

# Gift of Freedom on Independence Day



By Paul Engel

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- Can one preliminary injunction really make a difference for Freedom of Speech and Press?
- With all the evidence that the Biden Administration have been working to censor the American people through social media, what does Judge Doughty's preliminary injunction mean for our rights?
- Which do you think is worse, the number of examples of illegal activity or the number of administration officials who are implicated?

I don't think I'm exaggerating today that Judge Terry Doughty did more to protect Freedom of Speech and Press in America in my lifetime, possibly since the Bill of Rights was ratified in 1791. What could one man do that had such a tremendous impact? How could one preliminary injunction be so important? While there has been plenty of hype about judge Doughty's order, from both sides, as I have taken the time to review it, I am impressed both by its scope and its quotations, of both the Constitution and the Founding Fathers to prove the rightness of its position. What decision of a judge could have such an impact on the rights of the American people? The recognition of its infringement on one of our most basic rights: The freedom of expression, and the willingness to stand against it.

Some may say it's fate that this judge issued his order on the 4th of July, 2023. I see it as providence that this judge has once again honored that date as our Independence Day!

As I said in the opening, there has been a lot of talk about this judge's preliminary injunction against the Biden Administration, not all of it accurate. I gave my preliminary observation on the [Radio Program](#), and have to say, I was impressed, mostly by the scope of those enjoined. It took me a while to review the injunction itself, which impressed me even more.

## **Background**

*I may disapprove of what you say, but I would defend to the death your right to say it.*

*Evelyn Beatrice Hill, 1906, The Friends of Voltaire*

*This case is about the Free Speech Clause in the First Amendment to the United States Constitution. The explosion of social-media platforms has resulted in unique free speech issues— this is especially true in light of the COVID-19 pandemic. If the allegations made by Plaintiffs are true, the present case arguably involves the most massive attack against free speech in United States' history. In their attempts to suppress alleged disinformation, the Federal Government, and particularly the Defendants named here, are alleged to have blatantly ignored the First Amendment's right to free speech.*

## **[Missouri v. Biden – Preliminary Injunction](#)**

The introduction to the order starts with one of my favorite free speech quotes from Evelyn Beatrice Hill. Anyone who has followed [The Constitution Study](#) for any length of time knows that many so called "First Amendment" cases cannot be so because the first five words of the First Amendment are:

*Congress shall make no law...*

## [U.S. Constitution, Amendment I](#)

Since most so-called First Amendment disputes have nothing to do with Congress, they cannot be violations of the First Amendment. However, this case involves the federal government, the President of the United States, and numerous members of the Executive Branch, which were created by Congress. So this truly is a First Amendment case. Although plaintiffs claim a violation of the Free Speech Clause, it involves more violations of the Free Press Clause. Why? Because most of the censorship claimed involved the posting of information and videos, which falls under the definition of press, not speech.

*The art or business of printing and publishing.*

## [Press \(noun\) – Webster's 1828 Dictionary](#)

That detail aside, what grievances are the plaintiffs claiming?

*Plaintiffs allege that Defendants, through public pressure campaigns, private meetings, and other forms of direct communication, regarding what Defendants described as "disinformation," "misinformation," and "malinformation," have colluded with and/or coerced social-media platforms to suppress disfavored speakers, viewpoints, and content on social-media platforms. Plaintiffs also allege that the suppression constitutes government action, and that it is a violation of Plaintiffs' freedom of speech under the First Amendment to the United States Constitution.*

*First Amendment states:*

*Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof: **or abridging the freedom of speech**, or of the press; or the right*

*of the people peaceably to assemble, and to petition the Government for a redress of grievances. (emphasis added).*

*First Amendment, U.S. Const. amend. I.*

### [Missouri v. Biden – Preliminary Injunction](#)

It is so rare to find a judge actually quoting the Constitution, I find this a breath of fresh air. The judge then explains why freedom of speech is so important.

*The principal function of free speech under the United States' system of government is to invite dispute; it may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger... Freedom of speech and press is the indispensable condition of nearly every other form of freedom. ...*

### [Missouri v. Biden – Preliminary Injunction](#)

Then, before getting into the details of the case, Judge Doughty quotes several of our Founding Fathers on the topic of free speech:

*The following quotes reveal the Founding Fathers' thoughts on freedom of speech:*

*For if men are to be precluded from offering their sentiments on a matter, which may involve the most serious and alarming consequences, that can invite the consideration of mankind, reason is of no use to us; the freedom of speech may be taken away, and dumb and silent we may be led, like sheep, to the slaughter.*

*George Washington, March 15, 1783.*

*Whoever would overthrow the liberty of a nation must begin by subduing the free acts of speech.*

*Benjamin Franklin, Letters of Silence Dogwood.*

*Reason and free inquiry are the only effectual agents against error.*

*Thomas Jefferson.*

## [Missouri v. Biden – Preliminary Injunction](#)

### **The Allegations**

The judge then goes into the actual allegations that led to the injunction.

