

WRITTEN TESTIMONY
OF
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LOUISIANA DEPARTMENT OF JUSTICE
BEFORE THE
SELECT SUBCOMMITTEE ON THE
CORONAVIRUS PANDEMIC
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.
“CHURCHES VS. CASINOS: THE CONSTITUTION IS
NOT SUSPENDED IN TIMES OF CRISIS”
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Chairman Wenstrup, Ranking Member Ruiz, and distinguished members of the Select Subcommittee on the Coronavirus Pandemic, as the Solicitor General of the State of Louisiana, I am grateful for the opportunity to join Congress today to discuss the constitutionality of the government’s response to the COVID-19 pandemic and provide additional insight into actions taken by the Louisiana Department of Justice (LADOJ) in response to, as Justice Neil Gorsuch stated in his opinion in *Arizona v. Mayorkas*, “the necessity, unequal enforcement, and constitutionality of various decisions and mandates by federal, state, and local governments and agencies.”

Let us begin by discussing the necessity of various decisions and mandates. From the very beginning of the COVID-19 pandemic, the vast majority of leaders at the federal, state, and local levels engaged in completely irrational decision making while claiming complete autocratic power to justify those bad decisions. This behavior began at the federal level, with federal bureaucrats ultimately leading by example and providing justifications for similar behavior at the state and local levels with a complete disregard for the law.

If we turn our attention to vaccine mandates, off-label drugs with promise and credible evidence supporting their use were actively being discussed by health professionals as early as March

2020.¹ By August, doctors arguing in favor of these off-label drugs were being censored by Mark Zuckerberg and his various platforms under the umbrella of Meta.² As uncovered in our lawsuit, *Louisiana and Missouri vs. Biden et al.*, the censorship pushed by the federal government against these off-label drugs, the physicians who promoted them, and any form of vaccine hesitancy was vast and far-reaching. In fact, if I had posted on social media regarding my family's experience with the COVID-19 vaccines, it is likely that I would have been censored.³

In fact, my 17-year-old son was required to receive the COVID-19 vaccine in order to accept his new position as a camp counselor. Thirty-six hours after his second dose of the Pfizer mRNA vaccine, he was in the hospital. I personally drove him home to Louisiana from Texas worried that he would suddenly go into cardiac arrest at eleven o'clock at night on I-49. When we reached Our Lady of Lake Children's Hospital the next day, he was diagnosed with myocarditis. His troponin levels were at 16.0 ng/ml (compared to a normal range of 0.04 ng/ml) and he would need to spend four days in the pediatric ICU, hooked up to pulse-oxygen and heart monitors while receiving a 15-hour IVIg infusion to "stop his body from attacking itself." He underwent daily ECGs, an MRI, and had bloodwork drawn every six hours. The cost for these treatments would exceed \$75,000, and he would require specialized care from pediatric cardiologists for at least six months after leaving the ICU.

Yet according to "experts" with the Louisiana Department of Health (LDH), these were "mild side effects" to the COVID-19 vaccine, even though most pediatricians agree that the terms "mild" and "myocarditis" should not be uttered in the same sentence. Even worse, both myocarditis and pericarditis are confirmed adverse reactions to these mRNA vaccines, with reports of cases increasing significantly by June 2021 when I wrote to the Governor's Administration asking for parents and young adults to be provided with *accurate* information, rather than "grossly misleading propaganda" designed to increase vaccination rates no matter the cost.⁴

¹ Attorney General Jeff Landry And State Senator Fred Mills Announce Donation Of 400,000 Hydroxychloroquine Sulfate Tablets From Amneal Pharmaceuticals To Benefit COVID-19 Coronavirus Patients In Louisiana
<http://www.ag.state.la.us/Article/9748>

² Exclusive: Louisiana AG Jeff Landry Blasts Facebook Censorship of Breitbart in Letter to Zuckerberg
<https://www.breitbart.com/tech/2020/08/03/exclusive-louisiana-ag-jeff-landry-blasts-facebook-censorship-of-breitbart-in-letter-to-zuckerberg/>

