



Testimony of Professor Todd Zywicki Presented to  
United States House of Representatives  
Committee on the Judiciary  
Select Subcommittee on the Weaponization of the Federal  
Government  
“Weaponization of the Federal Government”  
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10:00 AM  
Rayburn House Office Building Room 2141  
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Chairman Jordan, Ranking Member Plaskett, and Members of the Committee:

I am Todd Zywicki and I appreciate the opportunity to appear to you today to testify on the topic of “Weaponization of the Federal Government.” I am George Mason University Foundation Professor of Law at Antonin Scalia Law School. Today’s hearing focuses on the United States Government’s massive, unprecedented, and chilling multi-year system of censorship by proxy through coercion and collaboration with the country’s largest social media sites to suppress the speech of ordinary Americans seeking to both speak and hear information on issues that not only affect elections and other issues of public political import but that actually directly affect our individual health, well-being, and ability to earn a living and to support our families.

How do I know?

Because it happened to me.

On the last weekend of February 2020 I found myself in New York City for a conference just as SARS-CoV-2 was arriving there. Sure enough, a few days later I turned up ill with a bunch of symptoms that were unlike anything else I had ever experienced before. As you will recall, given the scarcity of Covid tests at the time, I was unable to get a test confirm that I had Covid. But within a few days my symptoms abated and a few weeks later my symptoms were added to the growing list of symptoms associated with Covid.

Thus began my saga.

Unlike many other universities, that fall semester my colleagues and I were determined to make in-person learning available to students who wanted it. So I had my first of a stream of antibody tests that confirmed that I had previously had Covid and had

current antibodies and so I volunteered to teach in person that whole year. After all, as early as the first weeks of the virus's arrival in March 2020 it was understood that once you had Covid and recovered you were safe from future reinfection and serious illness.<sup>1</sup>

During that year I had a string of positive antibodies tests every few months that confirmed my continued protection against Covid. Nevertheless, in spring 2021 the President of George Mason University and the Board of Trustees announced that they would be imposing a Covid vaccine mandate on every faculty, staff, and student at George Mason. The mandate included as approved vaccines not only the mRNA vaccines under emergency approval in the United States, but also the Johnson & Johnson vaccine—which was never even claimed to provide significant protection against infection.

Even more absurd, the University's mandate recognized any vaccine approved by the World Health Organization but *not* approved in the U.S. even under emergency authorization—including demonstrably inferior Chinese vaccines such as Sinovac and Sinopharm. But it didn't recognize natural immunity.

So I sued. And fortunately the University granted me a medical exemption, for which I am grateful. But I know of students who were expelled for not taking the jab, even though they had natural immunity, and many students, staff, and faculty at my university and elsewhere who were coerced into taking the jab for fear of expulsion and loss of livelihood.

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<sup>1</sup> See Aylin Woodward and Holy Secon, *Fauci Said He's "Willing to Bet Anything" that People Who Recover from the New Coronavirus are "Really Protected from Reinfection*, BUSINESS INSIDER (Mar. 28, 2020), available in <https://www.businessinsider.com/coronavirus-fauci-those-who-recover-will-be-immune-2020-3>.

I announced my lawsuit in the *Wall Street Journal*.<sup>2</sup> My suit included an expert affidavit from my personal immunologist, Dr. Hooman Noorchasm, who holds a PhD in immunology, explaining that because I had natural immunity (even confirmed with an antibody test) it was his medical opinion that it both unnecessary and dangerous for me to receive a Covid vaccine at that time. It also included an affidavit from Drs. Jay Battacharya and Martin Kuldorff, who are no strangers to this committee.

Because of space limitation in the *Wall Street Journal*, I was unable to include references to all of the studies that by that time already had demonstrated that natural immunity was at least as protective against infection as the supposedly most protective vaccines. And was demonstrably superior to Johnson & Johnson in protection against infection and transmission not to mention the farcical Chinese vaccines endorsed by George Mason's Administration.

As a result, I started posting evidence on social media and giving public lectures that provided ongoing confirmation of my point. I gave public lectures and media interviews that supported my point. I filed a regulatory comment on the OSHA vaccine mandate and amicus briefs in cases similar to mine.

Early in the pandemic I frequently posted my thoughts on Covid and the government's response on Facebook. I was told by many of my friends that they found my commentary informative and enlightening and I eventually made my Covid posts on a "Public" privacy setting so they could be shared widely (which they were).

But sometime later in 2021 it became apparent that my posts regarding Covid not only stopped getting engagement, they weren't even being seen. Do I know for sure?

