

# 23-20538-CV

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IN THE

## United States Court of Appeals



FIFTH CIRCUIT

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STEVEN E GREER

*Plaintiff-Appellant*

v.

THE LANCET, ELSEVIER, RELX plc, DAN ERKES

*Defendants-Appellees*

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*On Appeal from the United States District Court  
for the Southern District of Texas*

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**BRIEF FOR PLAINTIFF-APPELLANT**

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## **CERTIFICATE OF INTERESTED PERSONS**

Per 5th Cir. local rule 28.2.1 of the F.R.A.P, the undersigned *pro se* Plaintiff-Appellant of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Here is the list names of all such persons and entities:

1. Steven E. Greer: The Plaintiff-Appellant in this case
2. The Lancet: A Defendant-Appellee in this case
3. Elsevier: A Defendant-Appellee in this case
4. RELX plc: A Defendant-Appellee in this case
5. Dan Erkes: A Defendant-Appellee in this case

/s/: Steven E. Greer, MD  
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**STATEMENT OF ORAL ARGUMENT**

Per 5th Cir. local rule 28.2.3 of the F.R.A.P, the undersigned *pro se* Plaintiff-Appellant of record waives oral argument.

This appeal has gone unopposed to date. No formal Notice of Appearance was made in the district court.

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## **JURISDICTION**

The district court had jurisdiction pursuant to (42 U.S.C. § 1983 (2021)- Civil action for deprivation of rights), and (18 U.S. Code § 241 - Conspiracy against rights).

This *Court of Appeals for the Fifth Circuit* has jurisdiction because the district court is part of the 5<sup>th</sup> Cir. Also, pursuant to 28 U.S.C. § 1291 (appeal of final decisions), the Order being appealed (ROA.86) is a final decision that disposes of all Appellant's claims in this action against all Appellees.

## **STATEMENT of the ISSUES**

### **1. Should the District Court have Enjoined *The Lancet* to Publish the Ventilator Mortality Data?**

The lower court judge seemed to conspire to make it very difficult for Plaintiff-Appellant to litigate (e.g., by denying the motion for ECF filing (ROA.81) and then dismissing the case with prejudice (ROA.86). As a result, the Complaint (ROA.4) was voluntarily withdrawn and a judicial misconduct complaint lodged.

The district court made it impossible to refile the Complaint by issuing an Order dismissing the case “with prejudice”. That was a malicious act of judicial misconduct Appellant argues in a formal complaint.

Instead, should the lower court have allowed the case to be refiled “without prejudice”? If so, then should the lower court have granted the injunctive relief sought by enjoining *The Lancet* to publish the highly important data on ventilator mortality rates in New York hospitals?

## **2. Did the District Court Err in Dismissing the Complaint “With Prejudice”?**

The lower court ordered the case to be dismissed with prejudice. Did that violate F.R.C.P. 41(1)(B)-Dismissal-of-Actions, which states that Complaints can be withdrawn by right and without prejudice, thus allowing the plaintiff to freely refile?

### **STATEMENT of the CASE**

This case involves a conspiracy between Defendants-Appellees and the federal government to censor medical literature that conflicts with the agendas of the NSA “Warp Speed” program. The lower court case was not allowed to proceed to discovery and the allegations remain yet unproved. However, if they are true, then the same federal government co-conspirators as in *Missouri v. Biden*, No. 3: 22-CV-01213 (W.D. La., 2022) are involved in this instant case as well as *de facto* defendants.

Plaintiff-Appellant believes that these omnipotent federal agencies influenced district court judge David Hittner, causing him to deny his motion for ECF filing rights and kill the case entirely with an erroneous order dismissing the case with prejudice. A report of judicial misconduct was filed and accepted by the office of the

clerk (see *Greer v. Judge David Hittner*: Judicial Misconduct Complaint No. 05-24-90010). That investigation is underway.

As a result of this alleged judicial misconduct, Appellant argues that vital medical information is not being disseminated to the medical community and public at large because the injunctive relief sought (*i.e.*, to enjoin *The Lancet* medical journal to publish data) was never addressed. It is an urgent matter for doctors, nurses, and policymakers to know that mechanical ventilation is ineffective and deadly when applied to patients with COVID.

