New Civil Liberties Alliance

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In NCLA Win, Federal Judge Rejects Motion to Dismiss Government-Induced Censorship Lawsuit

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

Washington, DC (March 20, 2023) – In a thorough and well-reasoned decision, Judge Terry A. Doughty of the U.S. District Court for the Western District of Louisiana has denied government defendants' motion to dismiss in *State of Missouri, et al. v. Joseph R. Biden, Jr., et al.* The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, represents renowned epidemiologists Drs. Jay Bhattacharya and Martin Kulldorff, as well as Dr. Aaron Kheriaty and Ms. Jill Hines, in a lawsuit that has exposed an elaborate, multi-agency federal government censorship regime. Judge Doughty wrote, "The Court finds that the Complaint alleges significant encouragement and coercion that converts the otherwise private conduct of censorship on social media platforms into state action, and is unpersuaded by Defendants' arguments to the contrary."

Discovery in the lawsuit unequivocally establishes that at least eleven federal agencies and sub-agencies, including CDC and DHS, directed social media companies to censor viewpoints that conflict with the federal government's messaging on topics ranging from Covid-19 to elections. Federal officials engaged in a lawless, expansive censorship campaign that employed illicit tactics—including coercion, collusion and coordination— on social media companies to suppress the airing of disfavored perspectives on Covid-19 and other topics. As a direct result of state action, NCLA's clients were blacklisted, shadow-banned, de-boosted, throttled, and censored, merely for articulating views opposed to government-approved views on Covid-19 restrictions and regulations. Judge Doughty held that "Plaintiffs have plausibly alleged state action under the theories of joint participation, entwinement, and the combining of factors such as subsidization, authorization, and encouragement."

In confirming Plaintiffs' standing, Judge Doughty said, "The threat of future censorship is substantial, and the history of past censorship is strong evidence that the threat of further censorship is not illusory or merely speculative." Judge Doughty also found Plaintiffs' alleged injuries-in-fact are "redressable by the Court," and that Plaintiffs had demonstrated sovereign immunity does not bar their First Amendment, *ultra vires*, or APA claims.

NCLA looks forward to continuing to litigate this vitally important First Amendment case before the Court.

NCLA released the following statements:

"The US government used its vast power over social media and big tech to censor legitimate scientific and policy discussion about Covid during the pandemic. This was a gross violation of basic American civil liberties. Had free speech been permitted instead, perhaps many fewer Americans would have been harmed by destructive and epidemiologically useless policies like lockdowns, school closures, vaccine discrimination, toddler masking and much else. *Missouri v. Biden* is the most important First Amendment legal case in a generation, and I am pleased that it will be proceeding forward."
— **Dr. Jay Bhattacharya, Plaintiff,** *State of Missouri, et al. v. Joseph R. Biden, Jr., et al.*

"Today's remarkable decision marks an important victory for free speech in America. Unlike other courts before it, the district court recognizes that the federal government's massive, far-reaching campaign of coercion and pressure on social media platforms to censor views that threaten the administration's agenda is unlawful and violates our clients' First Amendment rights."
— **Jenin Younes, Litigation Counsel, NCLA**

"The Court has seen through the government's unrelenting efforts to deny responsibility for using its vast power to silence thousands upon thousands of Americans online, often removing factually true information the government did not like. The ruse that it was just a coincidence that all the tech companies silenced the same people saying the same things at the same time has been exposed for the canard it is. This was a whole-of-government effort to take true information from the public square, which the Constitution does not countenance."
— **John J. Vecchione, Senior Litigation Counsel, NCLA**

"The federal government must not play any role in policing or tampering with lawful, private speech on social media. The government cannot use private companies as proxies to do indirectly what the Constitution forbids it from doing directly. The First Amendment has no secret back door through which governments can manipulate social media messages—especially not to ban or censor disfavored viewpoints on Covid-19 or other topics."
— **Mark Chenoweth, President and General Counsel, NCLA**

For more information visit the case page here **or watch the case video** here**.**

ABOUT NCLA

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

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