

No. 23-411

In the
Supreme Court of the United States

VIVEK H. MURTHY, SURGEON GENERAL, ET AL.,
Petitioners,

v.

MISSOURI, ET AL.,
Respondents.

**On Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit**

***Amici Curiae* Brief of America's Frontline
Doctors and Dr. Simone Gold, M.D., J.D., in
Support of Respondents for Affirmance**

Dr. Simone Gold, M.D., J.D.
David A. Dalia
Counsel of Record
Attorney at Law
700 Camp Street
New Orleans, LA 70130
T: 504-524-5541
davidadalia@gmail.com

Counsel for *Amici Curiae*

TABLE OF CONTENTS

TABLE OF AUTHORITIES. iii

A MATTER OF THE GREATEST PUBLIC
IMPORTANCE AND RULE 37.6 DISCLOSURE
. 1

INTERESTS OF *AMICI CURIAE*. 2

 A. GENERAL INTERESTS OF *AMICI
 CURIAE* 2

 B. SPECIFIC INTERESTS OF *AMICI CURIAE*
 3

SUMMARY OF ARGUMENT 6

ARGUMENT 10

 A. Plaintiffs have presented overwhelming
 evidence of egregious constitutional
 violations and *ultra vires* government
 conduct which cause significant dangers and
 which should be halted immediately by
 appropriate injunctive relief. 10

 B. Basic First Amendment jurisprudence shows
 that the conduct of Defendants in their
 establishment of a government censorship
 enterprise is clearly illegal and dangerous,
 violates citizen free speech rights on a
 massive scale, and shocks the conscience. . . 15

C. So-called “misinformation, disinformation, and malinformation” are all generally protected categories of free speech, subject only to the well known limited exceptions to free speech. In contrast, so-called “content moderation” is a species of censorship which is prohibited to government actors, subject only to the well known limited exceptions to free speech 18

D. These egregious constitutional violations and *ultra vires* government conduct heroically uncovered by Plaintiffs may also give rise to criminal liability under statutes such as 18 U.S.C. §241 and 42 U.S.C. §1985, in addition to civil liability. 24

E. Government funding of artificial intelligence (“AI”) ‘disfavored viewpoint’ censorship programs, with the goal of automating the unconstitutional and illegal suppression of disfavored viewpoints, driven by artificial intelligence and machine learning technologies, cries out to revisit the class action ruling in order to protect the class of social media users 24

CONCLUSION 25

TABLE OF AUTHORITIES

CASES

<i>Citizens United v. Federal Election Commission</i> , 130 S. Ct. 876 (2010)	17
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976)	15
<i>Griffin v. Breckenridge</i> , 403 U.S. 88 (1971)	24
<i>Lugar v. Edmondson Oil Co.</i> , 457 U.S. 922 (1982)	17
<i>Manhattan Community Access Corporation v. Halleck</i> , 139 S. Ct. 1921 (2019)	15
<i>Missouri and Louisiana, et al v. Joseph R. Biden, Jr. In his capacity as President of the United States, et al.</i> , 22-cv-01213, WDLA, 23-30445, CA5, 23-411 (U.S. 2023)	1
<i>Nat’l Fed’n of Indep. Bus. v. OSHA</i> , 595 U.S. ___, 142 S. Ct. 661 (2022)	1
<i>National Institute of Family and Life Advocates, dba NIFLA, et. al. v. Becerra, Attorney General of California, et. al.</i> , 585 U.S. ___, 138 S. Ct. 2361, 201 L. Ed. 2d 835 (2018)	16, 17
<i>National Rifle Association of America v. Cuomo</i> , 350 F. Supp. 3d 94 (N.D. N.Y. 2018)	16

<i>Police Department of Chicago v. Moseley</i> , 408 U.S. 92 (1972)	17
<i>Red Lion Broadcasting Co., v. F.C.C.</i> , 89 S. Ct. 1794 (1969)	11
<i>Rosenberger v. Rectors and Visitors of University of Virginia</i> , 515 U.S. 819 (1995)	17
<i>Schwarzer v. Wainwright</i> , No. 19-41011 (5th Cir. 2021)	24
<i>Simon & Schuster, Inc. v. Members of the New York State Crime Victim’s Board</i> , 505 U.S. 105 (1991)	17
<i>Turner Broadcasting System, Inc. v. F.C.C.</i> , 512 U.S. 622 (1994)	16
<i>United States v. Guest</i> , 383 U.S. 745 (1966)	24
<i>United States v. Price</i> , 383 U.S. 787 (1966)	24
CONSTITUTION AND STATUTES	
U.S. Const. amend. I	6, 8, 9, 10, 15, 16, 17
18 U.S.C. §241	9, 24
42 U.S.C. §1985	9, 24
La. R.S. 36:702	14

