

**WRITTEN TESTIMONY FROM U.S. SENATOR ERIC SCHMITT**  
**HEARING BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES**  
**COMMITTEE ON THE JUDICIARY**  
Select Subcommittee on the Weaponization of the Federal Government

March 30, 2023

**I. Introduction**

Chairman Jordan, Ranking Member Plaskett, and members of the Select Subcommittee, thank you for the opportunity to be here today to discuss this important issue.

It is my honor and privilege to represent the State of Missouri in the United States Senate. For the four years before Missourians sent me to the Senate, I served as Missouri’s Attorney General. I am proud that Louisiana Attorney General Jeff Landry and I launched the *Missouri v. Biden* lawsuit that we are here to discuss today.

**II. Importance of the freedom of speech**

The First Amendment is the beating heart of our Constitution. The First Amendment is integral to maintaining our republican form of government and the belief that we are a country of people, not oppressive government.

Long before the Revolutionary War, Americans witnessed the oppression of speech. More than 1,200 times before 1700, the British prosecuted Americans for what they called “seditious speech.”<sup>1</sup> Laws from the king and his minions prohibited criticism of the government, specific government officials, or “false news” based on the idea that the criticism could inflame the public against the government.<sup>2</sup> Some prosecutions appear to have involved little more than sensitive feelings being hurt. For example, one woman faced prosecution after calling the governor and his team “a parcel of pitiful beggarly curs.”<sup>3</sup> A man faced prosecution for calling a judge a “pitiful, lousy rascal.”<sup>4</sup> Criticism like this could be punished by large fines, public whippings, and even imprisonment.<sup>5</sup> Think how busy those prosecutors would be if social media existed back then.

But as the Revolutionary War approached, colonists began standing up for free speech. Colonial grand juries began refusing British requests to issue indictments for criticizing the government.<sup>6</sup> Colonial juries acquitted individuals accused of criticizing the government.<sup>7</sup>

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<sup>1</sup> Larry D. Eldridge, *Before Zenger: Truth and Seditious Speech in Colonial America, 1607-1700*, 39 AM. J. L. LEGAL HIST. 337, 337 (1995).

<sup>2</sup> *Id.* at 338.

<sup>3</sup> *Id.* at 340.

<sup>4</sup> *Id.*

<sup>5</sup> *See id.* at 340, 341, 344.

<sup>6</sup> Stephen D. Solomon, REVOLUTIONARY DISSENT: HOW THE FOUNDING GENERATION CREATED THE FREEDOM OF SPEECH (2016); Stephen D. Solomon, *The Cost of Criticism*, TREND & TRADITION MAGAZINE, Oct. 2, 2020.

<sup>7</sup> Richard Cicale, *Freedom of Speech: The King vs. John Peter Zenger*, HISTORY MAGAZINE, Dec./Jan. 2006, at 15.

Thomas Paine and others rallied colonists with pamphlets making the case against the king and for freedom.

Freedom of speech was not easily won. Signers of the Declaration of Independence risked their lives, their fortunes, and their sacred honor, and many paid dearly for their act of treason against King George. General George Washington and his ragtag army suffered through starvation, disease, and bitterly cold winters until they triumphed over what was then the world's greatest military at Yorktown.

These sacrifices won our freedom. In 1791, Congress and the states ratified the Bill of Rights, including the First Amendment's prohibition on "abridging the freedom of speech."

The Founding Fathers believed the freedom of speech was vitally important. As Justice Louis Brandeis said, our country's founders believed that "it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones."<sup>8</sup>

The freedom of speech is just as important today. As Justice Hugo Black wrote, the freedoms of the First Amendment "must be accorded to the ideas we hate or sooner or later they will be denied to the ideas we cherish."<sup>9</sup> For these reasons, government must zealously work to protect the freedom of speech, not prevent it.

### **III. The Biden Administration's public efforts to censor speech**

The Biden Administration has led the largest speech censorship operation in recent American history. Since taking office, President Biden and his team have labored to suppress viewpoints with which they disagree. And in so doing, they have infringed upon the individual freedoms of millions of Americans.

The Biden Administration has coerced social media companies to censor disfavored speech. The Biden team has publicly threatened social media companies with removing legal protections, blamed social media companies for societal problems, and accused social media companies of killing people.