³ Written Testimony of Jeff Landry Attorney General Louisiana Department of Justice Before the Select Subcommittee on the Weaponization of the Federal Government U.S. House of Representatives Washington, D.C. "Hearing on the Weaponization of the Federal Government"
<https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/landry-testimony.pdf>

⁴ Public Deserves Truth About Effects Of COVID-19 Vaccines On Kids
<http://www.ag.state.la.us/Article/10925>

Myocarditis is a serious medical condition that can result in heart attack, heart failure, stroke, arrhythmias, and sudden cardiac death; pericarditis can act as long as three weeks, be recurring or chronic, and lead to pericardial effusions, chronic constrictive pericarditis, and cardiac tamponade. These are extremely serious medical conditions; yet in a June 2021 program titled *COVID-19 Vaccines & Children: What you need to know*, LDH “experts” underemphasized the nature of these conditions by saying “take a couple of days off,” while simultaneously underplaying their connection with the vaccines, stating “it just happens.”

A week prior to the program’s launch, a 13-year-old Michigan child died of myocarditis and pericarditis three days after receiving the second dose of the Pfizer vaccine, a loss all the more tragic when you consider that young adults and teens have low to zero risk, if they even contract COVID-19. I personally requested that the Governor’s Administration remove the video from their website and YouTube.

Similarly, on June 23, 2021, our Attorney General, Jeff Landry, wrote to the Vaccine Safety Team for the Centers for Disease Control and Prevention (CDC)’s COVID-19 Vaccine Task Force sharing similar concerns.⁵ Even though the CDC had at least acknowledged the risk of myocarditis and pericarditis following the jab, they misleadingly stated that “most patients...who received care responded well to medicine and rest and quickly felt better.” Furthermore, the CDC’s process for collecting data on adverse events also indicates that the incident rate could be *severely under-reported*.

As our Attorney General pointed out, all of this has been “intentionally misleading, irresponsible, and undermines the principles of informed consent that are necessary for parents to make the right decisions for their children,” as “no parent can conceivably exercise informed consent based upon this type of flatly false and misleading information.”

Our office went on to implore the CDC not to mandate the EU-approved vaccines, or give final approval to them at this time. We also asked that the connection to the Pfizer and Moderna mRNA vaccines not be diminished in an effort to achieve herd immunity or some targeted percentage of vaccinated individuals. Instead, our office urged the CDC to immediately pause recommendation for use of these vaccines in healthy young adults and children pending further clinical studies.

Yet, rather than address these concerns, on November 22, 2021, the Governor and his Department of Health proposed mandating that all students attending kindergarten through twelfth grade receive the COVID-19 vaccine.⁶ This would have made Louisiana second to only

⁵ Louisiana AG Jeff Landry Leads Multi-State Opposition To CDC Proposals
<http://www.ag.state.la.us/Article/13078>

⁶ LDH Proposes COVID Shot Mandates For All Students
<http://www.ag.state.la.us/Article/12981>

California for mandating the vaccine for students; but even then, California’s mandate had been restricted to just middle and high school students.

In a letter to Dr. Courtney Phillips, Secretary of LDH, our Attorney General advised her that the proposed rule *was not permitted* under existing Louisiana law.⁷ First, much like the flu shot, the COVID-19 vaccine could not be “required” as it does not prevent disease. In other words, even if every student were vaccinated with these products, it was still possible for an outbreak to occur at school. Unlike diseases listed within La. R.S. 17:170 A(2), such as measles, mumps, rubella, tetanus, and others, COVID-19 is not a “vaccine-preventable disease” and cannot be mandated.

Second, even if these vaccines could prevent COVID-19 (despite all evidence to the contrary), our State Law and State Constitution enshrine students with extensive religious and philosophical protections. According to La. R.S. 17:170, any parent or student can dissent in writing; yet LDH, through various bullying tactics, tried to make dissenting more burdensome while creating unnecessary confusion as to whether or not dissent was an actual option. This threatened to infringe upon individual rights, including but not limited to, religious freedom, right to health autonomy, personal liberty, and other objections — which is unacceptable.

And finally, even officials at the WHO agree that, despite these mRNA vaccines, COVID-19 is not going away and will likely become an endemic virus that will be with mankind forever, similar to influenza. As such, the Attorney General warned LDH that their proposed rule would likely meet with significant legal challenges, then laid out steps for the Legislature to curtail the measure, which was successfully accomplished.