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<sup>2</sup> See Todd Zywicki, *Why I'm Suing My Employer's Vaccine Mandate* (Aug. 6, 2021); available in <https://www.wsj.com/articles/vaccine-mandate-natural-immunity-lawsuit-covid-19-coronavirus-11628281507>.

No—because in the Kafkaesque world of modern social media censorship, um, I mean “moderation,” there seems to be no way to confirm if you are being shadowbanned or what exactly is the basis for the suppression. But the timing of when I stopped posting on Facebook and relying on Facebook for useful information coincides with the timing of the federal government’s pressure on Facebook to crack down on users like me.

So instead of Facebook I became active on Twitter for the first time. It was obvious by that time that Twitter was engaged in ongoing censorship of information about Covid that was true but contradicted the White House’s preferred narrative, including the protection afforded by natural immunity. But at least I wasn’t shadowbanned there (at least as far as I know).

Because heterodox opinions that questioned the official narrative were largely excluded from traditional media,<sup>3</sup> I relied extensively on social media to follow doctors and other medical experts to identify, discuss, and critique medical studies related to the public policy issues as well as my personal health and the health of my family members. Eventually and inevitably many of those doctors and commenters were vaporized by Twitter and their videos were taken down by YouTube.

In one instance, Dr. Noorchasm reposted a Fox TV appearance where he discussed natural immunity that was removed from YouTube within minutes of being posted.

We should keep in mind the principles of freedom of speech protect both our right to *speak* but also our right to *receive* information that is important to us as democratic citizens but also with respect to information that affects our health and other private

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<sup>3</sup> This uniformity of editorial opinion and exclusion of alternative views appears to have been the result, at least in part, of a cartel-like arrangement among major media outlets known as the “Trusted News Initiative.”

decisions.<sup>4</sup> The information I received from these doctors and other commentators—many of whom were later banned from Twitter and YouTube—were essential in forming my own opinions about Covid policy and my own health decisions. The suppression or elimination of these voices and the valuable—and true—information they provided made it substantially more difficult for me to obtain accurate information to inform my health choices. This is exactly the sort of information regarding important individual health choices that led the Supreme Court to stress the importance of protecting the First Amendment rights of *listeners* as consumers in *Virginia Pharmacy Board v. Virginia Consumer Council* in 1976.

I personally had two videos removed from YouTube for supposed violation of the “Terms of Service” that related to my civil rights lawsuit—an interview on the Bill Walton Show posted on August 24, 2021 (and removed *that same day*),<sup>5</sup> and a public lecture sponsored by the Washington, DC Bastiat Society on December 3, 2021.<sup>6</sup> To this date, I have never been informed as to what I said or did that supposedly violated YouTube’s terms of service; however, I have appeared on Walton’s show several times and done dozens of public lectures on non-Covid topics that have not been removed. As can be seen from the attached Appendix, YouTube simply stated that the interview

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<sup>4</sup> Indeed, the seminal case protecting commercial speech under the First Amendment dealt with the right to advertise prescription drug prices, which the Supreme Court recognized was grounded in the rights of private individuals to receive information that was essential to their health and consumer purchasing decisions, not just the right of pharmacies to advertise. *See Virginia Pharmacy Board v. Virginia Consumer Council*, 425 U.S. 748 (1976).

<sup>5</sup> <https://www.youtube.com/watch?v=aVXL9iby7Nk>.

<sup>6</sup> *See* <https://www.youtube.com/watch?v=JsZvo7SWkls>. I have been unable to verify the exact date when that video was removed as, unlike The Bill Walton Show, nobody involved with the take down decision received a formal notice. Based on my recollection and others, we first discovered its removal sometime in January, about a month after the program was posted.

violated its “Medical Misinformation Policies” in some unspecified manner and thus was removed.<sup>7</sup>

It is difficult to discover whether one has been shadowbanned, “demoted,” or otherwise suppressed. In fact, much of what we know about the social media experiences of Drs. Bhattacharya, Kuldorff, Kheriaty, and others involved in the ongoing litigation has been revealed only because Judge Doughty was willing to order discovery in the litigation that revealed much of the information and only because this Subcommittee has been willing to use its power to bring to light the system of censorship that has been revealed.

Yet everything I said in my lawsuit and in those videos and social media postings about my lawsuit was true then and has been further confirmed since including, among others:

- Because Natural Immunity produces mucosal immunity and intramuscular Covid vaccines do not, Natural Immunity is substantially more protective against infection and serious illness than any Covid vaccine;<sup>8</sup>

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<sup>7</sup> The notice received by The Bill Walton Show regarding the episode in question is attached as an Appendix to my testimony. In addition, the Appendix includes the urls for the two videos that were removed and remain banned today. They simply contain boilerplate statements about medical policy or policy violations.

