

HEARING ON THE WEAPONIZATION OF THE FEDERAL GOVERNMENT

HEARING BEFORE THE SELECT SUBCOMMITTEE ON THE WEAPONIZATION OF THE FEDERAL GOVERNMENT OF THE COMMITTEE ON THE JUDICIARY U.S. HOUSE OF REPRESENTATIVES ONE HUNDRED EIGHTEENTH CONGRESS SECOND SESSION

WEDNESDAY, MAY 1, 2024

Serial No. 118–73

Printed for the use of the Committee on the Judiciary



Available via: <http://judiciary.house.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

WASHINGTON : 2024

COMMITTEE ON THE JUDICIARY

JIM JORDAN, Ohio, *Chair*

DARRELL ISSA, California	JERROLD NADLER, New York, <i>Ranking Member</i>
MATT GAETZ, Florida	ZOE LOFGREN, California
ANDY BIGGS, Arizona	SHEILA JACKSON LEE, Texas
TOM McCLINTOCK, California	STEVE COHEN, Tennessee
TOM TIFFANY, Wisconsin	HENRY C. "HANK" JOHNSON, JR., Georgia
THOMAS MASSIE, Kentucky	ADAM SCHIFF, California
CHIP ROY, Texas	ERIC SWALWELL, California
DAN BISHOP, North Carolina	TED LIEU, California
VICTORIA SPARTZ, Indiana	PRAMILA JAYAPAL, Washington
SCOTT FITZGERALD, Wisconsin	J. LUIS CORREA, California
CLIFF BENTZ, Oregon	MARY GAY SCANLON, Pennsylvania
BEN CLINE, Virginia	JOE NEGUSE, Colorado
KELLY ARMSTRONG, North Dakota	LUCY McBATH, Georgia
LANCE GOODEN, Texas	MADELEINE DEAN, Pennsylvania
JEFF VAN DREW, New Jersey	VERONICA ESCOBAR, Texas
TROY NEHLS, Texas	DEBORAH ROSS, North Carolina
BARRY MOORE, Alabama	CORI BUSH, Missouri
KEVIN KILEY, California	GLENN IVEY, Maryland
HARRIET HAGEMAN, Wyoming	BECCA BALINT, Vermont
NATHANIEL MORAN, Texas	
LAUREL LEE, Florida	
WESLEY HUNT, Texas	
RUSSELL FRY, South Carolina	
Vacancy	

SELECT SUBCOMMITTEE ON THE WEAPONIZATION OF THE FEDERAL GOVERNMENT

JIM JORDAN, Ohio, *Chair*

DARRELL ISSA, California	STACEY PLASKETT, Virgin Islands, <i>Ranking Member</i>
THOMAS MASSIE, Kentucky	STEPHEN LYNCH, Massachusetts
ELISE M. STEFANIK, New York	LINDA SANCHEZ, California
MATT GAETZ, Florida	DEBBIE WASSERMAN SCHULTZ, Florida
KELLY ARMSTRONG, North Dakota	GERRY CONNOLLY, Virginia
W. GREGORY STEUBE, Florida	JOHN GARAMENDI, California
DAN BISHOP, North Carolina	SYLVIA GARCIA, Texas
KAT CAMMACK, Florida	DAN GOLDMAN, New York
HARRIET HAGEMAN, Wyoming	JASMINE CROCKETT, Texas
WARREN DAVIDSON, Ohio	
RUSSELL FRY, South Carolina	

CHRISTOPHER HIXON, *Majority Staff Director*
CAROLINE NABITY, *Chief Counsel for Oversight*
AARON HILLER, *Minority Staff Director & Chief of Staff*
CHRISTINA CALCE, *Minority Chief Oversight Counsel*

C O N T E N T S

WEDNESDAY, MAY 1, 2024

OPENING STATEMENTS

	Page
The Honorable Jim Jordan, Chair of the Select Subcommittee on the Weaponization of the Federal Government from the State of Ohio	1
The Honorable Stacey Plaskett, Ranking Member of the Select Subcommittee on the Weaponization of the Federal Government from the Virgin Islands ...	4

WITNESSES

Robert Flaherty, former Director of the White House's Office of Digital Strat- egy	
Oral Testimony	9
Prepared Testimony	12
Andrew Slavitt, former Senior Advisor, COVID Response Team	
Oral Testimony	17
Prepared Testimony	19
Todd Zywicki, University Foundation Professor, Antonin Scalia School of Law, George Mason University	
Oral Testimony	22
Prepared Testimony	24
Matthew Seligman, Nonresident Fellow, Stanford Constitutional Law Center	
Oral Testimony	47
Prepared Testimony	49

