

Court Moves to End Government Censorship by Proxy in Social Media

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If you think your social media is being edited and blocked to press a certain point of view, it is. If you think the government is trying to get you to think a certain way, it is. There's no more hiding this behind dummy allegations of conspiracy theories.

The U.S. Court of Appeals for the 5th Circuit [ruled](#) the Biden White House and the FBI violated the First Amendment by improperly driving social media companies' decisions to remove or suppress posts on Covid and election topics. The ruling is a step toward bringing social media under the umbrella of the First Amendment and ending proxy censorship, and sets up a major Supreme Court battle over the censoring free speech as [demanded](#) by the Biden administration.

Specifically, the appeals judges [wrote](#) the

"White House, the CDC, the FBI, and a few other agencies urged the platforms to remove disfavored content and accounts from their sites. And, the platforms seemingly complied. They gave the officials access to an expedited reporting system, downgraded or removed flagged posts, and deplatformed users. The platforms also changed their internal policies to capture more flagged content and sent steady reports on their moderation activities to the officials. That went on through the COVID-19 pandemic, the 2022 congressional election, and continues to this day."

The judges wrote the White House

"coerced the platforms to make their moderation decisions by way of intimidating messages and threats of adverse consequences." They also found the White House "significantly encouraged the platforms' decisions by commandeering their decision-making processes, all in violation of the First Amendment."

The decision found although the platforms [stifled](#) the speech, it was government officials who “coerced, threatened, and pressured social-media platforms to censor” through private communications and legal threats,” i.e., censorship by proxy.

The appeals court decision includes emails from White House officials showing pressure on the social media companies to address “misinformation.” Things reached a boiling point in July 2021 when President Biden accused Facebook of “killing people.”

In one email, a White House official told a platform to take a post down “ASAP,” and instructed it to “keep an eye out for tweets that fall in this same genre.” In another, an official told a platform to “remove [an] account immediately”—he could not “stress the degree to which this needs to be resolved immediately.” The decision notes “White House officials did not only flag content; they started monitoring the platforms’ moderation activities, too. In that vein, the officials asked for and received frequent updates from the platforms. Those updates revealed, however, that the platforms’ policies were not clear-cut and did not always lead to content being demoted. So, the White House pressed the platforms. For example, one official demanded more details on Facebook’s internal policies at least twelve times, including to ask what was being done to curtail ‘dubious’ or ‘sensational’ content, what ‘interventions’ were being taken, what ‘measurable impact’ the platforms’ moderation policies had, ‘how much content [was] being demoted,’ and what ‘misinformation’ was not being downgraded.”

The platforms did not fight back. As the judges wrote, from the beginning, the platforms cooperated with the White House. One company made an employee “available on a regular basis,” and another gave the officials access to special tools like a “Partner Support Portal” to “ensure” their requests were “prioritized automatically.”

Once White House officials began to demand more from the platforms, they stepped-up their efforts to appease officials instead of pushing back. When there was confusion, the platforms would call to “clear up” any “misunderstanding[s]” and provide data detailing their moderation activities. They met with officials, “partnered” with them, and assured them that they were actively trying to “remove the most harmful COVID-19 misleading information.” When Facebook did not take a [unnamed] prominent pundit’s “popular post” down, a White House official asked what good is the reporting system, and signed off with “last time we did this dance, it ended in an insurrection.”

In another example, one official emailed Facebook a document recommending changes to the platform’s internal policies, including to its deplatforming and downgrading systems. In another example, one platform sent out a post-meeting list of “commitments” including a policy change “focused on reducing the virality” of anti-vaccine content even when it “does not contain actionable misinformation.” On another occasion, one platform listed “policy updates... regarding repeat misinformation” after meeting with the Surgeon General’s office and signed off “[w]e think there’s considerably more we can do in partnership with you and your teams to drive behavior.” The platforms obliged the censorship requests in every instance cited and were “keen to amplify any messaging you want us to project.” At times, the judges wrote, their responses “bordered on capitulation.”

In an escalation, the platforms began taking down content and deplatforming users more broadly. For example, “Facebook started removing information posted by the ‘disinfo dozen’—a group of influencers identified as problematic by the White House, despite earlier

representations that those users were not in violation of their policies. In general, the platforms had pushed back against deplatforming users in the past, but that changed. Facebook also made other pages that 'had not yet met their removal thresholds more difficult to find on our platform,' and promised to send updates and take more action. A month later, members of the disinfo dozen were deplatformed across several sites." Specifically mentioned as a victim of these actions was Gateway Pundit.

The judges also focused on the FBI interaction with social media platforms in the run-up to the 2020 elections, which included regular meetings with the tech companies. The judges wrote that the FBI's activities were "not limited to purely foreign threats," citing instances where the law enforcement agency targeted posts originating inside the United States. The judges said in their rulings the platforms changed their policies based on the FBI briefings, citing updates to their terms of service about handling of hacked materials, following warnings of state-sponsored "hack and dump" operations. The latter was used as justification initially by Twitter (now X) in blacklisting articles about the Hunter Biden laptop, suggesting its contents had been obtained via hacking and/or the contents were created as disinformation by the Russians. Neither was true but both were used, via the FBI, to step roughly on Americans' First Amendment rights and influence the 2020 presidential election.

The current appeals court decision follows a July [injunction](#) in [response](#) to a lawsuit brought by the attorneys general in Louisiana and Missouri. They alleged government officials went too far in their efforts to demand social media companies address posts that they worried could contribute to vaccine hesitancy during the pandemic. The state attorneys general accused the Biden administration of enabling a "sprawling federal 'Censorship Enterprise'" to encourage tech giants to remove politically unfavorable viewpoints and speakers. In their filings, the attorneys general alleged the actions amount to "the most egregious violations of the First Amendment in the history of the United States of America." The judge wrote the attorneys general "have produced evidence of a massive effort by Defendants, from the White House to federal agencies, to suppress speech based on its content." The injunction starts by non-ironically citing the famous quote "I may disapprove of what you say, but I would defend to the death your right to say it."

The answer to all this from the July injunction was to create a wall between social media and state. This affected a wide range of government departments and agencies, and imposed ten specific prohibitions on government officials. The more recent appeals court decision threw out nine of those and modified the 10th to rejoin the government from seeking to "coerce or significantly encourage social-media companies to remove, delete, suppress, or reduce, including through altering their algorithms, posted social-media content containing protected free speech." That will likely be tested before the Supreme Court.

During times when unbiased information was badly needed — on vaccines, for example — the government of the United States egregiously violated the First Amendment to pressure social media companies to amplify certain points of view and do away with others. This censorship at the request of the White House targeted both broad ideas ("anti-vax") and individual American citizens. It shows how the administration conducted an end run on the First Amendment, using the social media companies as proxies. It was done by the Biden administration to politically drive the American people toward its point of view. Its goal was nothing short of shutting down the marketplace of ideas so necessary in a democracy.

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