment in their favor and grant the following relief:

A. A declaration that the Surgeon General's and DH's entire misinformation campaign constitutes *ultra vires* action lacking statutory authority, and that Defendants' interpretation of its statutory authority in such a way as to authorize their conduct runs afoul of the nondelegation and major questions doctrines;

B. A declaration that Defendants' policy of pressuring Twitter, Facebook, Instagram, YouTube, Medium, and other social media accounts to censor Plaintiffs' accounts violates the First Amendment of the United States Constitution;

C. A declaration that Defendants' RFI demand that technology companies turn over information about "sources of misinformation" by May 2 constitutes a search in violation of the Fourth Amendment and would require a warrant approved by a court of law;

D. A declaration that the Surgeon General's campaign violates the Administrative Procedure Act and therefore is unlawful and invalid; and setting aside the RFI as a violation of the APA;

E. Injunctive relief restraining and enjoining Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them (*see* Fed. R. Civ. P. 65(d)(2)), and each of them, from enforcing coercive or otherwise pressuring policies or conditions similar to those described above that exert pressure upon Twitter and other technology companies to censor users;

F. A declaration that Twitter and other social media companies are under no obligation to censor content (especially content deemed COVID-19 misinformation) and will not be penalized if they do not engage in viewpoint-based censorship;

G. An order that the government destroy all records obtained from the companies and delete traces of that information that has been used or imported to other government databases;

H. Nominal damages of $1 each;

I. Attorney's fees pursuant to 42 U.S.C. § 1988; and

J. Any other just and proper relief.

**JURY DEMAND**

Plaintiffs herein demand a trial by jury of any triable issues in the present matter.

June 14, 2022

Respectfully submitted,

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