

# [***Supreme Court to debate whether White House crosses First Amendment line on social media disinformation***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6BK3-0YF1-DY7V-G018-00000-00&context=1516831)

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**Body**

(CNN) &#8212; For doctors like Eileen Barrett, a pending Supreme Court case challenging the government's ability to communicate with social media companies isn't principally a fight about the fraught ***politics*** of online speech.

Instead, they say, it's a matter of life and death.

"I have seen countless statements that are at best problematic and at worst flat-out disinformation that I'm terribly fearful are causing harm to patients," said Barrett, who chairs the board of regents of the American College of Physicians. "We've all taken care of somebody who has died from the flu. And now we've all taken care of people who have died from Covid."

Biden administration officials have for years persuaded social media platforms such as Facebook and X to take down posts that include misinformation about vaccines, the Covid-19 pandemic and the 2020 election, among other things.

But the Supreme Court must now decide whether those efforts go too far - when the government, in other words, veers into censorship on social media that violates the First Amendment.

The case could prove pivotal to the 2024 election. Its outcome could determine whether the Department of Homeland Security can legally flag posts to social media companies that may be the work of foreign disinformation agents seeking to disrupt the race. Blocking that line of communication would undo years of collaboration that began as a response to bombshell revelations that Russia tried to meddle in the 2016 US elections.

Republican officials in two states - Missouri and Louisiana - and five social media users sued over the practice in 2022, arguing that the White House did far more than "persuade" the tech giants to take down a few deceptive posts. Instead, they say, the Biden administration engaged in an informal, backdoor campaign of coercion to silence voices it disagreed with - a practice known as "[*jawboning*](https://www.lawfaremedia.org/article/informal-government-coercion-and-problem-jawboning)."

They say the decision by social media companies to [*suppress coverage of Hunter Biden's laptop*](https://www.cnn.com/2023/02/08/politics/twitter-hearing-house-oversight/index.html) in late 2020 is evidence of the type of unconstitutional government influence they are challenging. The plaintiffs also say the FBI leaned on platforms to remove content it identified as "foreign" when the posts were actually written by Americans.

"The result of this was to silence entire narratives," said Jenin Younes, litigation counsel for the New Civil Liberties Alliance, a legal advocacy group that frequently challenges government regulations and that is representing the private plaintiffs in the case. "Policies were adopted without the public hearing those views and that's exactly why we have a First Amendment, so the government can't do stuff like that."

Supreme Court in the middle of social media and free speech intersection

Oral arguments in the case, Murthy v. Missouri, arrive at a moment when courts and policymakers are grappling with the power of social media to influence everything from a patient's medical decisions to the outcome of a presidential election. At times the debates around social media have prompted bipartisan responses, such as legislation approved by the House on Wednesday that [*could lead to a nationwide ban against TikTok*](https://www.cnn.com/2024/03/13/politics/house-vote-tiktok-ban-bill/index.html).

But legal fights over social media at the Supreme Court this year have taken on a partisan hue.

The high court is also considering state laws approved by [*Florida and Texas designed to stop social media*](https://www.cnn.com/2024/02/26/politics/takeaways-supreme-court-at-odds-over-texas-florida-social-media-laws/index.html) giants from throttling conservative views. Those laws are being challenged by a trade group representing social media firms that has claimed they trample over the companies' First Amendment rights.

The First Amendment bars government-imposed restrictions on free speech. That prohibition doesn't extend to private entities like Facebook, which are free to make whatever decisions about content they choose.

But the Supreme Court has ruled in past decisions that private entities can become "state actors," and be subject to First Amendment scrutiny, when the government compels them to take action.

The administration argues it did not compel platforms to do anything because, it says, it never threatened social media companies with negative consequences if they refused to heed its advice.