<sup>8</sup> See David M. Morens, Jeffery K. Taubenberger, and Anthony S. Fauci, *Rethinking Next-Generation Vaccines for Coronaviruses, Influenzaviruses, and Other Respiratory Viruses*, 31(1) CELL HOST & MICROBE 146 (Jan. 11, 2023) (confirming that the protection provided against clinically apparent infection from existing vaccines against rapidly replicating respiratory viruses such as coronaviruses and influenza is “decidedly suboptimal” and their duration of “immunity is measured only in months”); Eva Piano Mortari, et al., *Highly-Specific Memory B Cells Generation after the 2<sup>nd</sup> Dose of BNT162b2 Vaccine Compensate for the Decline of Serum Antibodies and Absence of Mucosal IgA*, MEDRXIV [preprint] (June. 09, 2021) [accessed Jan. 5, 2022], available at <https://bit.ly/3JT2TOH> (“Most importantly, the vaccine triggers a serological IgA response, but does not generate mucosal IgA. The lack of specific IgA strategically located at the virus site of entrance explains why the vaccine does not induce sterilizing immunity.”); Uday S Kumar, et al., *Gold-Nanostar-Chitosan-Mediated Delivery of SARS-CoV-2 DNA Vaccine for Respiratory Mucosal Immunization: Development and Proof-of-Principle*, 15 ACS NANO 17582–17601 (2021), <https://bit.ly/32YP9ks>; Adam V. Wisnewski, et al., *Humoral IgG and IgA responses to COVID-19 mRNA Vaccines*, PLOS ONE (June 16, 2021), <https://bit.ly/3zDf39b>. Hundreds of studies have been conducted

- That the duration of protection from natural immunity against infection is far superior than for Covid vaccines;<sup>9</sup>
- Natural immunity provides a greater degree of protection against infection from variants than Covid vaccines;<sup>10</sup>
- Contrary to government claims that Covid vaccines were safe for individuals with natural immunity, individuals with natural immunity were specifically excluded from the vaccine trials and subsequent clinical evidence demonstrated that those with natural immunity were at a greatly elevated risk of severe adverse side-effects from receiving the Covid vaccine post-recovery;<sup>11</sup> and,

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around the world that confirm this finding. *See, e.g.,* Heba N. Altarawneh, et al., *Effects of Previous Infection and Vaccination on Symptomatic Omicron Infections*, 387 NEW ENG. J. MED. 21 (June 15, 2022).

<sup>9</sup> *See* Victoria Hall, et al., *Protection Against SARS-CoV-2 after Covid-19 Vaccination and Previous Infection*, 386(13) NEW ENGLAND J. OF MEDICINE 1207 (2022).

<sup>10</sup> *See* Stijm P. Andeweg, et al., *Elevated Risk of Infection with SARS-CoV-2 Beta, Gamma, and Delta Variants Compared with Alpha Variant in Vaccinated Individuals*, 15(684) SCI. TRANS. MED. (Feb. 22, 2023).

<sup>11</sup> I am not aware of a single study anywhere in the world that has *not* confirmed that receiving the Covid vaccine after recovery is associated with elevated risk of adverse side-effects, including hospitalization and emergency room treatment. *See* Shai Efrat, et al., *Safety and Humoral Responses to BNT162b2 mRNA Vaccination for SARS-CoV-2 Previously Infected and Naïve populations*, NATURE SCIENTIFIC REPORTS, Aug. 2021, at 1–2, 5; Amanda K. Debes, et al., *Association of Vaccine Type and Prior SARS-CoV-2 Infection With Symptoms and Antibody Measurements Following Vaccination Among Health Care Workers*, 181(12) JAMA INTERNAL MED. 1660, 1661 (2021); Alexander G. Mathioudakis, et al., *Self-Reported Real-World Safety and Reactogenicity of COVID-19 Vaccines: A Vaccine Recipient Survey*, LIFE, March 2021, at 3; Rajneesh K. Joshi, *Higher Incidence of Reported Adverse Events Following Immunisation (AEFI) after First Dose of COVID-19 Vaccine Among Previously Infected Health Care Workers*, 77 MED. J. ARMED FORCES INDIA S505, S505–07 (2021); Florian Krammer, et al., *Antibody Responses in Seropositive Persons after a Single Dose of SARS-CoV-2 mRNA Vaccine*, 384(14) N. ENGL J. MED. 1372, 1372–74 (2021); Rachael Kathleen Raw, et al., *Previous COVID-19 Infection, but not Long-COVID, Is Associated with Increased Adverse Events Following BNT162b2/Pfizer Vaccination*, 83 J. INFECT. 401, 401–03 (2021); Marie Tré-Hardy, et al., *Reactogenicity, Safety and Antibody Response, after One and Two Doses of mRNA-1273 in Seronegative and Seropositive Healthcare Workers*, 83(2) J. INFECT. 254, 254 (2021); Cristina Menni, et al., *Vaccine Side-Effects and SARS-CoV-2 Infection after Vaccination in Users of the COVID Symptom Study App in the UK: A Prospective Observational Study*, 21(7) LANCET INFECT. DIS. 939, 943–46 (2021).



