

Murthy v. Missouri (2024)

603 U.S. 43

In 2020, social media companies suppressed speech that they judged to be false or misleading about the COVID-19 pandemic and applied misinformation policies during that year's election season. White House and federal public health officials regularly requested that social media companies do more to limit what they considered to be misinformation about the pandemic and COVID-19 vaccines, flagging specific posts and trends as examples. White House officials, for example, publicly and privately called on the platforms to do more to address vaccine misinformation. Surgeon General Vivek Murthy issued a health advisory that encouraged the platforms to take steps to prevent COVID-19 misinformation "from taking hold." The Centers for Disease Control and Prevention alerted the platforms to COVID-19 misinformation trends and flagged example posts. The Federal Bureau of Investigation and the Cybersecurity and Infrastructure Security Agency communicated with the platforms about election-related misinformation in advance of the 2020 presidential election and the 2022 midterms.

Two states and five individual users of social media, including Drs. Jayanta Bhattacharya, Martin Kulldorff, and Aaron Kheriaty, who questioned COVID-19 lockdown policies, filed suit against dozens of federal officials for coercing the social media companies to violate their First Amendment right to free speech. The U.S. Court of Appeals for the Fifth Circuit found that the plaintiffs had standing to bring suit and issued a preliminary injunction ordering federal officials not to "coerce or significantly encourage social-media companies to remove, delete, suppress, or reduce, including through altering their algorithms, posted social-media content containing protected free speech."

Opinion of the Court: Barrett, Roberts, Sotomayor, Kagan, Kavanaugh, Jackson.

Dissenting opinion: Alito, Thomas, Gorsuch.

JUSTICE BARRETT delivered the opinion of the Court.

During the 2020 election season and the COVID–19 pandemic, social-media platforms frequently removed, demoted, or fact checked posts containing allegedly false or misleading information. At the same time, federal officials, concerned about the spread of “misinformation” on social media, communicated extensively with the platforms about their content-moderation efforts.

The plaintiffs, two States and five social-media users, sued dozens of Executive Branch officials and agencies, alleging that they pressured the platforms to suppress protected speech in violation of the First Amendment. The Fifth Circuit agreed, concluding that the officials’ communications rendered them responsible for the private platforms’ moderation decisions. It then affirmed a sweeping preliminary injunction.

The Fifth Circuit was wrong to do so. To establish standing, the plaintiffs must demonstrate a substantial risk that, in the near future, they will suffer an injury that is traceable to a Government defendant and redressable by the injunction they seek. Because no plaintiff has carried that burden, none has standing to seek a preliminary injunction.

With their billions of active users, the world's major social-media companies host a “staggering” amount of content on their platforms. Yet for many of these companies, including Facebook, Twitter, and YouTube, not everything goes. Under their longstanding content-moderation policies, the platforms have taken a range of actions to suppress certain categories of speech. They place warning labels on some posts, while deleting others. They also “demote” content so that it is less visible to other users. And they may suspend or ban users who frequently post content that violates platform policies.

In 2020, with the outbreak of COVID–19, the platforms announced that they would enforce their policies against users who post false or misleading content about the pandemic. . . . Twitter and YouTube began applying their policies in March and May 2020, respectively. Throughout the pandemic, the platforms removed or reduced posts questioning the efficacy and safety of mask wearing and the COVID–19 vaccine, along with posts on related topics.

The platforms also applied their misinformation policies during the 2020 Presidential election season. Facebook, in late 2019, unveiled measures to counter foreign interference campaigns and voter suppression efforts. One month before the election, multiple platforms suppressed a report about Hunter Biden's laptop, believing that the story originated from a Russian hack-and-leak operation. After the election, the platforms took action against users or posts that questioned the integrity of the election results.

Over the past few years, various federal officials regularly spoke with the platforms about COVID–19 and election-related misinformation. Officials at the White House, the Office of the Surgeon General, and the Centers for Disease Control and Prevention (CDC) focused on COVID–19 content, while the Federal Bureau of Investigation (FBI) and the Cybersecurity and Infrastructure Security Agency (CISA) concentrated on elections.

. . . [White House] officials peppered Facebook (and to a lesser extent, Twitter and YouTube) with detailed questions about their policies, pushed them to suppress certain content, and sometimes recommended policy changes. Some of these communications were more aggressive than others. For example, the director of Digital Strategy, frustrated that Facebook had not removed a particular post, complained: “[L]ast time we did this dance, it ended in an insurrection.” Another official, unhappy with Facebook's supposed lack of transparency about its vaccine misinformation problems, wrote: “Internally we have been considering our options on what to do about it.” Publicly, White House communications officials called on the platforms to do more to address COVID–19 misinformation—and, perhaps as motivation, raised the possibility of reforms aimed at the platforms, including changes to the antitrust laws. . . .