OTHER AUTHORITIES

- Benjamin Franklin, *Letters of Silence Dogwood*. . . 26
- “Cumulative Analysis of Post-Authorization Adverse Event Reports of PF-07302048 (BNT162B2) Received Through 28-Feb-2021”, found at <https://phmpt.org/wp-content/uploads/2021/11/5.3.6-postmarketing-experience.pdf>. . 7, 8
- Free Republic, 2/15/2022 <https://freerepublic.com/focus/f-news/4038460/posts>. 20
- <https://americasfrontlinedoctors.org/index/covid/hydroxychloroquine/science-of-hcq/> 21
- <https://c19hcq.org/> 21
- <https://c19ivm.org/> 21
- <https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm> 7
- https://www.cochrane.org/CD006207/ARI_do-physical-measures-such-hand-washing-or-wearing-masks-stop-or-slow-down-spread-respiratory-viruses 23
- <https://www.openvaers.com/covid-data> 7, 19
- <https://thefederalist.com/2023/03/21/grants-reveal-federal-governments-horrific-plans-to-censor-all-americans-speech/> 10, 25

Masks – Civil Liberties, Simone Gold, MD, JD, FABEM, https://res.cloudinary.com/aflDs/image/upload/v1660703803/aflDs/6076df5ce86247e10f68ae5b_Masks_Civil_Liberties_0b7d2bef88.pdf 22

Masks: The Science and Myths, Dr. Lee Merritt <https://aflDs.org/videos/post/masks-the-science-myths>. 22

“Swine Flu Program is Halted in Three States After Shots” <https://www.nytimes.com/1976/10/13/archives/swine-flu-program-is-halted-in-9-states-as-3-die-after-shots.html> 20

“White Paper on Hydroxychloroquine” by Dr. Simone Gold, M.D., J.D., found at [6076fe1361cd5d631ecb0a32_White-Paper-on-HCQ-2020.2%20\(3\).pdf](https://res.cloudinary.com/aflDs/image/upload/v1660703803/aflDs/6076fe1361cd5d631ecb0a32_White-Paper-on-HCQ-2020.2%20(3).pdf). 21

**A MATTER OF THE GREATEST PUBLIC
IMPORTANCE AND RULE 37.6 DISCLOSURE**

The Free Speech Foundation, d/b/a America’s Frontline Doctors, and Dr. Simone Gold, M.D., J.D., the founder and physician member (“*Amici Curiae*” or “AFLDS”) respectfully file this *amici curiae* brief in support of the Respondents’ (hereinafter, “Plaintiffs”) request for declaratory and injunctive relief in *Missouri and Louisiana, et al v. Joseph R. Biden, Jr. In his capacity as President of the United States, et al.*, 22-cv-01213, WDLA, 23-30445, CA5, 23-411 (U.S. 2023)¹. The United States Supreme Court accepted the filing of an *amicus curiae* brief from AFLDS as well in *Nat’l Fed’n of Indep. Bus. v. OSHA*, 595 U.S. ___, 142 S. Ct. 661 (2022), which position prevailed in that case.

This *amici curiae* brief offers an important perspective to this Court on a matter of great public importance, by conclusively demonstrating that the Petitioners (hereinafter, “Defendants”) engaged in unconstitutional, illegal, and possibly criminal activity by suppressing the free speech of dozens of speakers and millions of listeners. Further, the Defendants have not yet ceased this illegal government overreach, thus compromising the free speech rights of millions of Americans, as well as continuing to compromise patient safety and medical care.

¹ No counsel for any party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amici Curiae*, or their counsel, made any monetary contribution intended to fund the preparation or submission of this *amici curiae* brief.

INTERESTS OF *AMICI CURIAE*

A. GENERAL INTERESTS OF *AMICI CURIAE*

Amici Curiae are the Free Speech Foundation, d/b/a America's Frontline Doctors ("AFLDS"), a non-partisan, not-for-profit organization of hundreds of member physicians who come from across the country, representing a range of medical disciplines and practical experience on the front lines of medicine, and its' founder and physician member, Dr. Simone Gold, M.D., J.D..

AFLDS' programs focus on a number of critical issues including:

- Providing Americans with science-based facts about COVID-19;
- Protecting physician independence from government overreach;
- Combating COVID-19 with evidence-based approaches without compromising constitutional freedoms;
- Fighting medical cancel culture and media censorship;
- Advancing healthcare policies that protect the physician-patient relationship;
- Expanding COVID-19 treatment options for all Americans who need them; and
- Strengthening the voices of frontline doctors in the national healthcare conversation.

Each of AFLDS' member physicians is deeply committed to the guiding principle of medicine: "FIRST, DO NO HARM." They gravely take their ethical obligations to their patients. It is axiomatic that a physician's duty is to his or her patient. AFLDS holds sacrosanct the relationship between doctor and patient where informed decisions are to be made, taking into consideration all of the factors relating to the patients' health, risks, co-morbidities and circumstances. For AFLDS member physicians, the practice of medicine is not simply a job. Neither is it merely a career. Rather, it is a sacred trust. It is a high calling that often requires a decade or more of highly focused sacrificial dedication to achieve. America's Frontline Doctors is committed to preserving the voluntary and fully informed doctor/patient relationship, and opposes any sort of illegal interference with the doctor/patient relationship and illegal government overreach by the censorship of medical and other information, as is presented by this case.