- Conditional on infection, natural immunity provides greater protection against transmission to others than vaccine breakthrough infections.<sup>12</sup>

To be clear, I am not aware which of these statements—or some other one—resulted in my apparent shadowbanning on Facebook or causing my videos to be removed from YouTube. I do not even know whether the offending statements were made by me or someone else participating in the program. I also do not know whether other social media platforms, such as Twitter, might have also reduced awareness of my statements and the like, as opposed to banning them outright.

But in at least one communication reported in the District Court opinion in *Missouri v. Biden*, federal government officials indicated that they wanted “to make sure YouTube has a handle on vaccine hesitancy and is working toward making the problem better.” The government official conveyed that concern about vaccine hesitancy was “shared by the highest (‘and I mean the highest’) levels of the White House.”

In another email from April 18, 2021, discovered by this committee, Facebook reported that “Rob F” organized a meeting of “misinfo researchers” in which “the consensus was that FB is a ‘disinformation factory’, and that YT has made significant advances to remove content leading to vaccine hesitancy whilst we have lagged behind.” Presumably “YT” in that message refers to YouTube and Twitter. Later in that same message, Nick Clegg reported that Mr. Slavitt complained about a *meme* that appeared on Facebook that “demonstrably inhibit[ed] confidence” in the Covid vaccines and indicated that Slavitt assumed “that YT would never accept something like this.”

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<sup>12</sup> See Delphine Sterlin, et al., *IgA dominates the early neutralizing antibody response to SARS-CoV-2*, SCI. TRANSL. MED., Jan. 2021, at 1; Laith J. Abu-Raddad, et al., *Relative Infectiousness of SARS-CoV-2 Vaccine Breakthrough Infections, Reinfections, and Primary Infections*, 13 NATURE COMMUNICATIONS 532 (2022).

Moreover, denying listeners access to the truthful information contained in my presentations—and the multiple underlying studies and evidence I referenced in them—as well as those of other scholars working in the area such as Drs. Bhattacharya, Kuldorff, and Kheriaty could have changed the decisions they made with respect to their health, their behaviors, and that of others. For example, we all know people who believed the false statements that receiving the Covid vaccine would provide protection against infection and who thereby changed their behaviors based on that belief, such as by taking fewer precautions to prevent infection or transmission to others. Many parents and others supported devastating school closures and other detrimental actions toward children because the Great Barrington Declaration was suppressed. Many people with natural immunity were damaged by receiving vaccines after they recovered because they were assured that it was safe to do so, even though there was zero evidentiary basis for that statement and all subsequent evidence has contradicted that unsubstantiated assertion. In addition, some people chose not to get vaccinated because they believed false claims that if they wore masks in public they would not be infected.

Finally, and most viciously, based on the repeated assertions that Covid vaccines would prevent infection and transmission, millions of Americans supported firing individuals like me from our jobs, excluding us from public spaces, and otherwise ostracizing and discriminating against us.<sup>13</sup>

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<sup>13</sup> It is ironic that in a document labeled “3/26 White House Call Notes” between Flaherty and Facebook employees, Facebook discussed steps it was taking to prevent “bullying for choosing to get vaccinated.” I can say from personal experience that Facebook and other social media companies did not discourage bullying of those of us who chose *not* to get vaccinated and, in fact, it appears that the White House’s implicit policy was to encourage bullying and social stigma and exclusion of the unvaccinated, such as by repeating baseless claims that the pandemic would have been over earlier if we were vaccinated and the false claim it was essential to get vaccinated to “protect others.”