On multiple occasions, Biden and his team have threatened to punish social media companies that did not sufficiently censor Biden's political opposition by revoking Section 230. For example, on January 17, 2020, then-candidate Biden stated, "The idea that it's a tech company is that Section 230 should be revoked, immediately should be revoked, number one. For Zuckerberg and other platforms." He also stated, "And it should be revoked. It should be revoked because it is not merely an internet company. It is propagating falsehoods they know to be false. . . . There is no editorial impact at all on Facebook. None. None whatsoever. It's irresponsible.

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<sup>8</sup> *Whitney v. California*, 274 U.S. 357, 375, 47 S. Ct. 641, 648, 71 L. Ed. 1095 (1927), *overruled in part by Brandenburg v. Ohio*, 395 U.S. 444, 89 S. Ct. 1827, 23 L. Ed. 2d 430 (1969).

<sup>9</sup> *Communist Part of U.S. v. Subversive Activities Control Bd.*, 367 U.S. 1, 137 (1961) (Black, J., dissenting).

It's totally irresponsible.”<sup>10</sup> As president, Biden's White House announced new actions to prevent “hate-motivated violence” that called for fundamental reform to Section 230:

Tech platforms currently have special legal protections under Section 230 of the Communications Decency Act that broadly shield them from liability. This immunity extends beyond what the First Amendment requires and what newspapers and other media receive. It also effectively permits hate-fueled content mobilizing users to violence to be amplified on large tech platforms. President Biden has long urged fundamental reforms to Section 230, and consistent with the Principles for Enhancing Competition and Tech Platform Accountability released on September 8, he reiterates his call for Congress to fundamentally reform Section 230.<sup>11</sup>

Biden also suggested Facebook CEO Mark Zuckerberg should be subject to civil liability and potentially criminal prosecution for not censoring political speech: “He should be submitted to civil liability and his company to civil liability. . . . Whether he engaged in something and amounted to collusion that in fact caused harm that would in fact be equal to a criminal offense, that's a different issue. That's possible. That's possible it could happen.”<sup>12</sup>

On multiple occasions, President Biden has accused social media companies of “killing people” by not censoring enough disfavored speech. In July 2021, Biden said of social media companies, “They're killing people. The only pandemic we have is among the unvaccinated. And they're killing people.”<sup>13</sup> Biden repeated this accusation later that year: “Look, the unvaccinated are responsible for their own choices. But those choices have been fueled by dangerous misinformation on cable TV and social media. You know, these companies and personalities are making money by peddling lies and allowing misinformation that can kill their own customers and their own supporters. It's wrong, it's immoral, and I call on the purveyors of these lies and misinformation to stop it. Stop it now.”<sup>14</sup>

The Biden Administration has threatened and attacked social media companies so that those social media companies will censor speech the Biden Administration dislikes. Until the *Missouri v. Biden* lawsuit and later the Twitter Files, the Biden Administration's efforts to coerce social media companies behind the scenes, through meetings and emails, was unknown.

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<sup>10</sup> The Editorial Board, *Joe Biden*, N.Y. TIMES, Jan. 17, 2020, available at

<https://www.nytimes.com/interactive/2020/01/17/opinion/joe-biden-nytimes-interview.html>.

<sup>11</sup> White House, *FACT SHEET: New Actions from the Biden-Harris Administration and the Public and Private Sectors to Foster Unity and Prevent Hate-Motivated Violence*, Sept. 15, 2022, available at

<https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/15/fact-sheet-new-actions-from-the-biden-harris-administration-and-the-public-and-private-sectors-to-foster-unity-and-prevent-hate-motivated-violence/>.

<sup>12</sup> The Editorial Board, *Joe Biden*, N.Y. TIMES, Jan. 17, 2020, available at

<https://www.nytimes.com/interactive/2020/01/17/opinion/joe-biden-nytimes-interview.html>.

<sup>13</sup> Morgan Chalfant, *Biden: Social media platforms 'killing people'*, THE HILL, July 16, 2021, available at

<https://thehill.com/policy/technology/563440-biden-social-media-platforms-that-spread-coronavirus-misinformation-are/>.

<sup>14</sup> White House, *Remarks by President Biden on the Fight Against COVID-19*, Dec. 21, 2021, available at

<https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/12/21/remarks-by-president-biden-on-the-fight-against-covid-19/>.