B. SPECIFIC INTERESTS OF *AMICI CURIAE*

AFLDS and Dr. Simone Gold, M.D., J.D., were specifically mentioned in the trial court's injunction opinion in this case as being members targeted as the so-called "Disinformation Dozen", major American voices who were unconstitutionally suppressed by the long list of government Defendant actors. J.A.713, J.A.716. The list of the other suppressed victims, including Dr. Gold at ROA.26539-26540, is shocking. Major American voices were silenced. Here is the so-called "Disinformation Dozen":

- i. Jill Hines and Health Freedom of Louisiana;587
- ii. One America News;588
- iii. Breitbart News;589
- iv. Alex Berenson;
- v. Tucker Carlson;591
- vi. Fox News;592
- vii. Candace Owens;593
- viii. The Daily Wire;594
- ix. Robert F. Kennedy, Jr.;595
- x. Dr. Simone Gold and America's Frontline Doctors; 596, and
- xi. Dr. Joyce Mercola.597.

District Court Judge Terry A. Doughty specifically discussed AFLDS and the controversies surrounding the various covid treatments in detail, and discussed the first famous AFLDS press conference, the first White Coat Summit held by the AFLDS medical freedom doctors in front of the United States Supreme Court steps in 2021, in this passage at ROA.26507:

“When America’s Frontline Doctors held a press conference criticizing the Government’s response to the COVID-19 pandemic and spouting the benefits of hydroxychloroquine in treating the coronavirus,³²⁶ Dr. Fauci made statements on Good Morning America³²⁷ and on Andrea

Mitchell Reports³²⁸ that hydroxychloroquine is not effective in treating the coronavirus. Social-media platforms censored the America's Frontline Doctors videos. Facebook, Twitter, and YouTube removed the video.³²⁹ Dr. Fauci does not deny that he or his staff at NIAID may have communicated with social-media platforms, but he does not specifically recall it.³³⁰ ROA.26507.

Unfortunately, this egregious violation of the constitutional rights of Dr. Gold and of AFLDS's truthful and accurate medical free speech by government bureaucrats is medically very dangerous. As mentioned previously, the guiding principle of medicine is to DO NO HARM. As will be shown herein, this censorship of truthful and accurate medical information in the midst of a public health crises causes much harm, and can be literally fatal to thousands of Americans.

The speeches of the America's Frontline Doctors group were widely broadcast and the video went viral. Within hours, it captivated an estimated 20 million viewers who were obviously clearly hungry for truth, objective medical information, and second medical opinions. Then, without warning, the video was abruptly and mysteriously removed by media tech giants including Facebook, YouTube, and Twitter.

It should be noted that even false information is protected free speech, excluding only the well recognized exceptions to free speech. But here, illegal censorship by government bureaucrats of protected free speech, consisting of life saving, truthful and accurate medical information, deprived millions of listeners of

information which they could have used in formulating personal informed consent.

The equities surrounding these illegal and dangerous censorship efforts cry out for injunctive relief for the crucial reason of preventing more unnecessary deaths, among the other reasons cited by Plaintiffs. “**Informed consent**” cannot be formed if it is not fully **informed**. Informed consent can never be coerced, nor distorted by censored and incomplete information.

SUMMARY OF ARGUMENT

The evidence presented in this case and First Amendment jurisprudence clearly shows that the Defendants illegally, brazenly and repeatedly violated the First Amendment. Plaintiffs have heroically uncovered massive wrongdoing on the part of the Defendants, conduct which is very dangerous to the health of the people of Missouri, to the people of Louisiana, and indeed to the health of the entire nation, and threatens the rule of law in America. The Defendants do not attempt to dispute the facts uncovered by the Plaintiffs and by the lower court. They only appear to be concerned about their own rights of free speech, and of judicial interference with their ability to continue their unconstitutional suppression of the nation’s free speech and discourse through their various so-called “content moderation” policies.

The Defendants’ viewpoint discrimination is blatant and obvious.

This unconstitutional government censorship is particularly harmful, life threatening, and even fatal in the medical freedom arena. Dangerous and experimental mRNA injections were falsely and relentlessly promoted as being “safe and effective”, [they were neither^{2,3}]. In contrast, information

² The CDC’s own Vaccine Adverse Event Reporting System (VAERS) data shows that as of January 26th, 2024, there have been an appalling 37,100 deaths in America alone which thousands of medical professionals have attributed in their best professional judgments to a fatal adverse reaction to the experimental mRNA injections, aka “vaccines”. This is not “safe”. <https://www.openvaers.com/covid-data> In July 2021 an outbreak of SARS-CoV-2 infections in Barnstable County, Massachusetts involved 469 people, 79 percent of whom were symptomatic, and 74 percent of those who were symptomatic were fully vaccinated. This incident made it clear that the “vaccines” do not prevent infection or transmission of COVID-19. “Vaccinated” people can become infected and can also spread the SARS-CoV-2 virus to other people. This is not “effective”. <https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm>