Finally, in a public letter submitted to CDC Director Rochelle Wolensky, our office, along with eleven colleagues, called on the CDC’s Advisory Committee on Immunization Practices to not include COVID-19 vaccination on the list of childhood immunizations.⁸

We also urged the group to not include the COVID-19 vaccine in the Vaccines for Children Program, which was created by Congress during a measles outbreak to ensure that children from low-income families had access to free vaccines.

“The COVID vaccine does not provide the same protection against life threatening illnesses,” our Attorney General stated. “Instead, it could put more children at risk, when the purpose of the VCF is to protect them.” He added that the CDC “should not be treating kids in low-income households as lab experiments, nor should pharmaceutical companies be allowed to use their families as cash cows.”

⁷ Letter to Dr. Courtney Phillips, Louisiana Department of Health, November 22, 2021
<http://www.ag.state.la.us/Files/Article/12981/Documents/11.22.21-LtrtoLDH.pdf>

⁸ Louisiana AG Jeff Landry Leads Multi-State Opposition To CDC Proposals
<https://agjefflandry.com/Article/13078>

“Our Nation’s kids are not the federal government’s guinea pigs,” he said. “And this action could deny many parents the freedom to determine whether to subject their kids to an experimental vaccine.”

In short, these mandates were absolutely unnecessary and likely did far more damage than good. To this day, we still do not know exactly how many children and adults have been injured by these experimental mRNA injections, or how many have died as a direct consequence. Unfortunately, that is merely one aspect of this pandemic, albeit the most horrifying.

Yet as we turn to the subject of unequal enforcement, this brings us more into the territory of religious liberty. In the State of Louisiana, under the Disaster Powers Act, the legislature has no authority to delegate to the Governor complete power, like the power of a king. Still, on July 11, 2020, the Governor issued Proclamation 89 JBE 2020, which restricted service in bars, limited indoor and outdoor gatherings to 50 people, and resulted in a statewide mask mandate.⁹ Minimal statistics were provided to support these repressive decisions, along with extremely vague references and numerous exemptions to each rule, undermining the very purpose of the order. Business owners were threatened to enforce these restrictions or be subject to severe penalties.

Soon after our office issued Opinion 20-0068, making it clear that the Governor had no power to make such laws through an executive order—even in an emergency situation.¹⁰ We also warned that businesses and law enforcement agencies alike would be exposed to liability under state and federal law if they followed the order, ultimately violating an individual’s constitutional rights.

There was a concession that wearing a mask and aiming for a 50-person limit *might* be good recommendations for personal safety; but according to the laws of Louisiana, they could not be enforced with financial or criminal penalties. Unfortunately, that did not stop the Governor or others from attempting to do so, which meant the matter had to be settled in court.

The LADOJ then filed an “amicus curiae” brief in a Caddo District Court to support a lawsuit filed by four Shreveport businesses against the Mayor’s mandatory mask order. Our office also supported the owner of Firehouse BBQ in Denham Springs when she was targeted by the Governor for openly not complying with the “legally flawed” mask mandate.¹¹

“This is not about whether masks or face coverings are a good idea,” we said. “It is about what the Governor and the Department of Health can do during an extended public health emergency, and importantly, how it can constitutionally do it.” In the case of 89 JBE 2020, the mandate was neither constitutional nor enforceable.

⁹ Executive Department Proclamation Number 89 JBE 2020
<https://gov.louisiana.gov/assets/Proclamations/2020/89-JBE-2020.pdf>

¹⁰ <https://agjefflandry.com/Opinion>

¹¹ AG Landry Files Brief in Support of Firehouse BBQ
<https://agjefflandry.com/Files/Shared/Documents/FirehouseAmicus.pdf>

That was the stance also taken by Reverend Tony Spell. Whether you like him or not, Rev. Spell believed, and rightly so, that the Governor's executive orders were unconstitutional and that the Governor could not prohibit people from gathering to pray. Rev. Spell was extremely vocal in his opposition to the Governor's orders, which severely limited the number of people who could gather and worship. He invited people to attend his church anyway, which antagonized the Governor. As a result, Rev. Spell was placed under surveillance and later arrested for violating the Governor's executive orders. He was issued six misdemeanor citations.