The representation that Covid vaccines would prevent infection, or even death, was known to be wrong within a few months after the rollout of the Covid vaccines.<sup>14</sup> Nevertheless, social media companies continued to suppress this information for months—including banning Alex Berenson for making exactly this statement. In fact, the claim that the Covid vaccines would prevent infection was so egregiously false and unfounded that just last month, Great Britain’s pharmaceutical watchdog, the Prescription Medicines Code of Practice Authority (PMCPA), reprimanded senior Pfizer executives for promoting the claim that its vaccine was “95 per cent in preventing Covid-19,” which was found to be misleading and contained no information about safety or adverse events.<sup>15</sup> The PMCPA concluded that these claims brought “discredit” on the pharmaceutical industry and amounted to “unlicensed medicine being proactively disseminated... to health professions and members of the public in the UK” and imposed administrative costs of £34,800. At last check, senior Pfizer employees have been reprimanded by the PMCPA *six times* since for unsubstantiated and misleading claims about Pfizer vaccines, including a reprimand of Pfizer’s CEO Albert Bourla for misleading claims about vaccine benefits for children as young as five years old.<sup>16</sup>

To the best of my knowledge, none of these false and misleading claims for which Pfizer has been sanctioned by the PMCPA were ever flagged as “medical misinformation” or involuntarily removed or demoted by Twitter, LinkedIn, or other

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<sup>14</sup> See Read: *Internal CDC Document on Breakthrough Infections*, WASHINGTONPOST.COM (Jul. 30, 2021), available in <https://www.washingtonpost.com/context/cdc-breakthrough-infections/94390e3a-5e45-44a5-ac40-2744e4e25f2e/>.

<sup>15</sup> See Camilia Turner, *Pfizer’s CEO Rapped by Regulator for Making “Misleading” Statements About Children’s Vaccines*, THE TELEGRAPH (Nov. 26, 2022).

<sup>16</sup> See *id.*

social media sites where the claims were made. Indeed, as is well known, government officials repeatedly echoed exactly these same sentiments and statements.

Needless to say, my experience was not unique.<sup>17</sup> Dr. Jay Bhattacharya and the Great Barrington Declaration were targeted by social media companies for suppression and Google even appears to have manipulated search results to make it more difficult to find The Great Barrington Declaration.<sup>18</sup> Dr. Aaron Kheriaty alleges similar treatment by social media platforms. In fact, as recently as this fall Dr. Scott Atlas had a video of a public lecture he delivered for the Bruce Benson Center at University of Colorado on Covid policy at my invitation) as violating YouTube’s “Community Guidelines.”<sup>19</sup>

All of these individuals are scholars of the highest caliber and even more important, of the highest character, courage, and intellectual integrity. They do not express conclusions and opinions without a firm factual and evidentiary basis for our conclusions. Nor do I. To libel them, and me, by claiming we are purveyors of “medical misinformation” is infuriating, regardless of whether that libel was the doing of the social media platforms acting alone or, even more grotesque, the federal government doing so for political advantage.

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<sup>17</sup> See Yaffa Shir-Raz, et al., *Censorship and Suppression of Covid-19 Heterodoxy: Tactics and Counter-Tactics*, 61 MINERA 407 (2023) (describing the experiences of “highly accomplished doctors and research scientists from different countries who have been targets of suppression and/or censorship following their publications and statements in relation to COVID-19 that challenge official views”).

<sup>18</sup> See Fraser Myers, *Why Has Google Censored the Great Barrington Declaration?*, SPIKED.COM (Oct. 12, 2020), available in <https://www.spiked-online.com/2020/10/12/why-has-google-censored-the-great-barrington-declaration/>.

<sup>19</sup> See [https://twitter.com/ScottAtlas\\_IT/status/1729559644685631833](https://twitter.com/ScottAtlas_IT/status/1729559644685631833). It was subsequently reinstated after the Benson Center filed an appeal challenging its removal.

**Common Sense and the Overwhelming Factual Record of Covid Censorship Shows Coercion, Significant Encouragement, and Potential Collusion Between the Social Media Platforms to Censor People Like Me**

It defies common sense and the experience of the past several years to look at the government's comprehensive system of censorship by proxy and not recognize the underlying dynamics of government censorship is driving this.

In the world of the modern regulatory state, it is well-understood that when the government makes a "suggestion," it is anything but. As John Allison, former CEO of BB&T Bank and President of the Cato Institute, has observed, much of the way in which the government conducts its business today is through "regulation by raised eyebrow"—a subtle (or not-so-subtle) signal to private parties that certain actions will be treated favorably or unfavorably by the government. This was the *modus operandi* of the Obama Administration with respect to its Operation Choke Point initiative, in which the government used its powers of regulatory "supervision"—not formally binding on any bank—to debank certain politically disfavored industries and merchants. Today, a new version of Operation Choke Point appears to have returned, targeting individuals and non-profit organizations disfavored by the current administration.<sup>20</sup>

This is especially so when the agency issuing the communications are the White House and the FBI.

The government's response this obvious, common sense observation, and the response of those who justify it, fails the straight-face test.

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<sup>20</sup> See Todd Zywicki, *Cancel Culture Comes to Banking*, NEWSWEEK.COM (Jan. 13, 2022), available in <https://www.newsweek.com/cancel-culture-comes-banking-opinion-1668200>.