³ The Food and Drug Administration (“FDA”) notoriously asked for 75 years in which to release the Pfizer safety data in response to a Freedom of Information Act request filed by Public Health and Medical Professionals for Transparency (PHMPT). PHMPT sued the FDA on September 16, 2021, in the case of *Public Health and Medical Professionals for Transparency v Food and Drug Administration*, 21-cv-01058-P, Complaint for Declaratory and Injunctive Relief, NDTX. The federal judge ordered Pfizer to release all of the documents. One particularly incriminating document entitled “Cumulative Analysis of Post-Authorization Adverse Event Reports of PF-07302048 (BN 162B2) Received Through February 28, 2021,” includes a shocking 9-page list of 1,291 adverse side-effects from the Pfizer injection, including reactions affecting the nervous system, musculoskeletal, gastrointestinal, respiratory, skin, and procedural complications;

regarding numerous other completely safe, well-known, and reliably effective early treatments was demonized, denounced, and deleted. Why was truthful and accurate medical information censored, and false medical “narratives” promoted by government actors instead?

Setting aside for a moment the issue of the correctness of either approach, it remains undeniable that speech concerning either approach, the medically incorrect approach, or the medically correct approach, are both protected free speech. Both discourses are protected by the First Amendment. There is no “one size fits all” in medicine. Patients enjoy the right to be fully informed with all of the information freely available when making their deeply personal medical choices. Patients risk being terribly misled by incomplete medical information when it is censored by government actors in the name of “content-moderation”, or is branded as “misinformation” (in the opinion of a government actor.) Patients’ time-honored rights to obtain fully informed first and second medical

infections, cardiac, vascular, psychiatric, blood and lymphatic, eye, immune, and ear complications. Perhaps the most dangerous adverse side effect listed on the 9-page list of adverse side effects is “1P36 Gene Deletion Syndrome”. Symptoms include changes in facial structures, severe learning disabilities, severe oral communication problems, heart, muscle, breathing, eye and other problems.” Source: April 30, 2021 “Cumulative Analysis of Post-Authorization Adverse Event Reports of PF-07302048 (BNT162B2) Received Through 28-Feb-2021” submitted by Pfizer to the FDA. That document can be found at <https://phmpt.org/wp-content/uploads/2021/11/5.3.6-postmarketing-experience.pdf>

opinions must never be compromised by unconstitutional government censorship and viewpoint discrimination.

Despite these self-evident truths about free speech, the government Defendants do not appear to be halting their massive government censorship campaign at all. Indeed, the very fact that they are pursuing these appeals indicates that they intend to continue their censorship policies. Defendants merely seek permission from this Honorable Court to continue their unconstitutional censorship enterprises.

The breathtaking scope of the illegal government censorship enterprises uncovered by Plaintiffs are also arguably criminal enterprises designed to violate the First Amendment free speech rights of Americans under statutes such as 18 U.S.C. §241 and 42 U.S.C. §1985.

Alarmingly, new information is emerging that this government is now funding artificial intelligence viewpoint censorship programs, so that the unconstitutional and illegal suppression of disfavored viewpoints can be automated. Driven by artificial intelligence and machine learning technologies⁴,

⁴ The U.S. Government Is Building A Vast Surveillance And Speech Suppression Web Around Every American: “While the “Twitter Files” offer a glimpse into the government’s efforts to censor disfavored viewpoints, what we have seen is nothing compared to what is planned, as the details of hundreds of federal awards lay bare. Research by The Federalist reveals our tax dollars are funding the development of artificial intelligence (“AI”) and machine-learning (“ML”) technology that will allow the government to easily discover “problematic” speech and track

disfavored opinions can be automatically suppressed and deleted. This alarming development cries out for this distinguished Court to revisit the class action ruling as well to protect the class of social media users.

ARGUMENT

A. Plaintiffs have presented overwhelming evidence of egregious constitutional violations and *ultra vires* government conduct which cause significant dangers and which should be halted immediately by appropriate injunctive relief

“If the allegations made by Plaintiffs are true, the present case arguably involves the most massive attack against free speech in United States’ history.”...

“Although the censorship alleged in this case almost exclusively targeted conservative speech, the issues raised herein go beyond party lines. The right to free speech is not a member of any political party and does not hold any political ideology. It is the purpose of the Free Speech Clause of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of the market,

Americans reading or partaking in such conversations. Then, in partnership with Big Tech, Big Business, and media outlets, the government will ensure the speech is censored, under the guise of combating “misinformation” and “disinformation.”
<https://thefederalist.com/2023/03/21/grants-reveal-federal-governments-horrific-plans-to-censor-all-americans-speech/>

whether it be by government itself or private licensee.” *Red Lion Broadcasting Co., v. F.C.C.*, 89 S. Ct. 1794, 1806 (1969).

Memorandum Ruling on Request for Preliminary Injunction, ROA.26456.