. . . Surgeon General Vivek Murthy issued a health advisory on misinformation. The advisory encouraged platforms to “[r]edesign recommendation algorithms to avoid amplifying misinformation,” “[i]mpose clear consequences for accounts that repeatedly violate platform policies,” and “[p]rovide information from trusted and credible sources to prevent misconceptions from taking hold.” . . . The CDC hosted meetings and sent reports to the platforms, alerting them to misinformation trends and flagging example posts. The platforms often asked the agency for fact checks on specific claims. . . . The FBI alerted the platforms to posts containing false information about voting, as well as pernicious foreign influence campaigns that might spread on their sites. . . . CISA, through its “switchboarding” operations, forwarded third-party reports of election-related misinformation to the platforms. These communications typically stated that the agency “w[ould] not take any action, favorable or

unfavorable, toward social media companies based on decisions about how or whether to use this information.”

. . . The individual plaintiffs—three doctors, the owner of a news website, and a healthcare activist—allege that various platforms removed or demoted their COVID–19 or election-related content between 2020 and 2023. The States, Missouri and Louisiana, claim that the platforms have suppressed the speech of state entities and officials, as well as their citizens’ speech. . . . Though the platforms restricted the plaintiffs’ content, the plaintiffs maintain that the Federal Government was behind it. Acting on that belief, the plaintiffs sued dozens of Executive Branch officials and agencies, alleging that they pressured the platforms to censor the plaintiffs’ speech in violation of the First Amendment. . . .

On the merits, the Fifth Circuit explained that “a private party’s conduct may be state action if the government coerced or significantly encouraged it.” To identify coercion, it asked whether “the government compelled the [private party’s] decision by ... intimating that some form of punishment will follow a failure to comply.” The court explained that the Government significantly encourages a private party’s choice when it exercises “active, meaningful control, whether by entanglement in the party’s decision-making process or direct involvement in carrying out the decision itself.”

II

We begin—and end—with standing. At this stage, neither the individual nor the state plaintiffs have established standing to seek an injunction against any defendant. We therefore lack jurisdiction to reach the merits of the dispute.

A

Article III of the Constitution limits the jurisdiction of federal courts to “Cases” and “Controversies.” The “case or controversy” requirement is “fundamental to the judiciary’s proper role in our system of government.” Federal courts can only review statutes and executive actions when necessary “to redress or prevent actual or imminently threatened injury to persons caused by ... official violation of law.” As this Court has explained, “[i]f a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so.”

A proper case or controversy exists only when at least one plaintiff “establish[es] that [she] ha[s] standing to sue.” She must show that she has suffered, or will suffer, an injury that is “concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.”

B

. . . The primary weakness in the record of past restrictions is the lack of specific causation findings with respect to any discrete instance of content moderation. . . . [T]he platforms moderated similar content long before any of the Government defendants engaged in the challenged conduct. In fact, the platforms, acting independently, had strengthened their pre-existing content-moderation policies before the Government defendants got involved. For instance, Facebook announced an expansion of its COVID—19 misinformation policies in early February 2021, before White House officials began communicating with the platform. And the platforms continued to exercise their independent judgment even after communications with the defendants began.

The plaintiffs rely on allegations of past Government censorship as evidence that future censorship is likely. But they fail, by and large, to link their past social-media restrictions to the defendants' communications with the platforms. Thus, the events of the past do little to help any of the plaintiffs establish standing to seek an injunction to prevent future harms. . . .

Jayanta Bhattacharya, Martin Kulldorff, and Aaron Kheriaty. These plaintiffs are doctors who questioned the wisdom of then-prevailing COVID–19 policies, including lockdowns and mask and vaccine mandates. Each faced his first social-media restriction in 2020, before the White House and the CDC entered discussions with the relevant platforms. But neither the timing nor the platforms line up, . . . so the plaintiffs cannot show that these restrictions were traceable to the White House officials. . . .

The plaintiffs' counterarguments do not persuade. First, they argue that they suffer "continuing, present adverse effects" from their past restrictions, as they must now self-censor on social media. But the plaintiffs "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." And as we explained, the plaintiffs have not shown that they are likely to face a risk of future censorship traceable to the defendants.