"Government officials do not violate the First Amendment when they speak in public or in private to inform, to persuade, or to criticize speech by others," the US government [*wrote in a brief*](https://www.supremecourt.gov/DocketPDF/23/23-411/293780/20231219192259919_23-411ts%20Murthy.pdf).

Testimony in the case [*by an FBI official*](https://www.cnn.com/2022/12/23/politics/twitter-files-elon-musk-fbi-hunter-biden-laptop/index.html) showed that social media companies frequently made their own decisions about how to handle input from the government. In many situations, the official testified, companies flat-out ignored the government's flags or suggestions about content that appeared to violate their own terms of service.

Internal communications related to Twitter's handling of the Hunter Biden laptop story also highlighted how high-level company officials [*were divided*](https://www.cnn.com/2022/12/02/tech/musk-twitter-hunter-biden/index.html) on whether to suppress coverage of the story, contrary to suggestions by some critics that social media platforms demoted it because of government pressure or their own ideological bias.

"The government has no authority to threaten platforms into censoring protected speech," said Alex Abdo with the Knight First Amendment Institute at Columbia University. "But it must have the ability to participate in public discourse so that it can effectively govern and inform the public of its views."

Conservative judges have sided with challengers thus far

A federal judge in Louisiana who initially reviewed the case [*blocked the White House*](https://www.cnn.com/2023/07/04/tech/biden-administration-social-media-companies-communication-covid-censorship/index.html) and a slew of federal agencies from communicating with social media companies about removing content in a sweeping preliminary injunction last year.

A three-judge panel of the 5th US Circuit Court of Appeals scaled back the injunction last fall, narrowing its scope to a few agencies it said likely violated the First Amendment: the White House, US Surgeon General Vivek Murthy, the Centers for Disease Control and Prevention, the Cybersecurity and Infrastructure Security Agency and the FBI.

After the Biden administration filed an emergency appeal last year, the Supreme Court temporarily paused the injunction - in other words, allowing federal officials to continue the communications - and agreed to hear the case.

Conservative Justices Samuel Alito, Neil Gorsuch and Clarence Thomas said they disagreed with that decision.

"At this time in the history of our country, what the court has done, I fear, will be seen by some as giving the government a green light to use heavy-handed tactics to skew the presentation of views on the medium that increasingly dominates the dissemination of news," Alito wrote. "That is most unfortunate."

The dispute has drawn interest from state and county election officials who are worried about a decision that might limit their ability to fight election disinformation. In a separate brief, media organizations warn of a "chilling of the free flow of information" if the court rules broadly for the plaintiffs. [*Independent presidential candidate Robert F. Kennedy Jr.*](https://www.cnn.com/2023/12/15/politics/robert-kennedy-covid-vaccine-antisemitism/index.html), who has opposed Covid-19 vaccines and policies intended to reduce the spread of the virus, tried to intervene in the case but was denied.

A ruling against the US government would threaten research and speech by independent watchdogs and discourage vital work to secure America's elections, according to civil rights advocates.

"Information sharing between and among government agencies, voting rights organizations, and social media companies is crucial in guarding against emerging threats, particularly to vulnerable communities," a trio of prominent civil rights groups wrote [*in a filing*](https://www.supremecourt.gov/DocketPDF/23/23-411/294175/20231222150605479_23-411tsacTheLawyersCommitteeForCivilRightsUnderLaw.pdf).

From the doctors' perspective, the trends around vaccine hesitancy are moving in the wrong direction. Dr. Benjamin Hoffman, president of the American Academy of Pediatrics, blames misinformation on social media as a big part of the reason why.

The medical groups, which are supporting the Biden administration, were represented by Democracy Forward Foundation, a left-leaning legal advocacy group.

"We have to deal day in and day out with the ramifications of myths and disinformation around health issues, in general, but specifically about vaccines," said Hoffman, a practicing pediatrician in Oregon. "While our concern is not necessarily the crux of the Supreme Court case, the impact is really, really significant."

By John Fritze and Brian Fung, CNN

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