This 5<sup>th</sup> Cir. has the authority to grant a temporary injunction and remand the full case for a hearing. The motion for injunctive relief has a high likelihood of prevailing and will result in no harm to others. In fact, *The Lancet* originally agreed to publish the manuscript before reversing that decision for no good reason.



### **The Course of Proceedings and Disposition Below**

- October 5, 2023- Appellant commenced this action with a Complaint (ROA.4)
- October 5, 2023- Appellant motioned to have ECF filing rights (ROA.75)
- October 12, 2023- Judge David Hittner denied the motion for ECF filing rights (ROA.81) citing no legal reason.
- October 19, 2023- Appellant withdrew the case with a Notice of Dismissal (ROA.83).
- October 20, 2023- Judge Hittner issued an Order dismissing the case with prejudice (ROA.86).
- October 28, 2023- Appellant filed a Notice of Appeal (ROA.87).

## **STATEMENT of FACTS**

Appellant Steven E. Greer, MD is trained in surgery and research. He has extensive medical research experience, ranging from chart-review publications to multicenter clinical trials (i.e., human trials) that he designed and received federal funding to conduct.<sup>1</sup> A search of PubMed (a database of medical literature maintained by the NIH) for “Greer SE” reveals Dr. Greer’s list of work in the top medical peer-review medical journals. Those publications, with his co-authors being the best surgeons in the world, prove that Appellant is more than qualified to be publishing in Appellees’ *The Lancet* journal.

Dr. Greer trained in surgery at NYU Langone Medical Center as well as the affiliated Bellevue Hospital (a public hospital operated by the State of New York), *inter alia*. That experience made him more aware than most of the mishandling of the COVID crisis by New York bureaucrats in early 2020.

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<sup>1</sup> B2108RC/VA Merit Review Grant, 10/01/99-10/01/2001 (Principal Investigator: Longaker<sup>1</sup>) awarded \$408,280: Investigation of Subatmospheric Pressure Dressing on Pressure Ulcer Healing.

NCRR M01 RR00096, 6/21/99-6/20/2000 (Principal Investigator: Longaker) Controlled Study of Subatmospheric Pressure Dressing on Below-Knee Amputation Wounds. The NIH-funded General Clinical Research Center, physically located at Bellevue but a distinct entity, accepted the application for the study listed above to be conducted at their facility.

NCRR M01 RR00096, 6/21/99-6/20/2000 (Principal Investigator: Greer): Application of Outcome Data to Pressure Ulcer Healing. The NIH-funded General Clinical Research Center, physically located at Bellevue Hospital but a distinct entity, accepted the application for the study listed above to be conducted at their facility.

When the COVID pandemic become widely known in March of 2020, Appellant quickly spotted how policies driven by New York Governor Cuomo, and the New York Department of Health under his control, were killing people. For example, Dr. Greer was the first person to state in the media that it was tantamount to “murder” to mandate that elderly in hospitals, sick with COVID, be placed back into nursing homes to infect others.<sup>2</sup>

Dr. Greer also heard rumors that New York public hospitals were engaging in euthanasia by placing COVID patients on ventilators and then intentionally mismanaging those complex machines. In early 2021, he submitted records request to New York to obtain mortality data of patients place on ventilators. When the New York Department of Health stonewalled, Appellant litigated through his lawyers at *Emmet, Marvin & Martin, LLP*. The case is pending a decision soon (see *Cortex Television, LLC v NY Dept. Health* 536110 (NY App. 3<sup>rd</sup> Dept, 2023)).

However, Appellant was able to obtain the data elsewhere from New York City. After two-years of analyzing the data, Dr. Greer submitted the data to *The Lancet*. The results showed a large spike in deaths among the ventilated, which could not be likely explained by any other cause than human error (or intentional murder).

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<sup>2</sup> The New York Post is taking credit for this story. However, the main author for the Post first heard Dr. Greer state it on WABC radio. This is all detailed in *Greer v. Fox News Media*, No. 22-1970-cv (2d Cir. Mar. 29, 2023) and was never refuted.