“The question does not concern whether speech is conservative, moderate, liberal, progressive, or somewhere in between. **What matters is that Americans, despite their views, will not be censored or suppressed by the Government. Other than well-known exceptions to the Free Speech Clause, all political views and content are protected free speech.**” [*Emphasis added*]

Memorandum Ruling on Request for Preliminary Injunction, ROA.26457-26458

Subject to the well-known exceptions, even false statements are protected free speech.

It is astonishing that the Defendants appeared to blatantly disregard the illegality of their coercive activities.

The range and extent of the government censorship as uncovered by the Plaintiffs is breathtaking. Contrary viewpoints on virtually all of the major issues of our time were suppressed by Defendants. These issues included: (1) suppressing the Hunter Biden laptop story prior to the 2020 Presidential election; (2) suppressing speech about the lab-leak theory of COVID-19’s origin; (3) suppressing speech about the efficiency of masks and COVID-19 lockdowns;

(4) suppressing speech about the efficiency of COVID-19 vaccines; (5) suppressing speech about election integrity in the 2020 presidential election; (6) suppressing speech about the security of voting by mail; (7) suppressing parody content about Defendants; (8) suppressing negative posts about the economy; and (9) suppressing negative posts about President Biden. ROA.26458.

Examples of this illegal censorship are egregious, and abound. A few examples:

Plaintiffs Drs. Kulldorff and Bhattacharya were censored for advocating against vaccine and mask mandates, including mask mandates for young children, and for pointing out that natural immunity was stronger than vaccine immunity.

Plaintiff Jill Hines was censored for advocating against mask mandates for young children, for sharing Pfizer's pre-clinical trial data, and for posting the CDC's own Vaccine Adverse Event Reporting System (VAERS) data. ROA.26459, J.A.789-J.A.792.

Plaintiff Jim Hoft, the owner and operator of the Gateway Pundit, was censored and deleted because of his reporting on COVID-19 and on election fraud. ROA.26460-26461. R.O.A.13865.

AFLDS and Dr. Simone Gold, M.D., J.D., *Amici Curiae* herein, were targeted by Defendants as being some of the so-called "Disinformation Dozen" for promoting the benefits of HCQ and Ivermectin and opposing vaccine passports. These major American voices were unconstitutionally suppressed by the long list of government defendants. J.A.713, J.A.716,

ROA.633, ROA.634. These major American voices were illegally silenced. ROA.26539-26540.

The so-called “Disinformation Dozen” were relentlessly and illegally targeted and suppressed by various Defendants. See ROA.26471, ROA.26473, ROA.26475-26478, ROA.26484, ROA.26490, ROA.26550, ROA.26553, and ROA.26583.

Judge Doughty noted at ROA.26507 that after the first famous White Coat Summit held by the AFLDS medical freedom doctors in front of the United States Supreme Court in 2021, Dr. Fauci made statements on Good Morning America and on Andrea Mitchell Reports that hydroxychloroquine (“HCQ”) was not effective in treating the coronavirus. Social-media platforms then censored the America’s Frontline Doctors videos. Facebook, Twitter, and YouTube suddenly removed the video after having garnered over 20 million views.

Unfortunately, these egregious violations of the constitutional rights of Dr. Gold, of AFLDS’s truthful and accurate medical free speech, and the free speech of all of the other Plaintiffs, is very dangerous from a medical and legal standpoint. As will be shown, this censorship of truthful and accurate medical information in the midst of a public health crises caused much harm and was literally fatal to thousands of Americans.

The sovereign interests of the states of Missouri and of Louisiana were violated, inasmuch as their citizens’ rights to speak freely, and their citizens’ right to listen to and hear free speech, were violated by Defendants.

As Plaintiffs point out in their Brief of Respondents, pgs. 18-28, all Plaintiffs have standing. The state Attorneys General advocate for the public interest and for the people of their state. See also La. R.S. 36:702. Attorneys General broadly represent the public interest.

Plaintiffs uncovered and exposed numerous examples of the Defendants' use of "strong-arm tactics", through their use of emails, public and private messages, public and private meetings and other means, to significantly encourage and coerce social-media platforms to suppress protected free speech posted on social-media platforms.

As Plaintiffs point out:

"Thus began a campaign of "unrelenting pressure from the most powerful office in the world" to "bend [social-media platforms] to the government's will." J.A.27."

Brief of Respondents, pg. 3.

Also see J.A.17, J.A.71.

Judge Doughty cited countless examples of these unconstitutional and illegal free speech suppression tactics by the various government Defendants, filling an excess of seventy six (76) pages of the trial court opinion. See ROA.26463-26540. This huge body of evidence amply justifies injunctive relief.

Plaintiffs forcefully argue that justified injunctive relief is the only answer:

“[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury,” *Elrod v. Burns*, 427 U.S. 347, 373 (1976), and “injunctions protecting First Amendment freedoms are always in the public interest,” *Walker*, 453 F.3d at 859. Defendants’ conduct inflicts “millions of free speech violations,” J.A.264, likely “impact[ing] every social-media user,” J.A.82.”

Brief of Respondents, pg. 49.

The evidence of government overreach is indeed overwhelming in this case. The equities require immediate injunctive relief.