The pattern of communications between the social media companies and government officials confirms this common sense understanding that the “unrelenting pressure” of federal government officials caused social media platforms to change their policies or censor or stifle speech that they would not have on their own judgment. For example, in an internal email dated July 14, 2021, Facebook employee Nick Clegg explained, “Because we were *under pressure* from the administration and others to do more and it was part of the ‘more’ package.... We shouldn’t have done it.”

To justify its actions, the government says it was just exercising its free speech rights to “express” itself on these important matters of public health.

But if this is supposedly what the government was doing, why were most of these communications in *private*, not in public? Why did the government fight so hard to keep its scheme of bullying and harassment private?

Why did the communications to the social media companies *not* consist of evidence, citations to studies, or medical evidence to demonstrate that the information being reported was factually incorrect—so that the social media companies could make their *own* determination and establish their own policies in consultation with other medical authorities? Instead, the communications were full of vitriol, conclusory accusations of bad faith, and repeated demands to censor particular individuals and content. Protecting the ability of the government to attack private companies, issue veiled (and not-so-veiled) threats, and demand the silencing of private individuals expressing themselves on important matters of public policy and individual health decisions, hardly seems like what the First Amendment was designed to protect.

The government and its private partners would have America believe that all it was doing was expressing its opinions on Covid policies. If that were the case, then I would have little objection.

However, that manifestly is *not* what happened here. There is a big difference between stating the opinion, “We believe that Professor Todd Zywicki’s facts and conclusions are not supported by available evidence,” on one hand, and “We believe that you should shut up Todd Zywicki.” The government expressing the opinion, “We want you to prevent Zywicki from speaking” or “We want you to prevent interested listeners from hearing what Zywicki has to say about his lawsuit” is a far cry from any sensible understanding of what the First Amendment is about, especially when backed by veiled and not-so-veiled threats of repercussions for failure to comply. Promptly and completely.

What government officials wanted were *results*, in terms of the amount of content that was suppressed or demoted, not to inform the public of anything. As Mr. Flaherty told one company “Not to sound like a broken record, but how much content is being demoted, and how effective are you at mitigating reach and how quickly?” And in response these pressures from government officials, Facebook responded by touting its record in removing from its platform the individuals listed in the White House’s hit list of the “disinformation dozen.”<sup>21</sup>

And to be sure, there were threats and they were hardly veiled. As the Fifth Circuit’s *per curiam* opinion pointed out, in one instance “the White House Press Secretary stressed that, in regard to problematic users on the platforms, the ‘President has

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<sup>21</sup> See email by Nick Clegg, July 14, 2021, 7:50 AM. Illustrating the nature of Facebook’s moderation strategy, or lack thereof, later that same day Mr. Clegg had to explain to others on the internal email chain what the term “disinformation dozen” referred to. See email by Nick Clegg, July 14, 2021, 3:42 PM.

long been concerned about the power of large’ social media companies and that they ‘must be held accountable for the harms they cause.’ She continued that the President ‘has been a strong supporter of fundamental reforms to achieve that goal, including reforms to [S]ection 230, enacting antitrust reforms, requiring more transparency, and more.” The District Court opinion in *Missouri v. Biden* noted that Mark Zuckerberg, the owner of Facebook, has characterized the threat of antitrust enforcement as “an existential threat” to the company. In light of those stakes, does anyone seriously expect that the company would resist government pressure to censor a handful of controversial users when the government hints at a potential antitrust action if Facebook would not be “accountable” for the harm it supposedly caused by permitting those individuals on its platform?<sup>22</sup> In fact, as noted throughout the record of events, Facebook routinely submitted to White House pressure to censor and demote users and content in order to satisfy government officials, even when company’s employees acknowledged the content did not violate Facebook’s policies.

As Justice Alito recently observed during oral arguments in the similar case of *NRA v. Vullo*, the standard the government urges (and their private sector enablers) would simply require them not to be completely “ham-handed” in linking their communications to the threats of repercussions for failure to abide with their demands.

Judge Doughty had no trouble connecting the dots between the White House threats and actions by the social media companies. On July 15, 2021, Surgeon General

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<sup>22</sup> Although the White House cannot unilaterally launch an antitrust investigation, in light of the unusually close coordination between the White House and the Federal Trade Commission (a supposedly “independent” agency), any reasonably sophisticated businessperson would understand this White House saber-rattling was not merely idle chitchat. See Brownstein Client Alert, *White House, CFPB, FTC Advance “Junk Fee” Crackdown* (Oct. 6, 2023), available in <https://www.bhfs.com/insights/alerts-articles/2023/white-house-cfpb-ftc-advance-junk-fee-crackdown>.