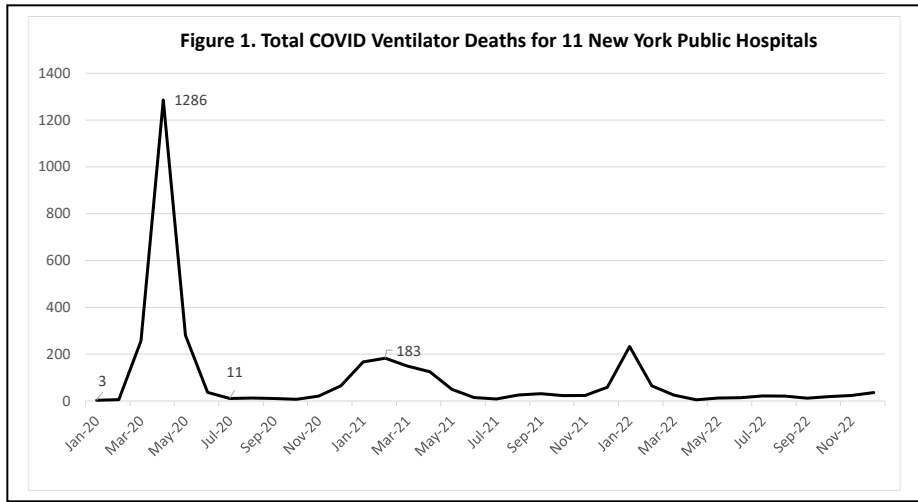


Figure 1. of the submitted *Lancet* manuscript (ROA.38)

As the Complaint details (ROA.15), the manuscript was originally accepted for early online publication, but then someone from the federal government intervened (see Defendant-Appellee Dan Erkes comments in Complaint (ROA.19). Subsequently, *The Lancet* declined to publish Dr. Greer’s manuscript.

Appellant suspected government-capture of the medical peer-review publication process just as was taking place with government control of the social media companies in *Missouri v. Biden*. He then filed the Complaint, *pro se*, in the district court accusing Appellees of : 1) Violation of First Amendment Rights, 2) Conspiracy Against Rights, 3) Conspiracy to Violate Title VI of the Civil Rights Act of 1964, 4) Fraud, and 5) Conspiracy to Commit Fraud.

## **SUMMARY of ARGUMENTS**

### **Injunctive Relief Against *The Lancet***

The Order dismissing the case with prejudice (ROA.86) made it impossible for Appellant to seek injunctive relief against Appellees. Clearly, that Order was erroneous, as explained below, and this case should be allowed to proceed with a refiling of the Complaint. The question is when and how urgent injunctive relief should be granted.

The exclusive mortality data gathered and analyzed by Appellant shows that no hospital or doctor should be using mechanical ventilators on patients with COVID. It is a deadly therapy that has already caused mass casualties. The medical community urgently needs to be aware of these data *via* a publication in *The Lancet*. That journal originally agreed to publish the manuscript, but then reversed that decision (ROA.17).

To have a district court order this injunctive relief would take several months, which is time that should not be wasted. The COVID virus has not been eradicated. The CDC recently reported that COVID cases are increasing. In addition, a new mystery pneumonia is in the news, which might also be improperly treated with ventilators.

This *United States Court of Appeals for the Fifth Circuit* has full authority to review this case *de novo* and issue orders of injunctive relief. Appellant urges this Court to do so in the best interest of patients and the medical community.

### **The District Court Erred Ordering a Dismissal With Prejudice**

The Order (ROA.86) by Judge Hittner being appealed here states, “the above referenced case is hereby dismissed with prejudice” However, the “with prejudice” clearly violates Federal Rule of Civil Procedure 41(a)(1)(B).

## **FIRST ARGUMENT- A PRELIMINARY INJUNCTION IS WARRANTED**

The Complaint (ROA.31) sought injunctive relief. The Order (ROA.86) that dismissed the case with prejudice effectively denied that injunctive relief as well. This Court of Appeals should grant a preliminary injunction because the Order was a misapprehension of the rules (see Second Argument).