Yet Reverend Spell was correct: these orders could never be criminally enforced as Louisiana law prohibits the Governor from creating any new crimes by executive order, even in a disaster. But what was most shocking is that the Governor's legal team admitted that Rev. Spell had not been targeted for endangering others but because he was "*unrepentant.*"

On May 13, 2022, the Louisiana Supreme Court ruled with the LADOJ in declaring that Governor John Bel Edwards' mandates closing churches cannot be the basis to prosecute a governor-created crime of letting too many people into church for worship. "In this criminal proceeding," the court ruled, "we find certain provisions of two executive orders, as applied to defendant, violate his fundamental right to exercise religion, do not survive strict scrutiny, and are thus unconstitutional."¹² It was a victory for Reverend Spell; but it took two years to achieve this ruling and at great expense.

Similar examples of this occurred across the country with two notable highlights. First, Governor Kathy Hochul of New York deliberately excluded a religious exemption from her vaccine mandate, telling New Yorkers that God wanted them to get vaccinated, arguing that "everybody from the Pope on down is encouraging [vaccination.]"¹³ She even went so far to say that "there are people out there who aren't listening to God and what God wants... You know who they are."¹⁴

Then we have Governor Andy Beshear of Kentucky who sided with a Louisville Mayor after he had banned drive-in church services and even encouraged people to snitch on those who participated.¹⁵ The Sixth Circuit provided an injunction in this case, asking how the Governor's

¹² Supreme Court of Louisiana No. 2021-KK-00876 State of Louisiana vs. Mark Anthony Spell <https://www.lasc.org/opinions/2022/21-0876.KK.OPN.pdf>

¹³ Gov. Hochul: Religious Exemption Not A Legitimate Excuse To Avoid COVID Vaccine <https://www.wamc.org/news/2021-09-15/gov-hochul-religious-exemption-not-a-legitimate-excuse-to-avoid-covid-vaccine>

¹⁴ New York Gov. Hochul tells Christian worshippers: 'God wants you to be vaccinated' <https://news.yahoo.com/york-gov-hochul-tells-christian-221200535.html>

¹⁵ KY Mayor bans drive-in religious services, tell neighbors to snitch on them <https://www.independentsentinel.com/ky-mayor-bans-drive-in-religious-services-tell-neighbors-to-snitch-on-them/>

executive orders could “permit big-lot parking for secular purposes but not for religious purposes?”¹⁶

There were also small businesses, like Louisiana’s Firehouse Barbecue, that felt the heavy hand of government come in and destroy their livelihoods. Small businesses were especially at risk because they could not wait for Congress to authorize funding or afford to pay salaries when unconstitutional mandates shut them down. While the government enjoys significant protection from damages, small businesses do not.

Yet Mayors and Governors across the country continued to enforce damaging and unconstitutional edicts upon religious organizations and small businesses throughout the pandemic. In the case of Mayor LaToya Cantrell in the City of New Orleans, our office was asked to get involved on two occasions. First, her illogical guidelines related to COVID-19 resulted in the New Orleans Saints announcing a new policy: in order to enter Champions Square and the Superdome on game day, ticket holders would need to either show proof that they were fully vaccinated or a recent PCR test with a negative result — with ticket holders given no opportunity to receive a refund or opt-out of the season. Our office pushed back against this policy, with our Attorney General calling upon the Treasurer and the State’s Bond Commission to “oppose any request for the Dome until these ticket holders are refunded or given the ability to opt-out.” As a result, the Saints reversed course on their policy.¹⁷

Six months later we were battling Cantrell’s mandates again, this time petitioning a court to have the State of Louisiana intervene in *Andrews v. Cantrell*, a lawsuit challenging the city’s vaccine and mask mandates.¹⁸ Over 100 parents had joined the suit against the Mayor and her health director. At the time, masks were required in bars, restaurants, and other public spaces. Even children as young as five were required to show proof of vaccination or a recent PCR test.