Murthy and White House Spokesperson Jennifer Psaki held a press conference demanding that social media platforms “monitor misinformation more closely,” “consistently take action against misinformation super-spreaders on their platforms,” and to “operate with greater transparency and accountability.” On July 16, 2021, President Biden stated that the social media platforms “are killing people” and the actions they had taken were “clearly not sufficient.” Within a few hours of these statements, Twitter suspended Alex Berenson’s account.

As the District Court opinion noted, the *next day* a Facebook official sent an email to Anita B. Dunn, Senior Advisor to the President, “asking for ways to ‘get back into the White House’s good graces’ and stated Facebook and the White House were ‘100% on the same team here in fighting this.’”

Just four days later (July 20, 2021), the White House Communications Director Kate Bedingfield “stated that the White House would be announcing whether social-media platforms are legally liable for misinformation spread on their platforms and examining how misinformation fits into the liability protection granted by Section 230 of the Communications Decency Act (which shields social-media platforms from being responsible for posts by third parties on their sites). Bedingfield further stated the administration was reviewing policies that could include amending the Communication Decency Act and that the social-media platforms ‘should be held accountable.’”

Subsequently *all twelve* of the members of the so-called “Disinformation Dozen” were “censored and pages, groups, and accounts linked to the Disinformation Dozen were removed.” Does anyone seriously think that Facebook conducted a serious review of those accounts and decided *on their own* to censor them—just days after the White

House's announcement that it was determining whether "misinformation" would be an exception to Section 230 of the Communications Decency Act and that the White House was considering seeking amendments to the Communications Decency Act to be able to hold social media companies "accountable" for the statements of users on its platform?

In another instance individuals in the White House informed a social media platform, "Internally we have been considering our options on what to do about it."

Against these intense pressures and threats coming from the White House and other government officials, the idea that social media companies are going to stand up for the rights of little people like me are laughable. Many commentators have analogized this to jawboning by government officials toward the *New York Times* or other traditional media outlets to shade their news coverage or opinions.

That analogy is absurd. First, *none* of the government communications described in those hypotheticals even approximates the relentless badgering, express demands for censorship and demotion, and implied threats of adverse consequences from failing to yield to the government's demands. For example, I am not familiar with any examples in American history where the United States government hinted that it was exploring reforms to the antitrust laws in response to reporting in the *New York Times* that contradicted the government's narrative.

Second, there is a massive difference between trying to pressure the *New York Times* into changing *its* opinion or coverage, versus pressuring Twitter or Facebook to censor the speech of third parties *who weren't even aware they were the subject of a government censorship effort*. In fact, a logical inference from the apparent ubiquity of the practice of "demoting" or reducing certain visibility of certain posts, as opposed to

simply deleting them, is that merely demoting them will make it much more difficult to determine whether one is in fact being shadowbanned as opposed to banned outright.<sup>23</sup> If information is believed to be false and/or dangerous, what would be the point in simply “demoting” the content so that fewer people are exposed to it—unless the actual purpose is to effectively censor it without tipping off the speaker (or listeners) as to what is happening.

Third, in the power dynamic between a newspaper like the *New York Times* and the government, the *Times* holds its own cards—the power to establish its own editorial policies on how to cover the administration, which shapes public perceptions of the administration’s performance and public opinion. The administration and the newspaper’s reporters are repeat players and both hold some power with respect to one another, thus both parties are reluctant to push too far in making demands of the other. No such restraint exists with respect to the relationship of social media companies to the government, in which the government holds all of the power and, as was clear here, is prepared to use it to accomplish its political goals. It is not a coincidence that the administration chose to attack social media companies for “killing people” and demand that they censor the speech of third parties and not major newspapers or news channels that gave air to similar opinions.

Under these circumstances and power dynamics threats by high-ranking government officials need not be very overt or “ham-handed” (as Justice Alito put it) for the recipient to understand the not-so-subtle message. Instead, as one of the Fifth Circuit Judges remarked at oral argument, it will be sufficient to invoke the old Hollywood

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<sup>23</sup> Facebook’s communications also make repeated reference to a strategy to “blackhole” certain links, which seems to be a technique of making the visibility of certain links disappear without actually blocking them.

mafioso line, “Nice little social media platform you got here, it would be a shame if something happened to it” in order to obtain their desired results.