Specifically, Appellant seeks to enjoin *The Lancet* to publish his submitted manuscript on COVID ventilator mortality rates. The results of the paper are urgent and a matter of life or death, yet the medical community is still unaware of the risks of using mechanical ventilators on COVID patients.

## **Standard of Review**

The district court never specifically denied the injunctive relief sought because the case was promptly withdrawn when judicial misconduct occurred. Instead, that court intentionally made it impossible to obtain such relief by dismissing the entire case with prejudice. That Order (ROA.86) is being appealed as a matter of law. Therefore, the injunctive relief sought in this appeal should be considered *de novo* as well.

In determining whether or not to issue an injunction, this 5th Cir. considers (1) the plaintiff's likelihood of success, (2) the threat of irreparable injury to plaintiff, (3) the balancing of harms between the parties, and (4) the public interest. *Anibowei v. Morgan*, 70 F.4th 898, 902 (5th Cir. 2023).

### **1. Plaintiff is Likely to Succeed on the Merits**

The Complaint has enough evidence to show that Appellees were colluding with the federal government to produce Warp-Speed-friendly messaging (i.e., propaganda and censorship). Therefore, the causes of action, which hinge on that allegation, will likely succeed.

This Court has already adjudicated key evidence for this instant case in the prior case of *Missouri v. Biden*, No. 23-30445 (5th Cir. Oct. 3, 2023). There, Anthony Fauci's deposition (ROA.49) mentioned *The Lancet* almost a dozen times, for example.

Tony Fauci had turned *The Lancet* into his personal propaganda tool of choice. He seems to have had more control of it than the other journals.

Also, the Complaint produced emails from *The Lancet* and other Appellees showing that Dr. Greer's manuscript was first accepted for online publication and then rejected (ROA.17-19). No reason was given for the reversal. Defendant Dan Erkes admitted that he had spoken with government officials (ROA.19).

## **2. Plaintiff Faces Irreparable Injury**

If Plaintiff-Appellant's medical manuscript is allowed to be silenced, he faces irreparable harm in several ways:

First, his three-years of hard work will have gone for naught. Inevitably, some other researcher will publish the data and render Dr. Greer's efforts as a waste of time, effort, and expense.

Secondly, aside from his research benefitting society, it should benefit Dr. Greer's reputation and ability to earn a living as well. The data will fade in relevance as time goes by without publication.

Thirdly and most importantly, society will be harmed by future improper use of ventilators if these data are not made public. Dr. Greer is part of that large group of "society" to be harmed.



### **3. The Balance of Harms Favors the Injunction**

The early online publication platform called *SSRN* that The Lancet was going to use to publish Dr. Greer's manuscript is not the final say in the peer-review process. It is designed to disseminate important knowledge to the scientific community faster than the traditional methods that relied only on paper journals. It is meant to be reversible if a manuscript is later found to be unworthy of full publication.

Assuming *arguendo* that a peer-review process later determined that the manuscript is unworthy of publication (which is unlikely given Dr. Greer's track record at publishing), then there would be no harm done to the public if the data on *SSRN* were to be eventually retracted. *SSRN* routinely retracts papers.

Also, nothing in the manuscript is based on anything other than the mortality data provided by the City of New York. The benefit from releasing those data far offsets any harms that might occur if the manuscript has other flaws (which it does not).

Lastly, the manuscript has already been published in The Public Access to Court Electronic Records (PACER) (ROA.33). However, only a few members of the legal community know about this.

### **3. An Injunction is in the Best Interest of the Public**

The results of Dr. Greer’s ventilator study are so important that Elon Musk and Joe Rogan touched upon one aspect of the findings during a podcast on October 31, 2023.<sup>3</sup> This request for injunctive relief is the best interest of society.

### **SECOND ARGUMENT- The District Court Erred by Ordering the Case to be Dismissed With Prejudice**

The Order (ROA.86) by Judge Hittner being appealed here states:

“ORDER Pursuant to the Notice of Voluntary Dismissal filed on October 20, 2023, the above referenced case is hereby dismissed with prejudice as to all Defendants pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). The Clerk shall send a true copy to all counsel of record. SIGNED at Houston, Texas, on this 20th day of October, 2023.”