B. Basic First Amendment jurisprudence shows that the conduct of Defendants in their establishment of a government censorship enterprise is clearly illegal and dangerous, violates citizen free speech rights on a massive scale, and shocks the conscience

The trial court relied on black letter First Amendment jurisprudence in concluding that the Defendants actions were unconstitutional and illegal in this case:

“The Free Speech Clause prohibits only governmental abridgment of speech. It does not prohibit private abridgment of speech. *Manhattan Community Access Corporation v. Halleck*, 139 S. Ct. 1921, 1928 (2019). The First Amendment, subject only to narrow and well-understood exceptions, does not

countenance governmental control over the content of messages expressed by private individuals. *Turner Broadcasting System, Inc. v. F.C.C.*, 512 U.S. 622, 641 (1994). At the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence. *Id.*

Government action, aimed at the suppression of particular views on a subject that discriminates on the basis of viewpoint, is presumptively unconstitutional. The First Amendment guards against government action “targeted at specific subject matter,” a form of speech suppression known as “content-based discrimination.” *National Rifle Association of America v. Cuomo*, 350 F. Supp. 3d 94, 112 (N.D. N.Y. 2018).

Memorandum Ruling on Request for Preliminary Injunction, ROA.26542.

Also see *National Institute of Family and Life Advocates, dba NIFLA, et. al. v. Becerra, Attorney General of California, et. al.*, 585 U.S. ___, 138 S. Ct. 2361, 201 L. Ed. 2d 835 (2018). The California Reproductive Freedom, Accountability, Comprehensive Care, and Transparency Act (“FACT Act”) analogously attempted to impose “content moderation” (i.e., mandatory medical speech) upon health care providers. The FACT Act required pro-life health care clinics to inform patients that free or low-cost abortions were available in California and required the clinics to give the patients a telephone number to call for those services. The United States Supreme Court held that

this law was likely an unconstitutional violation of the First Amendment. The *NIFLA* Court noted that content-based laws targeting speech based on its communicative content, which compel speakers to speak a particular message, are presumptively unconstitutional.

“Viewpoint discrimination is an especially egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the perspective of the speaker is the rationale for the restriction. *Rosenberger v. Rectors and Visitors of University of Virginia*, 515 U.S. 819, 829 (1995). Strict scrutiny is applied to viewpoint discrimination. *Simon & Schuster, Inc. v. Members of the New York State Crime Victim’s Board*, 505 U.S. 105 (1991). The government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views.” *Police Department of Chicago v. Mosley*, 408 U.S. 92, 96 (1972).

“The benefit of any doubt must go to protecting rather than stifling speech.” *Citizens United v. Federal Election Commission*, 130 S. Ct. 876, 891 (2010) “This is a standard that requires the private action to be “fairly attributable to the state.”” *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982).

Memorandum Ruling on Request for Preliminary Injunction, ROA.26542-26543.

The trial court carefully analyzed the voluminous evidence uncovered by Plaintiffs, and after correctly applying applicable law, correctly concluded that constitutional violations had occurred.

C. So-called “misinformation, disinformation, and malinformation” are all generally protected categories of free speech, subject only to the well known limited exceptions to free speech. In contrast, so-called “content moderation” is a species of censorship which is prohibited to government actors, subject only to the well known limited exceptions to free speech

The government actor Defendants constantly used as the rationale for their actions the mantra that they were combating “misinformation, disinformation, and malinformation”. However, subject to the well-known exceptions, “misinformation, disinformation, and malinformation” are all protected categories of free speech. Defendants knew or should have known this.

Defendants also repeatedly pressured their social media “partners” to strengthen their “content-moderation” policies. The trial court found that there was substantial encouragement, coercion, and public and private demands to censor and strengthen “content-moderation” by their social media partners. See ROA.26497-26498, ROA.26514-26515, ROA.26520, ROA.26530, ROA.26559, ROA.26564, and ROA.26584.

The viewpoint discrimination was quite blatant. In the medical freedom arena, free speech which supported early COVID-19 treatments with safe drugs

such as hydroxychloroquine, Ivermectin and others were targeted. Ivermectin may now be purchased over the counter in the state of Tennessee. Also targeted was speech questioning the efficacy of masks, and speech questioning the safety and efficacy of the experimental mRNA injections, aka “vaccines”. ROA.2717-18, 2813, 11454, 17042, 17068, 17072-73; J.A.139-40. J.A.716. Free speech which was viewed as contributing to so-called “vaccine hesitancy” was also targeted. J.A.664, J.A.666. But, targeting “vaccine hesitancy” by the suppression of truthful information undermines “informed consent”, dangerously interferes with the doctor/patient relationship, and violates physician free speech rights. For example, the CDC’s own Vaccine Adverse Event Reporting System (VAERS) data show that as of January 26th, 2024, there have been **37,100 deaths in America alone** which thousands of medical professionals have attributed to fatal adverse reactions to the experimental mRNA injections, aka “vaccines”⁵. See also footnote 2. This cannot reasonably be considered “safe”. These facts can form a reasonable basis for a patient to avoid such an experimental injection in favor of safer alternatives.