LETTERS, STATEMENTS, ETC. SUBMITTED FOR THE HEARING

All materials submitted for the record by the Select Subcommittee on the Weaponization of the Federal Government are listed below	105
An email chain between Amazon employees and White House employees, March 4, 2021, submitted by the Honorable Debbie Wasserman Schultz, a Member of the Select Subcommittee on the Weaponization of the Federal Government from the State of Florida, for the record	
An article entitled, "Coronavirus is causing the 'historic decimation' of Latinos, medical expert says," Sept. 30, 2020, NBC News, submitted by the Honorable Sylvia Garcia, a Member of the Select Subcommittee on the Weaponization of the Federal Government from the State of Texas, for the record	
Slides provides the an email chain during an interview with the Amazon employee who received the email, Apr. 16, 2024, submitted by the Honor- able Stacey Plaskett, Ranking Member of the Select Subcommittee on the Weaponization of the Federal Government from the Virgin Islands, for the record	

IV

Page

APPENDIX

A statement submitted by the Honorable Gerry Connolly, a Member of the
Select Subcommittee on the Weaponization of the Federal Government
from the State of Virginia, for the record

VOTES

RC #1—Vote on Motion to Table
RC #2—Vote on Motion to Table

HEARING ON THE WEAPONIZATION OF THE FEDERAL GOVERNMENT

Wednesday, May 1, 2024

HOUSE OF REPRESENTATIVES

SELECT SUBCOMMITTEE ON THE WEAPONIZATION OF THE
FEDERAL GOVERNMENT

COMMITTEE ON THE JUDICIARY

Washington, DC

The Committee met, pursuant to notice, at 10:09 a.m., in Room 2141, Rayburn House Office Building, the Hon. Jim Jordan [Chair of the Subcommittee] presiding.

Members present: Representatives Jordan, Issa, Massie, Gaetz, Armstrong, Steube, Bishop, Cammack, Hageman, Davidson, Fry, Plaskett, Lynch, Sanchez, Wasserman Schultz, Connolly, Garamendi, Garcia, Goldman, and Crockett.

Chair JORDAN. The Subcommittee will come to order. Without objection, the Chair is authorized to declare a recess at any time. We welcome everyone to today's hearing on government censorship.

The Chair now recognizes the gentleman from Kentucky to lead us in the Pledge of Allegiance.

ALL. I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation, under God, indivisible, with liberty and justice for all.

Chair JORDAN. The Chair now recognizes himself for an opening statement. "Can we include that the White House put pressure on us to censor the lab leak theory?" That's the question Mark Zuckerberg asked in a group text with the top people at Facebook. That is the question he posed to Sheryl Sandberg, Nick Clegg, Joel Kaplan, and the top people at Facebook on July 16, 2021. Now, what prompted this group text? What prompted him to ask that question about the White House putting pressure on Facebook to censor the lab leak theory?

Earlier that day, President Biden said, "Facebook is killing people." That is what got him talking. That is what got him texting. That is what he is asking, can we put out this statement that the White House has been putting pressure on us to censor the lab leak theory? Ms. Sandberg responded to that text message. She said, "they are scapegoating us." Mr. Zuckerberg further countered, or further stated,

Facebook had been combating misinformation just like the White House wanted, but now there is this coordinated attack by the White House against us.

Now, think about it. Facebook, Mr. Zuckerberg was saying Facebook was doing exactly what the White House wanted, but it still wasn't good enough.

Now, we should back up a few months. Senior White House officials, and particularly, the two guys testifying here today, Mr. Flaherty and Mr. Slavitt, had regular phone calls and meetings with Facebook officials. One March meeting, Mr. Flaherty said, and this is again from the internal communications we got when we subpoenaed Facebook, Mr. Flaherty said, "my bias is to kick people off the platform." The White House is telling a social media platform, the biggest one in the world, you should kick people off your platform if they are saying things we don't like.

In another one, Mr. Flaherty says, "Can you change the algorithm so Americans don't see news from outlets like the *Daily Wire*?" Telling a company, the Government, the White House telling a company, change your algorithm so Americans don't see news outlets like the conservative *Daily Wire*.

Now, Mr. Slavitt didn't want to be left out. He also got in on the censorship effort. He told Nick Clegg he was outraged that Facebook did not remove a meme. This one right here. Not remove a meme.

What is interesting is Mr. Clegg counted that quote—let me just read this quote. I think this is amazing. Mr. Clegg, a British Member of Parliament who works at Facebook, countered,

I countered that removing content like that would represent a significant incursion into traditional boundaries of free expression in the United States.

An incursion into traditional boundaries of free expression in the United States.