Our office argued that Mayor Cantrell had overstepped her authority; and after our subpoenas were issued in the case, the Mayor had a choice: lift her mandates or face even more public scrutiny. As a result, she dropped the mandates.

As for the constitutionality of these orders, it is clear that during the COVID-19 pandemic the role of government became distorted and the Constitution was set aside without any meaningful

¹⁶ Sixth Circuit Injunction Against Kentucky Ban on Drive-In Religious Services
<https://www.nationalreview.com/bench-memos/sixth-circuit-injunction-against-kentucky-ban-on-drive-in-religious-services/>

¹⁷ Louisiana AG Jeff Landry Calls Saints Vaccine Mandate ‘Completely Unacceptable’
<https://www.breitbart.com/sports/2021/08/19/louisiana-ag-jeff-landry-calls-saints-vaccine-mandate-completely-unacceptable/>

¹⁸ Subpoenas Issued For New Orleans Mayor, School Board President In Shot And Mask Mandate Lawsuit Joined By Attorney General Jeff Landry
<https://agjefflandry.com/Article/13011>

resistance from the Congress, the legislatures, or even the Judiciary. That is why our constitutional structure, which is supposed to prevent one branch of government from ever exercising autocratic, tyrannical power over the people, was able to be violated from the top down, causing massive damage at an enormous cost. One major example of this relates to the Biden Administration and its vaccine mandates.

As President-Elect, Joe Biden said that he “d[i]dn’t think [vaccines] should be mandatory” and “wouldn’t demand [they] be mandatory.” Once he took office, his Administration’s policy was: “The government is not now, nor will we be supporting a system that requires Americans to carry a [vaccine] credential.” It suggested that the role of the federal executive was ensuring “American’s privacy and rights [were] protected” and that the vaccine rollout is “not used against people unfairly.” On the subject of masks, Biden admitted that he could only mandate their use on federal property, explaining that, as President, “I cannot mandate people wearing masks.”

But as time went on, according to his own words, the President’s “patience” began “wearing thin” on those “who haven’t gotten vaccinated.” He expressed similar disdain for those opposed to mask mandates, calling their concerns “ugly” and “wrong.” Then, on September 9, 2021, he abandoned persuasion for brute force and announced a series of unprecedented federal mandates aimed at compelling most of the adult population of the U.S. to get a COVID-19 vaccine while expanding mask mandates nationwide. He also declared that he was “taking on elected officials and states” and that he would “use my power as President to get them out of the way.”

My Attorney General, along with 23 of his colleagues, immediately voiced our opposition to Biden’s unconstitutional and illegal edict. “We urge you to reconsider your unlawful and harmful plan and allow people to make their own decisions,” we wrote. “If your Administration does not alter its course, we will seek every available legal option to hold you accountable and uphold the rule of law.”

Instead of backing down, the Biden Administration doubled down. First, in an attempt to force vaccines on businesses in the private sector with 100 or more employees, the Biden Administration chose a rarely used emergency temporary standard provision in the Occupational Safety and Health Act.¹⁹ Between 1971 and 1983, the Occupational Safety and Health Administration (OSHA) issued nine emergency temporary standards and only one had been upheld. That's because, in order to justify such a standard, OSHA must determine that “employees are exposed to grave danger from exposure to *substances* or *agents* determined to be toxic or physically harmful or from *new hazards*.” It must also conclude that “such an emergency standard is *necessary* to protect employees from such danger.”

¹⁹ Large Employers Under Attack From OSHA, Attorney General Jeff Landry Sues To Halt Biden Authoritarianism
<https://agjefflandry.com/Article/12973>

However, the COVID-19 virus is not the sort of “substance,” “agent,” or “hazard” to which the statute refers. And Biden’s own statements, that those who are vaccinated have little chance of hospitalization or death, undercut any assertion that there is “grave danger.” Finally, Congress empowered OSHA to establish workplace standards related to “employment and places of employment.” All of the provisions are most naturally focused on dangers occurring at work *because of one’s work*, as opposed to dangers occurring in society generally, *including* at work.