Yes, the government has some First Amendment right to express its opinion. (I leave aside the glaring irony that those who are most adamant about protecting the government’s right to “speak” here are often those who are also most opposed to the idea that corporations have free speech rights under *Citizen’s United*). Even recognizing that principle, any sensible and moral reading of the First Amendment should recognize that in choosing between the government’s right to speak and the rights of private individuals to speak and hear views that are important to the democratic process and their families’ health and welfare, we should err on the side of the latter. That is especially the case when, as here, the government’s supposed “speech” is nothing more than secretive tantrums and demands for *silencing* the speech of third parties. And even more, when as here, the speech that the government was demanding to be removed was *true* speech and the government was seeking to replace it with false speech.

### **Conclusion**

I am grateful to this subcommittee for conducting this hearing and its ongoing investigations into the abusive conduct of the federal government in censoring individual speech and the ability to hear undistorted views on important questions of public policy and individual health. As Judge Doughty wrote, “if the allegations made by Plaintiffs are true, the present case arguably involves the most massive attack against free speech in United States’ history.”

A friend of mine who is in the leadership of the Covid vaccine-injured support group React19.org has been diagnosed with Chronic Inflammatory Demyelinating Polyneuropathy (CIDP), which is an autoimmune response where his immune system is eating away at the protective myelin sheath that insulates the nerves all over his body, as a side-effect of receiving a Covid vaccination.<sup>24</sup> He joined a Facebook support group along with tens of thousands of others for those suffering from Covid vaccine injuries.

What did Facebook do? It terminated the group.<sup>25</sup>

Maybe some sadistic Facebook employee unilaterally decided take this cruel act without government pressure. But maybe it was because of the unrelenting hectoring and threats against Facebook by White House officials like Andrew Slavitt, Rob Flaherty, and others. Whoever is responsible, it is sick and it is wrong.

This is not some political parlor game. This is my life. And the lives of many others. Americans should have the right not to have the federal government targeting them for censorship simply for expressing their views on the issues of the day. Of course the government can express its opinion on matters of public concern. But when the “opinion” of government officials is “Shut that guy up, or else...” delivered behind closed doors, then it has gone beyond what any sane and decent American thinks is acceptable behavior by the government.

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<sup>24</sup> CIDP is a documented side effect of the Covid vaccines. See Holly Keeley, et al., *CIDP in an Adolescent After Pfizer-BioNTech COVID-19 Vaccination*, PRACTICAL NEUROLOGY 46 (Nov. 2023); Irma Nora Duncan, et al., *A Case of Chronic Inflammatory Demyelinating Polyneuropathy after Pfizer COVID-19 Vaccination*, 98(18) NEUROLOGY (May 3, 2022); Tyler Grantham, et al., *Recurrent Acute-Onset of Chronic Inflammatory Demyelinating Polyneuropathy after COVID-19 Vaccination*, 33 IDCASES e01809 (2023); Sooyoung Kim, et al., *Two Case Reports of Chronic Inflammatory Demyelinating Polyneuropathy After COVID-19 Vaccination*, 38(8) J. KOREAN MED. SCI. e57 (Feb. 27, 2023).

<sup>25</sup> See Brief of *Amici Curiae* The Manhattan Institute, React19, and Three Vaccine-Injured Individuals in Support of Respondents, *Murthy v. State of Missouri*, Supreme Court of the United States (Feb. 8, 2024), available in [https://www.supremecourt.gov/DocketPDF/23/23-411/300113/20240208125205732\\_Murthy%20v%20Missouri%20merits.pdf](https://www.supremecourt.gov/DocketPDF/23/23-411/300113/20240208125205732_Murthy%20v%20Missouri%20merits.pdf).

Thank you for your time and the opportunity to appear before you today and I am happy to take any questions you may have.

# APPENDIX



Hi The Real World Show,

Our team has reviewed your content, and, unfortunately, we think it violates our [medical misinformation policy](#). We've removed the following content from YouTube:

**View:** [Episode 10: "Vaccine Mandates" with Professor Todd Zuckerman from Vermont](#)



We know that this might be disappointing, but it's important to us that YouTube is a safe place for all. If content breaks our rules, we remove it. If you think we've made a mistake, you can appeal and we'll take another look. Keep reading for more details.

## How your content violated the policy

YouTube does not allow content that spreads medical misinformation that contradicts local health authorities or the World Health Organization (WHO) medical information about COVID-19. Learn more [here](#).

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## How this affects your channel

Because it's the first time, this is just a warning. If it happens again, your channel will get a strike and you won't be able to do things like upload, post, or live stream for 1 week.

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We want to help you stay on YouTube, so please:

- Make sure you understand YouTube's [Community Guidelines and rules](#) [here](#).
- Review your content with our policies in mind. If after reviewing your content you think we made a mistake, let us know. You can appeal this decision [here](#).

Sincerely,  
The YouTube Team

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