Second, the plaintiffs and the dissent suggest that the platforms continue to suppress their speech according to policies initially adopted under Government pressure. That may be true. But the plaintiffs have a redressability problem. "To determine whether an injury is redressable," we "consider the relationship between 'the judicial relief requested' and the 'injury' suffered." The plaintiffs assert several injuries—their past social-media restrictions, current self-censorship, and likely social-media restrictions in the future. The requested judicial relief, meanwhile, is an injunction stopping certain Government agencies and employees from coercing or encouraging the platforms to suppress speech. A court could prevent these Government defendants from interfering with the platforms' independent application of their policies. But without evidence of continued pressure from the defendants, it appears that the platforms remain free to enforce, or not to enforce, those policies—even those tainted by initial governmental coercion.

JUSTICE ALITO, with whom JUSTICE THOMAS and JUSTICE GORSUCH join, dissenting.

This case involves what the District Court termed "a far-reaching and widespread censorship campaign" conducted by high-ranking federal officials against Americans who expressed certain disfavored views about COVID–19 on social media. Victims of the campaign perceived by the lower courts brought this action to ensure that the Government did not continue to coerce social media platforms to suppress speech. Among these victims were two States, whose public health officials were hampered in their ability to share their expertise with state residents; distinguished professors of medicine at Stanford and Harvard; a professor of psychiatry at the University of California, Irvine School of Medicine; the owner and operator of a news website; and Jill Hines, the director of a consumer and human rights advocacy organization. All these victims simply wanted to speak out on a question of the utmost public importance.

If the lower courts' assessment of the voluminous record is correct, this is one of the most important free speech cases to reach this Court in years. Freedom of speech serves many valuable purposes, but its most important role is protection of speech that is essential to democratic self-government, and speech that advances humanity's store of knowledge, thought,

and expression in fields such as science, medicine, history, the social sciences, philosophy, and the arts.

The speech at issue falls squarely into those categories. It concerns the COVID–19 virus, which has killed more than a million Americans. Our country's response to the COVID–19 pandemic was and remains a matter of enormous medical, social, political, geopolitical, and economic importance, and our dedication to a free marketplace of ideas demands that dissenting views on such matters be allowed. I assume that a fair portion of what social media users had to say about COVID–19 and the pandemic was of little lasting value. Some was undoubtedly untrue or misleading, and some may have been downright dangerous. But we now know that valuable speech was also suppressed. That is what inevitably happens when entry to the marketplace of ideas is restricted.

Of course, purely private entities like newspapers are not subject to the First Amendment, and as a result, they may publish or decline to publish whatever they wish. But government officials may not coerce private entities to suppress speech, and that is what happened in this case.

. . . [H]ere is what the record plainly shows. For months in 2021 and 2022, a coterie of officials at the highest levels of the Federal Government continuously harried and implicitly threatened Facebook with potentially crippling consequences if it did not comply with their wishes about the suppression of certain COVID–19-related speech. Not surprisingly, Facebook repeatedly yielded. As a result Hines was indisputably injured, and due to the officials' continuing efforts, she was threatened with more of the same when she brought suit. These past and threatened future injuries were caused by and traceable to censorship that the officials coerced, and the injunctive relief she sought was an available and suitable remedy. This evidence was more than sufficient to establish Hines's standing to sue, and consequently, we are obligated to tackle the free speech issue that the case presents. The Court, however, shirks that duty and thus permits the successful campaign of coercion in this case to stand as an attractive model for future officials who want to control what the people say, hear, and think.

That is regrettable. What the officials did in this case was more subtle than the ham-handed censorship found to be unconstitutional in *National Rifle Association v. Vullo* (2024), but it was no less coercive. And because of the perpetrators' high positions, it was even more dangerous. It was blatantly unconstitutional, and the country may come to regret the Court's failure to say so. Officials who read today's decision together with *Vullo* will get the message. If a coercive campaign is carried out with enough sophistication, it may get by. That is not a message this Court should send.

First, social media have become a leading source of news for many Americans, and with the decline of other media, their importance may grow.

Second, internet platforms, although rich and powerful, are at the same time far more vulnerable to Government pressure than other news sources. If a President dislikes a particular newspaper, he (fortunately) lacks the ability to put the paper out of business. But for Facebook and many other social media platforms, the situation is fundamentally different. They are critically dependent on the protection provided by § 230 of the Communications Decency Act of 1996, which shields them from civil liability for content they spread. They are vulnerable to antitrust actions; indeed, Facebook CEO Mark Zuckerberg has described a potential antitrust lawsuit as an “existential” threat to his company. And because their substantial overseas

operations may be subjected to tough regulation in the European Union and other foreign jurisdictions, they rely on the Federal Government's diplomatic efforts to protect their interests.