Yet more than 80 million people would have been affected by this one-size-fits-all mandate, the likes of which neither OSHA nor Congress had ever before imposed on American workers. Our coalition immediately sued the Biden Administration; and on November 5, 2021, a federal judge halted Biden’s mandate in the U.S. Court of Appeals for the Fifth Circuit pending expedited judicial review. It was then allowed to take effect by a federal appellate panel in Cincinnati, making its way to the U.S. Supreme Court where the OSHA mandate was successfully stopped by our office.

Similarly, as soon as Joe Biden had instituted his misguided and unconstitutional vaccine mandate for federal contractors, our office filed suit in collaboration with the attorneys general of Indiana and Mississippi.²⁰ The Contractor Vaccine Mandate would have affected one-fifth of the American workforce, including untold numbers of state employees. It also threatened state budgets with widespread implications for safety-net programs, pension funding, state credit ratings, and virtually all state-funded priorities.

Congress had granted no such authority to the Executive; yet that did not stop Joe Biden from issuing Executive Order 14042, which directed agencies to ensure that “contracts...include a clause that the contractor or subcontractor shall, for the duration of the contract, comply with all guidance...published by the Safer Federal Workforce Task Force.”

That Task Force Guidance required vaccination, masking, physical distancing, and the designation of a “compliance coordinator.” Even employees who worked outdoors were subjected to these requirements, with a deadline for full vaccination on January 4, 2022.

The scope of this mandate was enormous, putting overwhelming pressure on our State to change its laws and policies or risk losing millions in future contracting opportunities. Yet in December 2022, the U.S. Court of Appeals for the Fifth Circuit ruled in favor of our office, affirming the district court’s preliminary injunction and protecting over \$100 billion in funding to federal contracts in Louisiana, Mississippi, and Indiana.

²⁰ Louisiana Leads Multi-State Lawsuit Against Biden’s COVID Executive Order
<https://agjefflandry.com/Article/12972>

Next came the Centers for Medicare and Medicaid Services (CMS) Mandate.²¹ From the very beginning, it was clear that no statute authorizes the federal executive to mandate vaccines to increase societal immunity; yet on November 5, 2021, the CMS published a rule requiring COVID shots for nearly every employee, volunteer, and contractor working at a wide range of healthcare facilities receiving Medicaid or Medicare funding. According to the rule, some 17 million people were required to be "fully vaccinated" by January 4, 2022 with extremely limited exceptions.

This was one year after the Nation hailed these same workers as heroes, caring for the sick without the supposed protection of a vaccine. And roughly 2.4 million healthcare workers remained unvaccinated at the time of the mandate; so it seemed unlikely they would suddenly forfeit control over their private medical choices, personal information, and bodily autonomy to their employers and the government. More likely, they would leave the workforce—resulting in even greater healthcare worker shortages.

Regardless, our lawsuit against the mandate made its way to the U.S. Supreme Court. As I stated at the time: “This case is not about whether vaccines are effective, useful, or a good idea. It’s about whether this federal branch executive agency has the power to force millions of people...to undergo an invasive, irrevocable, forced medical treatment.” Unfortunately, SCOTUS upheld this particular order, which is why we are now leading a 22-state coalition fighting for its repeal.

Finally, there was the Head Start mandate announced in November 2021 when Joe Biden continued his “sledgehammer” approach towards mandatory vaccination, placing unlawful requirements on underserved children and families by requiring toddlers be masked while all staff & volunteers at Head Start programs be fully vaccinated against COVID-19 with no exceptions for natural immunity or a negative PCR test.²² If the Head Start provider did not comply with the mandate, their funding would be terminated.

“Like all of his other unlawful attempts to impose medical decisions on Americans, Biden’s overreaching orders to mask two-year-olds and force vaccinate teachers in our underserved communities will cost jobs and impede child development,” our office stated. In fact, the toddler mask mandate would likely result in psychological, speech, and health problems, while some 273,000 staff, up to one million volunteers, and 864,289 children across 20,717 centers would be thrown into uncertainty.