A conservatively estimated 37,100 American deaths attributed to the experimental mRNA injections indeed shocks the conscience. While in stark contrast, in 1976, after only 32 deaths were attributable to the swine flu vaccine, the United States government halted the mass

⁵ <https://openvaers.com/covid-data>

vaccination campaign⁶. The New York Times reported on October 13, 1976 that the swine flu program was halted in nine states after only 3 deaths were attributed to the vaccine shots⁷. Regrettably, the U.S. government continues its' mass mRNA "vaccine" campaign in the face of so many deaths.

It is very dangerous to suppress such truthful and accurate medical information in a government censorship effort to promote a contrary "narrative". Further, we now know that these experimental mRNA injections, aka "vaccines", do not prevent acquisition or transmission of COVID-19 at all. See footnotes 2 and 3. Thus, they cannot reasonably be considered "effective" either.

For the record, it is the position of *Amici Curiae*, supported by enormous amounts of scientific research, that early COVID-19 treatments with hydroxychloroquine ("HCQ") and Ivermectin are in fact quite safe and effective, contrary to the incessant

⁶ CDC data signaling vaccine catastrophe. It took only 32 deaths to halt 1976 shot campaign. Free Republic, 2/15/2022 <https://freerepublic.com/focus/f-news/4038460/posts>

⁷ 'Swine Flu Program is Halted in Three States After Shots' <https://www.nytimes.com/1976/10/13/archives/swine-flu-program-is-halted-in-9-states-as-3-die-after-shots.html>

government “narrative”^{8, 9, 10} against such treatment options.

⁸ As of July 24, 2023, a global, real-time meta-analysis includes 499 Hydroxychloroquine (HCQ) COVID-19 studies, from 8,467 scientists and 522,536 patients in 58 countries, 406 studies are peer reviewed, with 402 comparing treatment and control groups. The studies indicate a statistically significant improvement for mortality, hospitalization, recovery, cases, and viral clearance, and there is 72% less death in 16 early treatment trials. Source: <https://c19hcq.org/>

⁹ A white paper is to draw the reader’s attention to the indisputable safety of hydroxychloroquine (“HCQ”), an analog of the same quinine found in tree barks that George Washington used to protect his troops. A “White Paper on Hydroxychloroquine” by Dr. Simone Gold, M.D., J.D., is the culmination of months-long research from all sources. It explains how Americans have come to be in the grip of fear. All the myths and all the misconceptions about a safe, generic drug that has been FDA approved for 65 years, given to pregnant women, breast-feeding women, children, the elderly, and the immune-compromised for years and decades without complication, are finally put to rest. Source: [6076fe1361cd5d631ecb0a32_White-Paper-on-HCQ-2020.2%20\(3\).pdf https://americasfrontlinedoctors.org/index/covid/hydroxychloroquine/science-of-hcq/](https://americasfrontlinedoctors.org/index/covid/hydroxychloroquine/science-of-hcq/)

¹⁰ As of July 25, 2023, a global, real-time meta-analysis includes 214 Ivermectin COVID-19 studies; 165 that are peer reviewed, with 99 comparing treatment and control groups. The studies indicate Ivermectin reduces risk for COVID-19 with very high confidence for mortality, ventilation, ICU admission, hospitalization, recovery, cases, and viral clearance. No treatment, vaccine, or intervention is 100% effective and available. Thus all practical, effective, and safe means should be used based on risk/benefit analysis. Over 20 countries adopted Ivermectin for COVID-19. Ivermectin may now be purchased over the counter in the state of Tennessee. Source: <https://c19ivm.org/>

For the record, it is the position of *Amici Curiae*, supported by enormous amounts of scientific research, that the experimental mRNA injections are neither “safe” nor “effective”. See footnotes 2 and 3.

For the record, it is also the position of *Amici Curiae*, supported by enormous amounts of scientific research, that masks lack efficacy. Ineffective masks have been found to have measurably harmful effects such as increased incidents of life-threatening bacterial pneumonia, decreased oxygen levels in the brains of mask-wearers, and speech deficits in children. Masks are also unsanitary and function as bacteria-collectors. “The pore size of cloth face coverings range from ~ 20-100 microns. The Covid virus is 200-1000x smaller than that, at 0.1 microns. Putting up a chain link fence will not keep out a mosquito. See accurate mask efficacy sources here.^{11, 12, 13} .