Think about it. You have got the British guy telling the American guy how the First Amendment works. It is not just any British guy. It is the British guy who is a member of the British Parliament telling the American guy who works for the President of the United States, this is an incursion of the First Amendment and free expression. Now, it wasn't just Facebook. It wasn't just Facebook. On day three, the White House sent an email to Twitter, Ms. Clarke Humphrey sent the email—we have talked about this one before. This email said January 23, 2021, the third day of the Biden Administration. The email goes to Twitter,

Hey folks, wanted to flag the below tweet and am wondering if we can get moving on the process for having it removed ASAP?

Next sentence:

And then if we can keep an eye out for tweets that fall in this same genre, that would be great.

White House, third day of the Administration telling Twitter take down this tweet as soon as possible and any other tweets like it, make sure you are taking them down, too.

That is censorship at its worst. Oh, by the way, the tweet, the tweet was from Robert F. Kennedy, Jr., the guy who turned out to

be Biden's—the White House's opponent in the primary election and all Robert F. Kennedy said is

Hank Aaron's tragic death is part of a wave of suspicious deaths among elderly. Closely following administration of COVID vaccines. He received the Moderna vaccine on January 5th to inspire other Black Americans to get the vaccine.

Two sentences, both true and the White House is saying take it down as soon as possible from the guy who is going to run for the office therein.

So, it wasn't just Facebook. It was Twitter and they didn't stop there, YouTube as well. Let me just read another one. Again, all these are internal communications or communications we got from the social media companies, but this one sent to Mr. Flaherty.

Hi, Rob. Our YouTube Trust and Safety Team is working to finalize a new policy to remove content that could mislead people on the safety and efficacy of vaccines. We would like for you to preview our policy proposal and get any feedback you may have.

Preview our policy proposal and get feedback. They are asking permission. It has gotten so bad they are saying, hey, White House, is it OK if we do this? Will your censorship efforts allow us to have this kind of policy?

Our other witness, Mr. Zywicki, was censored by YouTube. Maybe you can blame the guys right beside you, Mr. Zywicki. They are the reason you got censored, probably. I mean go figure.

Now, here is the real kicker. The Biden White House didn't stop with social media companies. They censored books as well. So, it was Facebook. It was Twitter. It was YouTube and also Amazon. This is from an internal Amazon communication where they say,

I submitted a new "do not promote class" for any vax books. The impetus for this request is criticism from the Biden Administration about books we are giving prominent placement and should be handled urgently.

So, it wasn't just social media. It was books. Books as well. This virtual book banning that they were involved in and if you disagreed with them, your social media company, your book, your Amazon, you get censored. They come after you.

Maybe the most important point is when you violate the First Amendment, public debate gets distorted and when that happens, you get bad policy. You don't have full debate. That is why we have the First Amendment. Some speech may be wrong. You may not like it, but more speech is the answer, not taking down speech. Policies get put in place when you censor, and you restrict the First Amendment. Policies that kept Americans from going to church, from going to school, from going to work, policies that forced Americans to choose between taking a vaccine or losing their job, all that happened, in part, because this effort to restrict the First Amendment and speech.

I guess maybe the final thing I would point out is what does the Biden Administration have up their sleeve in these last six months before the election? What are they going to try to censor now? We know the meetings have resumed. Foreign influence task force meetings with big tech. We know those have resumed. What are they up to now that is going to try to restrict speech and keep information, important information from the American people.

With that, I would yield to the Ranking Member for an opening statement.

Ms. PLASKETT. Thank you and good morning to everyone that is with us today. While today is only our ninth hearing in this Select Committee, which I note opened with much fanfare from my colleagues on the right, it is the sixth hearing, like a Ground Hog Day, for the same supposed weaponization of social media through the curious case of the so-called Twitter files, Facebook files, social media files, however we want to couch it, the idea that the FBI and the Biden Administration have stopped social media companies from free speech.

First, I thought when I heard this in the beginning, is this just my poor colleagues doing the bidding of Elon Musk who is no fan of American democracy or the great diversity of this country? Is that what is going on here? What is really up their sleeve? It eventually came to light though that this is about the continual projection that the Republicans engage in themselves. This is about them intimidating social media companies to stop engaging in reviewing and moderating content before the 2024 election. It is working. Media and particularly social media executives and professionals have been targeted, harassed, intimidated by this Committee and the many hordes that follow behind them on Twitter and other places and they are afraid to do their job. They are afraid to speak up. They are afraid to do their work on those very same platforms. That is well done, well done.

Guess what? You know how we did this? We did this by spending \$20 million, yes, that is how much this Committee has spent to have nine hearings, six of which are repeat hearings—\$20 million. My fiscally conservative, budget conscious, don't grow the Government coffers friends, have spent \$20 million to have nine hearings, six of which are about the very same subject.