#### IV. *Missouri v. Biden*: The most important free speech lawsuit of this generation

On May 5, 2022, Missouri and Louisiana filed suit against the Biden Administration for violating the First Amendment through its vast censorship enterprise.<sup>15</sup> The lawsuit came shortly after the Department of Homeland Security announced the formation of the “Disinformation Governance Board” to combat disinformation and misinformation.

Missouri’s and Louisiana’s lawsuit alleges that the Biden Administration, including President Biden and members of his team, colluded with social media giants Meta, Twitter, and YouTube to censor free speech in the name of combating so-called “disinformation” and “misinformation,” which led to the suppression and censorship of truthful information on a scale never before seen. The social media companies are not innocent actors; they collude with the federal government to censor posts and block truthful information, and they advance censorship at the federal government’s direction, through rigged “fact-checking” ruses, and under pressure from radical external and internal forces. The lawsuit provides several examples of truthful information that was censored by social media companies that were admitted at a later date to be truthful or credible, including the Hunter Biden laptop story, the COVID-19 lab leak theory, and the efficacy of masks.

In July 2022, the federal district court granted the request by Missouri and Louisiana for expedited preliminary injunction-related discovery.<sup>16</sup> The order allowed Missouri and Louisiana to conduct written discovery on the federal government defendants, and then to seek depositions at a later date based upon the documents and information that the federal government produced.<sup>17</sup> The court later granted Missouri’s and Louisiana’s motion to compel documents and request for depositions.<sup>18</sup>

Discovery obtained by Missouri and Louisiana demonstrated that the Biden Administration’s coordination with social media companies and collusion with non-governmental organizations to censor speech was far more pervasive and destructive than ever known. After documented instances of censorship efforts during the campaign and transition, the Biden censorship efforts in office began just three days after the inauguration when a White House official emailed Twitter to demand removal of a tweet from Robert F. Kennedy Jr.<sup>19</sup> Documents discovered by Missouri and Louisiana reveal multiple White House officials, from the former press secretary to the digital director, relentlessly pressuring social media companies to remove specific posts or accounts, or expand censorship practices.<sup>20</sup> For example, White House officials made the following statements to social media companies:

- “Please remove this account immediately.”<sup>21</sup>

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<sup>15</sup> *Missouri v. Biden*, 3:22-cv-01213, Doc. 1 (W.D. La. May 5, 2022).

<sup>16</sup> *Missouri v. Biden*, 3:22-cv-01213, Doc. 34 (W.D. La. July 12, 2022).

<sup>17</sup> *Id.* at 13-14.

<sup>18</sup> *Missouri v. Biden*, 3:22-cv-01213, Doc. 90 (W.D. La. Oct. 21, 2022); *Missouri v. Biden*, 3:22-cv-01213, Doc. 72 (W.D. La. Sept. 6, 2022)

<sup>19</sup> *Missouri v. Biden*, 3:22-cv-01213, Doc. 174-1, at 1 (W.D. La. Jan. 11, 2023).

<sup>20</sup> *Missouri v. Biden*, 3:22-cv-01213, Doc. 212-3, ¶¶ 31-211 (W.D. La. Mar. 6, 2023).

<sup>21</sup> *Missouri v. Biden*, 3:22-cv-01213, Doc. 174-1, at 4 (W.D. La. Jan. 11, 2023).

- “Cannot stress the degree to which this needs to be resolved immediately.”<sup>22</sup>
- “You are hiding the ball.”<sup>23</sup>
- “We are gravely concerned that your service is one of the top drivers of vaccine hesitancy- period. I will also be the first to acknowledge that borderline content offers no easy solutions. But we want to know that you're trying, we want to know how we can help, and we want to know that you're not playing a shell game with us when we ask you what is going on. This would all be a lot easier if you would just be straight with us.”<sup>24</sup>
- “[L]ooking out for your game plan on tackling vaccine hesitancy spread on your platform.”<sup>25</sup>
- “And while the product safari has been interesting, at the end of the day, I care mostly about what actions and changes you’re making to ensure you’re not making our country’s vaccine hesitancy problem worse.”<sup>26</sup>
- “To recap: . . . we remain concerned that Youtube is ‘funneling’ people into hesitance and intensifying people’s hesitancy. . . . we want to be sure that you have a handle on vaccine hesitancy generally and are working toward making the problem better. This is a concern that is shared at the highest (and I mean highest) levels of the WH, so we’d like to continue a good-faith dialogue about what is going on under the hood here.”<sup>27</sup>
- “Would you mind looking at this video and helping us with next steps to put a label or remove it?”<sup>28</sup>