¹¹ Masks – Civil Liberties, Simone Gold, MD, JD, FABEM “The pore size of cloth face coverings range from ~ 20-100 microns. The Covid virus is 200-1000x smaller than that, at 0.1 microns. Putting up a chain link fence will not keep out a mosquito.” Source: https://res.cloudinary.com/aflids/image/upload/v1660703803/aflids/6076df5ce86247e10f68ae5b_Masks_Civil_Liberties_0b7d2bef88.pdf

¹² Masks: The Science and Myths, Dr. Lee Merritt <https://aflids.org/videos/post/masks-the-science-myths>

¹³ Do physical measures such as hand-washing or wearing masks stop or slow down the spread of respiratory viruses? [meta-mask analysis]. “Wearing masks in the community probably makes little or no difference to the outcome of influenza-like illness (ILI)/COVID-19 like illness compared to not wearing masks (risk ratio (RR) 0.95, 95% confidence interval (CI) 0.84 to 1.09; 9 trials, 276,917 participants; moderate-certainty evidence.” Source:

Even if someone might reach a different conclusion than those reached by the *Amici Curiae* herein, the constitutional rights of the *Amici Curiae* to advance and advise their carefully considered and well-researched medical conclusions, unhindered by government censorship, are indisputable. We can all agree on this. Our Constitution demands it.

Amici Curiae AFLDS' member physicians are deeply committed to the guiding principle of medicine: "FIRST, DO NO HARM." They gravely take their ethical oath and obligations to their patients with the utmost seriousness. It is axiomatic that a physician's duty is to his or her patient.

However, the illegal actions of the Defendants exposed by this brilliant lawsuit pose great dangers to patient health, to the doctor/patient relationship, and to informed consent itself.

While it can be said that false speech, misrepresentations and even lies can be protected as free speech, *Amici Curiae* are left with a burning question:

Why was truthful and accurate medical information ruthlessly censored, exposing patients to greater risks, while inaccurate and false information was often promoted instead of the truth, as an "approved government narrative"?

https://www.cochrane.org/CD006207/ARI_do-physical-measures-such-hand-washing-or-wearing-masks-stop-or-slow-down-spread-respiratory-viruses

D. These egregious constitutional violations and *ultra vires* government conduct heroically uncovered by Plaintiffs may also give rise to criminal liability under statutes such as 18 U.S.C. §241 and 42 U.S.C. §1985, in addition to civil liability

The suppression of important medical information during a pandemic, which put patient's lives at risk, is sufficiently serious so as to warrant the possible applicability of criminal statutes such as 18 U.S.C. §241 and 42 U.S.C. §1985.

This is on account of the high level of internal collusion, coordination and cooperation between and among the various government Defendant actors herein. See for example *Schwarzer v. Wainwright*, No. 19-41011 (5th Cir. 2021), *United States v. Guest*, 383 U.S. 745 (1966), *Griffin v. Breckenridge*, 403 U.S. 88 (1971), and *United States v. Price*, 383 U.S. 787 (1966).

E. Government funding of artificial intelligence (“AI”) ‘disfavored viewpoint’ censorship programs, with the goal of automating the unconstitutional and illegal suppression of disfavored viewpoints, driven by artificial intelligence and machine learning technologies, cries out to revisit the class action ruling in order to protect the class of social media users

Unfortunately, new information is emerging that this government is now funding artificial intelligence viewpoint censorship programs, so that the unconstitutional and illegal suppression of disfavored

viewpoints can be automated, driven by artificial intelligence and machine learning technologies¹⁴. This development cries out for this distinguished Court to revisit the class action ruling as well, to protect the class of social media users.

CONCLUSION

As the District Court eloquently observed:

“For if men are to be precluded from offering their sentiments on a matter, which may involve the most serious and alarming consequences, that can invite the consideration of mankind, reason is of no use to us; the freedom of speech may be taken away, and dumb and silent we may be led, like sheep, to the slaughter.”
[*Emphasis added*]

George Washington, March 15, 1783.

And

¹⁴ The U.S. Government Is Building A Vast Surveillance And Speech Suppression Web Around Every American: “While the “Twitter Files” offer a glimpse into the government’s efforts to censor disfavored viewpoints, what we have seen is nothing compared to what is planned, as the details of hundreds of federal awards lay bare. Research by The Federalist reveals our tax dollars are funding the development of artificial intelligence (AI) and machine-learning (ML) technology that will allow the government to easily discover “problematic” speech and track Americans reading or partaking in such conversations. Then, in partnership with Big Tech, Big Business, and media outlets, the government will ensure the speech is censored, under the guise of combatting “misinformation” and “disinformation.” <https://thefederalist.com/2023/03/21/grants-reveal-federal-governments-horrific-plans-to-censorall-americans-speech/>

“Whoever would overthrow the liberty of a nation must begin by subduing the free acts of speech.”

Benjamin Franklin, *Letters of Silence Dogwood*.

Memorandum Ruling on Request for Preliminary Injunction, ROA.26457.

The unconstitutional and illegal actions exposed by the Plaintiffs herein which inequitably violate the fundamental rights of millions of Americans are of sufficient gravity and importance so as to amply justify the injunctions issued. The temporary administrative stay should also be immediately dissolved. The decision of the Fifth Circuit should be affirmed.

Respectfully Submitted,

Dr. Simone Gold, M.D., J.D.

David A. Dalia

Counsel of Record

Attorney at Law

700 Camp Street

New Orleans, LA 70130

T: 504-524-5541

davidadalia@gmail.com

Counsel for *Amici Curiae*,

America’s Frontline Doctors and

Dr. Simone Gold, M.D., J.D.