²¹ Biden Attempts To Turn Last Year's Healthcare Heroes Into This Year's Unemployed, Attorney General Jeff Landry Fights Back
<https://agjefflandry.com/Article/12978>

²² Biden Targets Head Start In Latest COVID Mandate, AG Jeff Landry Files Suit To Protect Children And Teachers
<https://agjefflandry.com/Article/12989>

According to a National Head Start Association Survey, it was estimated that less than half of the staff was vaccinated at 20% of facilities, while a quarter of programs anticipated losing more than 30% of their staff because of the mandate. At the same time, the Head Start program was created “to promote school readiness of low-income children.” Should programs be forced to close due to staff shortages or loss of funding, many of these vulnerable children would risk irreparable harm, if not from abuse and trauma then from the loss of an education.

That is why our office, in coalition with the AG offices of 23 other states, fought against this federal overreach and obtained a permanent injunction. The judge agreed with what we’ve said from the very beginning: executive agencies DO NOT have the power to impose such mandates without an act of Congress.

Yet the attack on our constitutional rights went much further than vaccine mandates. The COVID-19 pandemic was also used as an excuse to stifle the protected speech of average Americans, as discovered in our ongoing case *Louisiana and Missouri vs. Biden et al.*²³

Freedom of speech is the bedrock of American liberty, and the First Amendment states that “Congress shall make no law...abridging the freedom of speech, or of the press.” As such, the government has no power to restrict expression because of its message, its ideas, its subject matter, or its content. The U.S. Supreme Court also firmly rejected the idea of a “free-floating test for First Amendment coverage...based on ad hoc balancing of relative social costs and benefits.”

Due to the nature of these protections, some false statements are inevitable; however, the remedy is not censorship but more speech that is true. It has been argued that members of our society have the “right and civic duty to engage in open, dynamic, rational discourse.” In other words, American citizens have the right, if not the duty, to respond to speech they do not like; but the government has no right to limit, suppress, censor, or otherwise control speech.

Furthermore, if the goal is truth, censorship is not the answer. By suppressing speech in the name of guarding against “misinformation” and “disinformation,” the government and its actors actually make it more difficult to recognize truth. As a result, there is even greater confusion, distrust, and falsehood—which is the exact opposite of the outcome those in support of censorship claim to desire.

Yet the U.S government and its officials should not be engaged in the act of censorship or suppression of speech *at all*. Nor can government officials circumvent the First Amendment by

²³ Louisiana, Missouri Attorneys General File Suit Against Biden, Top Admin Officials For Allegedly Colluding With Social Media Giants To Censor And Suppress Free Speech
<https://agjefflandry.com/Article/13032>

inducing, threatening, and/or colluding with private entities to suppress protected speech. Shockingly, that is exactly what has occurred in collusion with “Big Tech.”²⁴

In many ways, social media platforms have become our modern public square. At the time of the COVID-19 pandemic, Facebook had close to 3 billion users worldwide with some 124 million in the U.S. alone. In 2021, 66% of U.S. adults used Facebook, while 31% said that they got their news from the platform. Similarly, 23% of U.S. adults used Instagram (which is owned by Facebook/Meta), and 11% claimed to use it for news. Twitter, on the other hand, had more than 340 million users worldwide in 2021, with roughly 70 million in the U.S. During COVID-19, approximately 500 million tweets were being posted daily. Meanwhile, more than 4 billion hours of video were viewed every month on YouTube with an estimated 500 hours of video content uploaded every minute. More than 72% of U.S. adults claimed to use the video streaming platform, while 22% used it for gathering news on a regular basis.

But for all of this communication flowing across these platforms, censorship can occur without the knowledge of the speaker or their audience. Over recent years, accounts with these companies and others have been “shadow banned,” suspended, and terminated over disfavored views and speech. Content, especially on YouTube, has been demonetized and algorithms have been adjusted—sometimes manually (as in the Hunter Biden laptop story)—to de-emphasize, demote, and suppress voices.

The very threat of censorship has even been used to drive behavioral changes leading to self-censorship, with threats of suspension, demonetization, and permanent bans causing speakers to bend to ever changing standards of speech. This form of censorship, known as “prior restraint,” is the most egregious form of censorship because the thought never enters the stream of public discourse. As a result, government narratives are often given preference; even when time and time again, the opinions, beliefs, and arguments of senior government officials have been proven to be false, misleading, or downright wrong while the truth was relegated to the waste bin labeled “misinformation.”