The “with prejudice” statement clearly violates the rules. Federal Rule of Civil Procedure 41(a)(1)(B) states:

“(B) *Effect.* Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.”

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<sup>3</sup> Dr. Greer emailed them the paper that is not widely known to the public <https://twitter.com/CitizenFreePres/status/1719474906692259974>

Judge Hittner either misapprehended a basic rule or he was maliciously trying to thwart efforts to expose the federal government capture of the medical peer-review process, ala *Missouri v. Biden*. Regardless, the Order should be reversed.

### **STANDARD of REVIEW**

The Order (ROA.86) is being appealed as a question of law. This 5<sup>th</sup> Cir. reviews questions of law *de novo*, see *Lynd v. Reliance Standard Life Ins. Co.*, 94 F.3d 979 (5th Cir. 1996).

The Complaint in the district court sought injunctive relief that was, in effect, denied by the Order because the Complaint was dismissed with prejudice. Therefore, the matter of injunctive relief falls under that same “question of law” argument as well.

This Court “review[s] a preliminary injunction [denied by a question of law] *de novo*.” *Louisiana v. Biden*, 45 F.4th 841, 845 (5th Cir. 2022). “Whether an injunction fulfills the mandates of Fed. R. Civ. P. 65(d) is a question of law [the Court] review[s] *de novo*.” *Id.*

## **CONCLUSION and RELIEF SOUGHT**

The district court clearly erred by issuing an Order (ROA.86) dismissing the case with prejudice when no order at all was required. If an order were to have been applied, it should have only dismissed the case without prejudice so as to comply with F.R.C.P. 41(1)(B)- Dismissal of Actions.

By killing the case with that Order, the district court also denied the injunctive relief sought. This 5<sup>th</sup> Cir. Court of Appeals has wide leeway to review this *de novo* and issue injunctive relief denied by a lower court.

The medical data that Appellant seeks to publish (*i.e.*, regarding the deadliness of ventilators in COVID patients) are being stifled from broad dissemination by Appellees. Because of that, more lives at risk. Also, those people who orchestrated what appears to be mass murder in New York continue to evade justice as long as awareness of their crimes is hindered.

As of this filing, former Governor Andrew Cuomo is not in jail. In fact, he is rumored to be staging a political comeback as Mayor of New York City. Former Commissioner of the New York State Department of Health, Howard Zucker, MD is happily employed at a high level of federal government acting as Deputy Director of Global Health for the CDC.

Not only have these men not been held accountable for their COVID policies, but they have been rewarded. Only in a totalitarian state can such situations arise. This should not be occurring in The United States of America.

We are living in times of tyranny worse than the Revolutionary War. The divisions within the country closely mirror those of the Civil War era.<sup>4</sup> Only the Judicial Branch of federal government seems to be functioning (as well as some state governments).

Those persons implicated in the Complaint should be properly tried in a fair federal district court. Evidence of their wrongdoing must be published promptly in *The Lancet*. The government-capture of the medical peer-review process should be exposed.



This brief is dedicated to Thomas David Greer.  
1937-2023. Killed by doctors

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<sup>4</sup> Amazing similarities between the first Civil War and second one going on now- <https://greerjournal.com/amazing-similarities-between-1850-and-now/>

**PRAYER for RELIEF**

**WHEREFORE**, Plaintiff Steven Greer prays for the following:

1. Relief enjoining *The Lancet* medical journal to publish Appellant's submitted manuscript.
2. Relief reversing the Order that dismissed the case with prejudice allowing Appellant to refile in a new district court.
3. Relief reversing the decision to deny ECF filing rights and ordering the district court to allow Plaintiff to have ECF rights.
4. Punitive damages in accordance with precedent cases.
5. An order awarding Appellant, Dr. Greer, such other and further relief as the Court deems just and proper, include reimbursement for costs in filing this Complaint.

Dated: December 11, 2023

*/ s / Steven E. Greer /*

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**CERTIFICATE OF SERVICE**

Pursuant to 5<sup>th</sup> Cir. R. 25(d) and Fed. R. App. P. 31.1, no certificate of service is required since no opposing counsel have appeared either in the district court or this court of appeals.

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