The White House wanted posts censored from Fox News host Tucker Carlson, even though Facebook found that the content did not violate its policies.<sup>29</sup> The White House also asked for unfavorable news to be put “in context” with specific talking points along with amplification of Biden Administration messaging and FAQs.<sup>30</sup>

In addition to gathering these documents, Missouri and Louisiana deposed Dr. Anthony Fauci. Testimony and documents from that deposition showed that when Dr. Fauci spoke, social media censored. For example, Dr. Fauci was aware early in the pandemic that his agency had funded dangerous gain-of-function research on coronaviruses at the Wuhan Institute of Virology, but he sought to discredit and suppress the theory that COVID-19 leaked from that lab to deflect blame and avoid potential responsibility for the pandemic.<sup>31</sup> In his deposition, Dr. Fauci claimed 174 times that he could not recall, including about critical details relating to gain-of-function research and other issues associated with the lab-leak theory and the government’s response to the

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 12.

<sup>24</sup> *Id.* at 11.

<sup>25</sup> *Id.* at 14.

<sup>26</sup> *Id.* at 17.

<sup>27</sup> *Id.* at 39.

<sup>28</sup> *Id.* at 65.

<sup>29</sup> *Id.* at 22, 33-34.

<sup>30</sup> *Id.* at 30-31.

<sup>31</sup> See *Missouri v. Biden*, 3:22-cv-01213, Doc. 212-3, ¶¶ 598-852 (W.D. La. Mar. 6, 2023).

pandemic.<sup>32</sup> Because of Dr. Fauci’s influence, social media platforms censored the lab-leak theory and other COVID-19 viewpoints that Dr. Fauci and his cabal of “experts” disfavored.<sup>33</sup>

Missouri and Louisiana also deposed an FBI agent about the Hunter Biden laptop story. This deposition and relevant documents revealed that the FBI deliberately planted false information about “hack-and-leak” operations in advance of the Hunter Biden laptop story in order to deceive social media platforms into censoring the Hunter Biden laptop story.<sup>34</sup> The FBI also flagged social media accounts for censorship on a monthly basis and have an estimated 50 percent success rate in getting reported disinformation removed or censored.<sup>35</sup>

The *Missouri v. Biden* lawsuit also obtained documents revealing that multiple federal agencies, including the FBI, the Centers for Disease Control and Prevention, the Census Bureau, the Cybersecurity & Infrastructure Security Agency in the Department of Homeland Security, and the Global Engagement Center in the State Department have pressured and colluded with social media companies to flag and censor large numbers of accounts and posts, especially relating to public health and elections.<sup>36</sup> The federal government has even created public-private partnerships like the “Election Integrity Partnership” and the “Virality Project” to expand its censorship reach.<sup>37</sup>

Without the *Missouri v. Biden* lawsuit and the subsequent disclosures in the Twitter Files, Americans would never know the Biden Administration’s coordination, collusion, and coercion to censor speech. The Biden Administration’s actions to censor speech it dislikes infringes one of our country’s most fundamental freedoms. In 1984, George Orwell imagined a world where the government completely controlled speech and thought through its Ministry of Truth. President Biden and his administration may lust for its own Ministry of Truth, but I along with millions of Americans will not stop fighting for the God-given right to speak your mind, freedom of expression, and freedom of speech.

## V. Conclusion

Americans enshrined the First Amendment in our Constitution for more than 230 years, for good reason and for times such as these. We cannot allow the Biden Administration to infringe upon the freedoms that we cherish and that have been purchased for us by the sacrifice of millions of Americans. Freedom of speech is vital to our country and our people. In many ways, it is our pressure release valve. We must stop the Biden Administration’s threats to free speech so that America can remain the freest country in the world.

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<sup>32</sup> *Id.* at ¶ 620.

<sup>33</sup> *Id.* at ¶¶ 598-852.

<sup>34</sup> *Id.* at ¶¶ 880-904.

<sup>35</sup> *Id.* at ¶¶ 928, 931-944.

<sup>36</sup> *Id.* at ¶¶ 426-595, 853-1134.

<sup>37</sup> *Id.* at ¶¶ 991-1075, 1135-1365.