For example, the Hunter Biden laptop exposé published by the *New York Post* on October 14, 2020 was aggressively censored, even in Twitter DMs (aka direct messages). Then, in collusion with Dr. Anthony Fauci, the highly likely lab-leak theory of COVID-19’s origins was suppressed, especially by Facebook and CEO Mark Zuckerberg, until the figurative dam broke and the theory could no longer be contained, even by a network of ordained “fact checkers.”

Similarly, speech questioning the efficacy of masks and aggressive COVID-19 mitigation measures such as lockdowns were collectively silenced by tech companies in collaboration with public officials. In the case of the 2020 election, speech that raised concerns about the security of

²⁴ Block Biden From Violating First Amendment Rights Of Americans Asks Attorney General Jeff Landry To Federal Court
<https://www.agjefflandry.com/Article/13120>

voting by mail and election integrity were swept clean from the Internet as best as these companies could muster. But in each of these cases, social media platforms were effectively censoring truthful and reliable information that happened to contradict Big Government talking points—and that is the basis of our lawsuit.

For decades, the federal government has artificially encouraged, protected, fostered, and subsidized the aggregation of power over speech, including the specific power of censorship by a small group of social media firms. Part of the problem is Section 230 of the Communications Decency Act (CDA). This unique liability shield has fostered a concentrated cluster of social media firms while protecting and encouraging the development of speech-censorship policies. Without this protection and its overly broad interpretations, free-market forces would impose a powerful check on content- and viewpoint-based censorship by social media platforms. And that's precisely why this artificial immunity has become such a key aspect of this particular issue.

The CDA was enacted in 1996 with the purpose of promoting the growth of digital commerce and protecting against the transmission of obscene materials to children over the Internet. The intention was to “offer a forum for a true diversity of political discourse,” providing social media firms protection from any liability for what their users post. In practice, these firms have used Section 230 as a shield from liability for censoring anything they deem “objectionable,” even if it is constitutionally protected speech. We hold that this interpretation is unreasonable and exceeds what Congress authorized with the CDA.

Consequently, this means that social media platforms currently enjoy the best of both worlds: they claim that they are exempt from liability if they leave atrocious content posted, then claim that they are also exempt from liability if they censor anything they deem objectionable. Thus, there exists a new “censorship cartel,” with social media firms actively coordinating with each other in silencing speech that they, and their political allies, disfavor.

Moreover, President Biden and others have a long history of threatening to remove Section 230 and its artificial immunity should social media companies not comply with censoring content and silencing dissent on their behalf. Oftentimes these threats revolve around antitrust enforcement or legislation as well as amending or repealing liability protections if Big Tech doesn't engage in more aggressive censorship tactics to create “a healthy news environment.”

The American people experienced first-hand how aggressive such actions have become throughout the COVID-19 pandemic and the 2020 election, right on down to the creation of an Orwellian “Disinformation Governance Board” through the Department of Homeland Security. Big Tech has even gone so far to limit the reach of content showcasing Biden's notoriously creepy, touchy-feely behavior around women and children, as well as posts highlighting the President's verbal gaffes.

This situation, which has only gotten worse with time, is intolerable under the First Amendment. That is why this case is monumental and why the LADOJ will not stop fighting for the First Amendment rights of all Americans.²⁵

But where do we go from here?

I believe that we must really evaluate what happened during the COVID pandemic and why. Only then can we attempt to repair the damage and prevent a reoccurrence in any meaningful way. We need to make the boundaries very clear through legislation at both the state and federal level while providing meaningful remedies for individuals to get injunctive relief, especially those who were forced to fight legal battles against unconstitutional mandates at great expense to themselves.

Now, thanks to the recent opinion issued by Supreme Court Justice Neil Gorsuch, the tides are turning, and perhaps people are beginning to realize why we do not put our Constitution on the shelf during an emergency. That is why now is the time to take a good hard look at the ramifications of those actions and create ways to ensure it never happens again. It is our hope that this statement assists you in that process.

Thank you.

²⁵ Fighting and Winning for Louisiana
<https://agjefflandry.com/Files/Article/13119/Documents/FightingAndWinningForLouisiana.pdf>