For these and other reasons, internet platforms have a powerful incentive to please important federal officials, and the record in this case shows that high-ranking officials skillfully exploited Facebook's vulnerability. When Facebook did not heed their requests as quickly or as fully as the officials wanted, the platform was publicly accused of “killing people” and subtly threatened with retaliation.

Not surprisingly these efforts bore fruit. Facebook adopted new rules that better conformed to the officials’ wishes, and many users who expressed disapproved views about the pandemic or COVID–19 vaccines were “deplatformed” or otherwise injured.

I

A

. . . The story starts in early 2021, when White House officials began communicating with Facebook about the spread of misinformation about COVID–19 on its platform. Their emails started as questions, e.g., “Can you also give us a sense of misinformation that might be falling outside of your removal polices?” But when the White House did not get the results it wanted, its questions quickly turned to virtual demands. And sometimes, those statements were paired with explicit references to potential consequences. [The dissent presents detailed accounts of the interactions between Facebook and Biden administration officials].

. . . Perhaps the most intense period of White House pressure began [in July, 2021]. Surgeon General Vivek Murthy released an advisory titled “Confronting Health Misinformation.” Dr. Murthy suggested, among other things, algorithmic changes to demote misinformation and additional consequences for misinformation “super-spreaders.” Dr. Murthy also joined [White House press secretary Jen] Psaki at a press conference, where he asked the platforms to take “much, much more . . . aggressive action” to combat COVID–19 misinformation “because it's costing people their lives.”

At the same press conference, Psaki singled out Facebook as a primary driver of misinformation and asked the platform to make several changes. Facebook “should provide, publicly and transparently, data on the reach of COVID–19 [and] COVID vaccine misinformation.” It “needs to move more quickly to remove harmful, violative posts.” And it should change its algorithm to promote “quality information sources.” . . . The White House “engage[s] with [Facebook] regularly,” she said, and Facebook “certainly understand[s] what our asks are.” Apparently, the White House had not gotten everything it wanted from those private conversations, so it was turning up the heat in public.

Facebook responded by telling the press that it had partnered with the White House to counter misinformation and that it had “removed accounts that repeatedly break the rules” and “more than 18 million pieces of COVID misinformation.” But at another press briefing the next day, Psaki said these efforts were “[c]learly not” sufficient and expressed confidence that Facebook would “make decisions about additional steps they can take

That same day, President Biden told reporters that social media platforms were “killing people” by allowing COVID-related misinformation to circulate. And far from disclaiming potential regulatory action, the White House confirmed that it had not “taken any options off the

table.” [A White House official] said that the White House was “reviewing” whether [federal law] should be amended to open the platforms to suit.

Facebook responded quickly. The same day the President made his “killing people” remark, the platform reached out to Dr. Murthy to determine “the scope of what the White House expects from us on misinformation going forward.” The next day, Facebook asked officials about how to “get back to a good place” with the White House. And soon after, Facebook sent an email saying that it “hear[d]” the officials’ “call for us to do more,” and promptly assured the White House that it would comply. In spite of the White House’s inflammatory rhetoric, Facebook at all times went out of its way to strike a conciliatory tone. Only two days after the President’s remark—and before his supposed clarification—Facebook assured Dr. Murthy that, though “it’s not great to be accused of killing people,” Facebook would “find a way to deescalate and work together collaboratively.”

. . . What these events show is that top federal officials continuously and persistently hectorated Facebook to crack down on what the officials saw as unhelpful social media posts, including not only posts that they thought were false or misleading but also stories that they did not claim to be literally false but nevertheless wanted obscured. And Facebook’s reactions to these efforts were not what one would expect from an independent news source or a journalistic entity dedicated to holding the Government accountable for its actions. Instead, Facebook’s responses resembled that of a subservient entity determined to stay in the good graces of a powerful taskmaster. . . .

While all this was going on, Jill Hines and others were subjected to censorship. The Government concedes that Hines suffered past injury, but it claims that she did not make the showing needed to obtain prospective relief. Both the District Court and the Court of Appeals rejected this argument and found that Hines had shown that she was likely to be censored in the future. But no matter what test is applied, the record clearly shows that Hines was still being censored when she sued—and that the censorship continued thereafter. That was sufficient to establish the type of injury needed to obtain injunctive relief. Hines did not need to prove that it was only because of [Biden administration] officials’ conduct that she was censored. Rather, it was enough for her to show that one predictable effect of the officials’ action was that Facebook would modify its censorship policies in a way that affected her.