

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

STATE OF MISSOURI, ET AL.

CASE NO. 3:22-CV-01213

VERSUS

JUDGE TERRY A. DOUGHTY

JOSEPH R. BIDEN JR., ET AL.

MAG. JUDGE KAYLA D. MCCLUSKY

**MEMORANDUM RULING ON REQUEST
FOR PRELIMINARY INJUNCTION**

At issue before the Court is a Motion for Preliminary Injunction [Doc. No. 10] filed by Plaintiffs.¹ The Defendants² oppose the Motion [Doc. No. 266]. Plaintiffs have filed a reply to the opposition [Doc. No. 276]. The Court heard oral arguments on this Motion on May 26, 2023 [Doc. No. 288]. Amicus Curiae briefs have been filed in this proceeding on behalf of Alliance Defending Freedom,³ the Buckeye Institute,⁴ and Children’s Health Defense.⁵

¹ Plaintiffs consist of the State of Missouri, the State of Louisiana, Dr. Aaron Kheriaty (“Kheriaty”), Dr. Martin Kulldorff (“Kulldorff”), Jim Hoft (“Hoft”), Dr. Jayanta Bhattacharya (“Bhattacharya”), and Jill Hines (“Hines”).

² Defendants consist of President Joseph R Biden (“President Biden”), Jr, Karine Jean-Pierre (“Jean-Pierre”), Vivek H Murthy (“Murthy”), Xavier Becerra (“Becerra”), Dept of Health & Human Services (“HHS”), Dr. Hugh Auchincloss (“Auchincloss”), National Institute of Allergy & Infectious Diseases (“NIAID”), Centers for Disease Control & Prevention (“CDC”), Alejandro Mayorkas (“Mayorkas”), Dept of Homeland Security (“DHS”), Jen Easterly (“Easterly”), Cybersecurity & Infrastructure Security Agency (“CISA”), Carol Crawford (“Crawford”), United States Census Bureau (“Census Bureau”), U. S. Dept of Commerce (“Commerce”), Robert Silvers (“Silvers”), Samantha Vinograd (“Vinograd”), Ali Zaidi (“Zaidi”), Rob Flaherty (“Flaherty”), Dori Salcido (“Salcido”), Stuart F. Delery (“Delery”), Aisha Shah (“Shah”), Sarah Beran (“Beran”), Mina Hsiang (“Hsiang”), U. S. Dept of Justice (“DOJ”), Federal Bureau of Investigation (“FBI”), Laura Dehmlow (“Dehmlow”), Elvis M. Chan (“Chan”), Jay Dempsey (“Dempsey”), Kate Galatas (“Galatas”), Katharine Dealy (“Dealy”), Yolanda Byrd (“Byrd”), Christy Choi (“Choi”), Ashley Morse (“Morse”), Joshua Peck (“Peck”), Kym Wyman (“Wyman”), Lauren Protentis (“Protentis”), Geoffrey Hale (“Hale”), Allison Snell (“Snell”), Brian Scully (“Scully”), Jennifer Shopkorn (“Shopkorn”), U. S. Food & Drug Administration (“FDA”), Erica Jefferson (“Jefferson”), Michael Murray (“Murray”), Brad Kimberly (“Kimberly”), U. S. Dept of State (“State”), Leah Bray (“Bray”), Alexis Frisbie (“Frisbie”), Daniel Kimmage (“Kimmage”), U. S. Dept of Treasury (“Treasury”), Wally Adeyemo (“Adeyemo”), U. S. Election Assistance Commission (“EAC”), Steven Frid (“Frid”), and Kristen Muthig (“Muthig”).

³ [Doc. No. 252]

⁴ [Doc. No. 256]

⁵ [Doc. No. 262]

I. INTRODUCTION

I may disapprove of what you say, but I would defend to the death your right to say it.