*In this case, Plaintiffs allege that Defendants suppressed conservative-leaning free speech, such as: (1) suppressing the Hunter Biden laptop story prior to the 2020 Presidential election; (2) suppressing speech about the lab-leak theory of COVID-19's origin; (3) suppressing speech about the efficiency of masks and COVID-19 lockdowns; (4) suppressing speech about the efficiency of COVID-19 vaccines; (5) suppressing speech about election integrity in the 2020 presidential election; (6) suppressing speech about the security of voting by mail; (7) suppressing parody content about Defendants; (8) suppressing negative posts about the economy; and (9) suppressing negative posts about President Biden.*

## [Missouri v. Biden – Preliminary Injunction](#)

That is quite a list of accusations. He then goes into the details of the alleged suppression of freedom of speech (press), a list too long for me to go into detail here. While the case is called Missouri v. Biden, there are actually a number of plaintiffs:

*Plaintiffs consist of the State of Missouri, the State of Louisiana, Dr. Aaron Kheriaty ("Kheriaty"), Dr. Martin Kulldorff ("Kulldorff"), Jim Hoft ("Hoft"), Dr. Jayanta Bhattacharya ("Bhattacharya"), and Jill Hines ("Hines").*

## Missouri v. Biden – Preliminary Injunction

Each of these plaintiffs is alleging that the Biden Administration suppressed their speech by pressuring social media companies censor, remove, de-platform, or otherwise suppress plaintiff's content for them.

*The following facts are pertinent to the analysis of whether or not Plaintiffs are entitled to the granting of an injunction.*

*Plaintiffs assert that since 2018, federal officials, including Defendants, have made public statements and demands to social-media platforms in an effort to induce them to censor disfavored speech and speakers. Beyond that, Plaintiffs argue that Defendants have threatened adverse consequences to social-media companies, such as reform of Section 230 immunity under the Communications Decency Act, antitrust scrutiny/enforcement, increased regulations, and other measures, if those companies refuse to increase censorship. Section 230 of the Communications Decency Act shields social-media companies from liability for actions taken on their websites, and Plaintiffs argue that the threat of repealing Section 230 motivates the social-media companies to comply with Defendants' censorship requests. Plaintiffs also note that Mark Zuckerberg ("Zuckerberg"), the owner of Facebook, has publicly stated that the threat of antitrust enforcement is "an existential threat" to his platform. ...*

*Plaintiffs assert that by using emails, public and private messages, public and private meetings, and other means, the White House Defendants have "significantly encouraged" and "coerced" social-media platforms to suppress protected free speech posted on social-media platforms.*

## Missouri v. Biden – Preliminary Injunction

The injunction then goes on to cite almost 150 specific instances of members of the Biden administration encouraging,

coercing, and bullying social media platforms to censor content from the plaintiffs, in violation of the First Amendment. Again, that's too long for me to go into here.

## **The Injunction**

Someone does not deserve an injunction simply because they claim a grievance.

*The standard for an injunction requires a movant to show: (1) the substantial likelihood of success on the merits; (2) that he is likely to suffer irreparable harm in the absence of an injunction; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. ... The party seeking relief must satisfy a cumulative burden of proving each of the four elements enumerated before an injunction can be granted. ...*

### **Missouri v. Biden – Preliminary Injunction**

Judge Doughty then looks at the arguments for and against each factor required for the plaintiffs to get their injunction. In short, the judge found that the plaintiffs are likely to succeed on the merits of their case. Due to the number of defendants listed, this explanation takes up a significant percentage of the injunction, over 50 pages in fact. The judge also notes that:

*Additionally, violation of a First Amendment constitutional right, even for a short period of time, is always irreparable injury.*

### **Missouri v. Biden – Preliminary Injunction**

On the question of balance of equities, the judge states:

*Plaintiffs' free speech rights thus far outweighs the rights of Defendants, and thus, Plaintiffs satisfy the final elements needed to show entitlement to a preliminary injunction.*

## Missouri v. Biden – Preliminary Injunction

With all of the required elements satisfied, the judge was bound to issue the injunction, again beginning with another quote.

