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In NCLA Victory, Fifth Circuit Expands Injunction Against Government Social Media Censorship

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

Washington, DC (October 3, 2023) — Today, the U.S. Court of Appeals for the Fifth Circuit granted Plaintiffs’ petition for a panel rehearing and [added](#) the Cybersecurity and Infrastructure Security Agency to its preliminary injunction in *Missouri v. Biden*, barring the White House, U.S. Surgeon General’s office, CDC, FBI and now CISA officials from pressuring social media platforms to censor constitutionally protected speech. NCLA is pleased all these officials will be enjoined from infringing on the First Amendment rights of our clients, Drs. Jayanta Bhattacharya, Martin Kulldorff and Aaron Kheriaty, and Ms. Jill Hines—and other brave Americans.

The Fifth Circuit’s new action expands upon its September 8 [ruling](#) that upheld the most important portions of U.S. District Judge Terry Doughty’s July 4 preliminary injunction order, prohibiting those officials from pressuring social media companies to suppress First Amendment-protected speech. The injunction vindicates Drs. Bhattacharya, Kulldorff and Kheriaty, and Ms. Hines, who have all been blacklisted, shadow-banned, de-boosted, throttled, and censored on social media as part of the Biden Administration’s years-long censorship campaign.

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

The Biden Administration’s ongoing censorship campaign successfully suppressed perspectives contradicting government-approved views on hotly disputed topics such as whether natural immunity to Covid-19 exists and is as effective as that induced through vaccination, Covid-19 vaccine concerns, the virus’s origins, and mask mandate efficacy. The vast, coordinated effort silenced public voices, including influential doctors and scientists.

“CISA—working in close connection with the FBI—held regular industry meetings with the platforms concerning their moderation policies, pushing them to adopt CISA’s proposed practices for addressing ‘mis-, dis-, and mal-information,’” the Fifth Circuit wrote in its new order. “CISA also engaged in ‘switchboarding’ operations, meaning ... CISA officials acted as an intermediary for third parties by forwarding flagged content[.]”

The decision constituted a departure from the panel’s September ruling, which held that CISA had worked with the social media companies in a constitutionally permissible manner. Reassessing the facts, the Court this time concluded that “CISA’s role went beyond mere information sharing. Like the CDC for COVID-related claims, CISA told the platforms whether certain election-related claims were true or false. CISA’s actions apparently led to moderation policies being altered and content being removed or demoted by the recipient platforms.” The Fifth Circuit stayed the order for an additional 10 days, possibly to give the government time to petition for a *writ of certiorari* from the U.S. Supreme Court.

NCLA released the following statement:

“NCLA is pleased the Fifth Circuit has recognized that it erred in letting CISA—one of the worst violators of Americans’ First Amendment rights—off the hook, and we’re glad that CISA is now included in the injunction prohibiting censorship. We look forward to vindicating our clients’ rights in the Supreme Court, which we are confident will also recognize the egregious and intolerable nature of the government’s conduct.”

— **Jenin Younes, Litigation 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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