Evelyn Beatrice Hill, 1906, *The Friends of Voltaire*

This case is about the Free Speech Clause in the First Amendment to the United States Constitution. The explosion of social-media platforms has resulted in unique free speech issues—this is especially true in light of the COVID-19 pandemic. If the allegations made by Plaintiffs are true, the present case arguably involves the most massive attack against free speech in United States’ history. In their attempts to suppress alleged disinformation, the Federal Government, and particularly the Defendants named here, are alleged to have blatantly ignored the First Amendment’s right to free speech.

Although the censorship alleged in this case almost exclusively targeted conservative speech, the issues raised herein go beyond party lines. The right to free speech is not a member of any political party and does not hold any political ideology. It is the purpose of the Free Speech Clause of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of the market, whether it be by government itself or private licensee. *Red Lion Broadcasting Co., v. F.C.C.*, 89 S. Ct. 1794, 1806 (1969).

Plaintiffs allege that Defendants, through public pressure campaigns, private meetings, and other forms of direct communication, regarding what Defendants described as “disinformation,” “misinformation,” and “malinformation,” have colluded with and/or coerced social-media platforms to suppress disfavored speakers, viewpoints, and content on social-media platforms. Plaintiffs also allege that the suppression constitutes government action, and that it is a violation

of Plaintiffs' freedom of speech under the First Amendment to the United States Constitution. The First Amendment states:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof: **or abridging the freedom of speech**, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (emphasis added).

First Amendment, U.S. Const. amend. I.

The principal function of free speech under the United States' system of government is to invite dispute; it may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. *Texas v. Johnson*, 109 S. Ct. 2533, 2542–43 (1989). Freedom of speech and press is the indispensable condition of nearly every other form of freedom. *Curtis Pub. Co. v. Butts*, 87 S. Ct. 1975, 1986 (1967).

The following quotes reveal the Founding Fathers' thoughts on freedom of speech:

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

George Washington, March 15, 1783.

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

Benjamin Franklin, *Letters of Silence Dogwood*.

Reason and free inquiry are the only effectual agents against error.

Thomas Jefferson.

The question does not concern whether speech is conservative, moderate, liberal, progressive, or somewhere in between. What matters is that Americans, despite their views, will not be censored or suppressed by the Government. Other than well-known exceptions

to the Free Speech Clause, all political views and content are protected free speech.

The issues presented to this Court are important and deeply intertwined in the daily lives of the citizens of this country.

II. FACTUAL BACKGROUND

In this case, Plaintiffs allege that Defendants suppressed conservative-leaning free speech, such as: (1) suppressing the Hunter Biden laptop story prior to the 2020 Presidential election; (2) suppressing speech about the lab-leak theory of COVID-19's origin; (3) suppressing speech about the efficiency of masks and COVID-19 lockdowns; (4) suppressing speech about the efficiency of COVID-19 vaccines; (5) suppressing speech about election integrity in the 2020 presidential election; (6) suppressing speech about the security of voting by mail; (7) suppressing parody content about Defendants; (8) suppressing negative posts about the economy; and (9) suppressing negative posts about President Biden.

Plaintiffs Bhattacharya and Kulldorff are infectious disease epidemiologists and co-authors of The Great Barrington Declaration (“GBD”). The GBD was published on October 4, 2020. The GBD criticized lockdown policies and expressed concern about the damaging physical and mental health impacts of lockdowns. They allege that shortly after being published, the GBD was censored on social media by Google, Facebook, Twitter, and others. Bhattacharya and Kulldorff further allege on October 8, 2020 (four days after publishing the GBD), Dr. Frances Collins, Dr. Fauci, and Cliff Lane proposed together a “take down” of the GBD and followed up with an organized campaign to discredit it.⁶

Dr. Kulldorff additionally alleges he was censored by Twitter on several occasions because of his tweets with content such as “thinking everyone must be vaccinated is scientifically flawed,”

⁶ [Doc. No. 10-3 and 10-4]