*Once a government is committed to the principle of silencing the voice of opposition, it has only one place to go, and that is down the path of increasingly repressive measures, until it becomes a source of terror to all its citizens and creates a country where everyone lives in fear.*

Harry S. Truman

*The Plaintiffs are likely to succeed on the merits in establishing that the Government has used its power to silence the opposition. Opposition to COVID-19 vaccines; opposition to COVID-19 masking and lockdowns; opposition to the lab-leak theory of COVID-19; opposition to the validity of the 2020 election; opposition to President Biden's policies; statements that the Hunter Biden laptop story was true; and opposition to policies of the government officials in power. All were suppressed. It is quite telling that each example or category of suppressed speech was conservative in nature. This targeted suppression of conservative ideas is a perfect example of viewpoint discrimination of political speech. American citizens have the right to engage in free debate about the significant issues affecting the country.*

*Although this case is still relatively young, and at this stage the Court is only examining it in terms of Plaintiffs' likelihood of success on the merits, the evidence produced thus far depicts an almost dystopian scenario. During the COVID-19 pandemic, a period perhaps best characterized by widespread doubt and uncertainty, the United States Government seems to have assumed a role similar to an Orwellian "Ministry of Truth."*

## Missouri v. Biden – Preliminary Injunction



This summation of the evidence provided so far can and should lead to only one conclusion for this judge at this time.

*The Plaintiffs have presented substantial evidence in support of their claims that they were the victims of a far-reaching and widespread censorship campaign. This court finds that they are likely to succeed on the merits of their First Amendment free speech claim against the Defendants. Therefore, a preliminary injunction should issue immediately against the Defendants as set out herein. The Plaintiffs Motion for Preliminary Injunction [Doc. No. 10] is **GRANTED IN PART and DENIED IN PART.***

### Missouri v. Biden – Preliminary Injunction

What was denied? The plaintiffs had asked for this case to be certified as a class action. That was the only part that was denied. Following the memorandum, the judge enjoined nine departments and 38 individuals from:

*(1) meeting with social-media companies for the purpose of urging, encouraging, pressuring, or inducing in any manner the removal, deletion, suppression, or reduction of content containing protected free speech posted on social-media platforms;*

*(2) specifically flagging content or posts on social-media platforms and/or forwarding such to social-media companies urging, encouraging, pressuring, or inducing in any manner for removal, deletion, suppression, or reduction of content containing protected free speech;*

*(3) urging, encouraging, pressuring, or inducing in any manner social-media companies to change their guidelines for removing, deleting, suppressing, or reducing content containing protected free speech;*

*(4) emailing, calling, sending letters, texting, or engaging in any communication of any kind with social-media companies*

*urging, encouraging, pressuring, or inducing in any manner for removal, deletion, suppression, or reduction of content containing protected free speech;*

*(5) collaborating, coordinating, partnering, switchboarding, and/or jointly working with the Election Integrity Partnership, the Virality Project, the Stanford Internet Observatory, or any like project or group for the purpose of urging, encouraging, pressuring, or inducing in any manner removal, deletion, suppression, or reduction of content posted with social-media companies containing protected free speech;*

*(6) threatening, pressuring, or coercing social-media companies in any manner to remove, delete, suppress, or reduce posted content of postings containing protected free speech;*

*(7) taking any action such as urging, encouraging, pressuring, or inducing in any manner social-media companies to remove, delete, suppress, or reduce posted content protected by the Free Speech Clause of the First Amendment to the United States Constitution;*

*(8) following up with social-media companies to determine whether the social-media companies removed, deleted, suppressed, or reduced previous social-media postings containing protected free speech;*

*(9) requesting content reports from social-media companies detailing actions taken to remove, delete, suppress, or reduce content containing protected free speech; and*

*(10) notifying social-media companies to Be on The Lookout ("B0L0") for postings containing protected free speech.*

### **Missouri v. Biden – Preliminary Injunction**

However, the request for injunction against four departments and 7 individuals, including the Disinformation Government

Board and its director Nina Jankowicz was denied. The injunction goes on to state that these departments and persons are not prohibited from informing social media companies about criminal actives, national security or public safety threats, or other permissible government speech.

## **Conclusion**

Just when I start questioning the effectiveness of the federal judiciary, we have decisions like this one. I'm not sure what disturbs me more, the number of alleged acts of censorship or the number of departments and government actors involved. Public health departments like Health and Human Services, Centers for Disease Control and Prevention, and the Surgeon General are implicated, along with security agencies like the Federal Bureau of Investigation, Department of Justice, Department of Homeland Security, and Cybersecurity and Infrastructure Security Agency are included. The surprising ones for me are the Census Bureau and the Department of State. Not only are the number of individuals names extraordinary, but look at who some of them are: White House Press Secretary Karine Jean-Pierre, Counsel to the President Stuart Delery, Special Assistant to the President Aisha Shah, White House Climate Advisor Ali Zaidi, White House Senior Advisor Andrew Slavitt, and more.

We need to remember, this is only a preliminary injunction. While it will remain in effect until the case is decided, or the injunction is overturned by a higher court, there is still a long way to go before justice can be served. That said, this injunction, not to mention the details within, gives me hope that our judicial system isn't completely corrupt.

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