

Children's Health Defense: U.S. Government Illegally Pressured Facebook to Censor CHD Website, Social Media Content, Lawsuit Alleges

By [Children's Health Defense](#)

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Children's Health Defense has made significant progress in the case against Facebook and Mark Zuckerberg since the last court filing, and looks forward to its next court date, May 5.

In August 2020, Children's Health Defense (CHD) filed [a lawsuit](#) against Facebook, **Mark Zuckerberg** and two of Facebook's "fact checkers." The lawsuit asserts claims of illegal censorship in violation of the [First Amendment](#), illegal "taking" in violation of the [Fifth Amendment](#) and corporate fraud in violation of federal law — [Racketeer Influenced and Corrupt Organizations](#) (RICO) and [Lanham](#) Acts.

On Nov.13, 2020, CHD filed a 150-page [first amended complaint](#) in the U.S. District Court in San Francisco, detailing factual allegations regarding the Centers for Disease Control and Prevention (CDC), CDC Foundation and World Health Organization's (WHO) extensive relationships and collaborations with Facebook and [Zuckerberg](#).

CHD has made significant progress in the case against Facebook and Zuckerberg since the last court filing — including filing a [second amended complaint](#) on Dec.15, 2020, which contained considerable factual amplification of the allegations set forth in our initial filings.

As set forth in the second amended complaint, CHD believes children are being exposed to health and life-threatening injuries by the multi-billion-dollar [vaccine industry](#) and that 5G technology, promoted by [behemoth internet](#) interests, poses similarly [severe risks](#).

To alert the public to these serious potential dangers, CHD posts links to articles in reputable scientific journals, and publishes opinions expressed by doctors, scientists and others, including CHD Chairman, **Robert F. Kennedy, Jr.** This material is constitutionally protected speech on matters of serious public concern.

As alleged in our second amended complaint, since early 2019, Facebook and Zuckerberg have engaged in a deliberate, systematic effort to degrade and destroy CHD by fraudulently branding our Facebook content as false, directing users to competitors' sites and preventing Facebook users from donating to CHD.

The complaint specifically identifies 15 instances of defendants falsely labeling CHD content as inaccurate.

The complaint also sets out in detail the reason behind the defendants' animus against CHD: CHD is a nonprofit organization dedicated to warning the public about the potential risks of certain vaccines and technologies in which the defendants have immense financial interests and investments.

The complaint also outlines how federal actors and agencies encouraged and pressured defendants to engage in their censorship scheme against CHD and jointly participated in that scheme.

The resulting threat to free speech is especially serious because government agents have in essence "deputized" Facebook to do what the government itself is constitutionally forbidden to do.

As the latest complaint details, the defendants were pressured by a prominent Congressman to suppress so-called vaccine "misinformation" — incredibly defined to include content that "casts doubt on the safety or efficacy of vaccines."

The complaint also alleges that in censoring CHD, the defendants acted with the joint participation of the CDC — a federal agency — and its proxy, the World Health Organization, with which Facebook partnered to create its "fact-checking" protocol.

As a consequence, and as CHD has consistently argued, Facebook and Zuckerberg were not acting merely as private parties, but were functioning as government actors — and thus are subject to the First Amendment's strictures against government censorship.

As anticipated in this hard-fought litigation, on Dec. 21, 2020, defendants moved to [dismiss](#) the second amended complaint. Facebook apparently seeks special dispensation, not available to other parties, to dismiss CHD's allegations of government joint action and of Facebook's responsibility for its "fact-checks" because Facebook claims that it isn't working with the government or with these same "fact-checkers."

Facebook also claims that its "fact-checks" aren't statements of fact at all, but merely protected "opinions," and that Facebook is merely labelling CHD's content as "potentially" misleading.

CHD is confident the district court will see through these arguments and that ultimately CHD's rights will be vindicated. Toward this end, CHD vigorously opposed defendants' motions to dismiss, filing detailed opposition briefs on Feb. 5. These briefs carefully and thoroughly elaborate the legal basis for CHD's claims and explain why we should be permitted to proceed through the discovery process and on to trial, rather than be dismissed.

On March 8, CHD filed a [motion to supplement](#) the second amended complaint, asserting new and additional allegations based on very recent efforts by Facebook to injure and retaliate against CHD.

In CHD's motion to supplement, CHD asserts that since the filing of the second amended complaint, Facebook and Zuckerberg have engaged in further acts of censorship and

retaliation against CHD, and in further acts of joint participation with the federal government to suppress CHD's constitutionally protected speech.

Among the specific acts that CHD has moved to include as supplemental allegations in the action are:

(1) On Feb. 10, Facebook [terminated the Instagram account](#) of Robert F. Kennedy, Jr., CHD's founder and chairman, which at that time had more than 800,000 followers.

(2) In late February, federal actors and Facebook itself publicized significant encouragement to censor vaccine-related information. These statements represent a clear acknowledgement by companies such as Facebook and government sources that federal officials are directly engaged with Silicon Valley in censoring social media users.

(3) On March 5, Facebook published a "warning label" on a third-party user's Facebook account, which included the message: "Unfollow Children's Health Defense." The warning label also implies that CHD is promulgating false and harmful information on its Facebook page; encourages users to visit the WHO's COVID page for accurate information; and allows users to stop seeing posts from CHD by clicking on an accompanying icon. CHD's briefs in support of its motion to supplement were filed on March 8 and March 29.

Oral arguments on defendants' motion to dismiss and CHD's motion to supplement the second amended complaint are scheduled to be heard by the Court (the Honorable Susan Illston) on May 5.

In what may be an encouraging sign, the U.S. Supreme Court Justice Clarence Thomas, in a recent concurrence to the Supreme Court's grant of certiorari in another case, [indicated a receptivity](#) to the kind of First Amendment argument that CHD is making in the action against Facebook, alleging that when private companies censor based on government pressure, they may be considered state actors.

Referring to digital platforms such as Facebook and others, Justice Thomas remarked on the "unprecedented ... concentrated control of so much speech in the hands of a few private parties." As a result, he noted, "[w]e will soon have no choice but to address how our legal doctrines apply to highly concentrated privately owned infrastructure such as private platforms."

After analyzing the possibility that legislative or regulatory action might be taken to limit the platforms' ability to exclude speakers or engage in viewpoint censorship, Justice Thomas noted that, even in the absence of such legislation, the First Amendment is relevant and "some speech doctrines might still apply in limited circumstances, as this Court has recognized in the past."

In words that appear to be germane to our First Amendment arguments opposing Facebook's motion to dismiss, Justice Thomas remarked that "although a private entity is not ordinarily constrained by the First Amendment, it is if the government coerces or induces it to take action the government itself would not be permitted to do, such as censor expression of a lawful viewpoint."

Examples of the kind of government conduct that could render a private entity subject to

the First Amendment could include threats made by the government. As Justice Thomas explains:

“The government cannot accomplish through threats of adverse government action what the Constitution prohibits it from doing directly. Under this doctrine, plaintiffs might have colorable claims against a digital platform if it took adverse action against them in response to government threats.”

Justice Thomas acknowledged in his concurrence, however, that “[w]hat threats would cause a private choice by a digital platform to be ‘deemed ... that of the state’ remains unclear,” and the question was not directly presented in the case in which he issued his concurrence.

To what extent Judge Illston may prove receptive to these ideas reflected in CHD’s pleadings and briefs remains to be seen. Stay tuned.

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