Now, what is even more interesting is I love when people give you half a sentence and then don't respond with what the answer is. They have been doing this repeatedly. You are going to hear this throughout this hearing. For example, that first—what was up on the board there, can we include that the White House put pressure on us to censor the lab leak theory? That looks like a question that he is asking his executive, Mark Zuckerberg. What about the answer? The answer was I don't think that they put specific pressure on that theory. That is the answer. So, the answer was no. He didn't want to show you that part because that doesn't help the argument that he is making.

The other one that he did where he says that is a question. Were you asking if there were threats like if you don't do what we want, a content moderation, we are going to sic Lina Khan on you or are we going to go after—and Nick, maybe you can answer just the subsequent question. The answer is we were never sort of threatened with any. That is the answer. You're going to hear this repeatedly. That is the answer. They weren't threatened. They were informed. They were asked. They were questioned. Things were pointed out to them, but the social media content people did what they wanted to do. That is how a private enterprise works.

What is going to happen now is I am going to give you a preview of what is going to happen in this hearing because I have been sit-

ting in this chair for a while and I kind of know the Ground Hog Day and how it goes. Up at the top row, we are going to get a poster with a tweet supposedly demonstrating how a Member got labeled by social media company as sharing potentially misinformation on COVID. That is going to happen. Then someone else down the line, we are going to hear about censorship in another country like Canada and how we as Americans need to be afraid of that happening here and how we need to make sure that this doesn't happen and that is why we are having this hearing.

Then wait for it. Wait for it because you know it is coming. We are going to hear about Hunter's laptop because you have got to hear about the laptop. You don't have a hearing unless you hear about Hunter's laptop, and you are going to hear the story about how it was squashed by the FBI and Trump would have won if that had been able to get out more on social media outlets. You are going to hear that one.

Then, finally, the final campfire story that you are going to hear lower down there is about how scary the FBI is because now they are going after people that look like them. You are going to hear that. That is going to be part of this hearing. So, everybody can go because I have just outlined for you what we are going to do. Or you can watch the tapes of the six other hearings we have done, sometimes with the same witnesses. Thankfully, we have got some new witnesses here. We did bring back one because it is the same subject.

I do want to thank the witnesses today, all whom are appearing in front of the Select Committee voluntarily. I would also like to share with you all why we are hearing these witnesses, this twist on the social media spin that is important right now, why this is so prescient having this hearing with these witnesses. Republicans are holding this hearing today in a last-ditch effort to influence the Supreme Court opinion in the case of *Murthy v. Missouri*. That is what is going on right now. During oral arguments in March, six justices questioned Republicans' claim that the Federal Government interactions with social media companies are tantamount to censorship. The Supreme Court is presently working in their chambers preparing, thinking, and contemplating what that decision is going to be.

So, when the Chair sent a letter to several of the witnesses asking that they testify today, the initial response was shouldn't we wait until this court's decision? Wouldn't it be bad form to hold this hearing now and use the U.S. Congress to unduly influence the decision? That is exactly what we want to do is the answer. That is exactly why we are holding this hearing now because we do want to influence the decision. We do want to use Congress for that. There is no doubt that this is completely inappropriate use of congressional oversight powers, that my colleagues are the biggest projectors ever. They are like the bad boyfriend who tells you that you are the bad person, when they are the ones doing the same thing that they are accusing you of.

Let's take a step back and remember where we were during this time in 2021 and when we think about all that think about the projecting they are doing of using this Congress, this body, to

weaponize the Federal Government. The Congress is actually weaponizing against social media companies.

So, in 2021, President Biden had just assumed office in the wake of a coup attempt that many on the other side still refuse to identify as such. More than 3,000 Americans were dying a day of COVID, 3,000 a day. That is what was happening while all this was going on that they are discussing. Doctors, nurses, public health authorities were working to roll out a vaccine that the former President Donald Trump, his administration initiated. Did we forget that part? We forgot. Warp Speed, remember that they wanted the vaccine until they weren't in office, and then you don't want the vaccine because it is not your President who is the one who is rolling it out? That was done to stem the tide of deaths in the face of mounting waves of conspiracy theories, claiming without evidence that the vaccine was not safe. This is, while I will repeat it, 3,000 Americans a day were dying from the direct effects of COVID.

These conspiracy theories were downright dangerous. The conspiracy theories I am referring to weren't just now—and I love her music, Nikki Minaj, sharing a story that a friend of a friend of her cousin from Trinidad something bad happened to him in his private parts when he took the vaccine. Remember that one? The Republican majority has even used our Select Committee to give a platform to continue Robert Kennedy, Jr.'s claim that COVID was proposedly bioengineered in a lab to target Black people, but to spare Ashkenazi Jews and Chinese people. These false claims that target Black people, specifically, let me say putting on the echoes of very real historic medical experimentation on Black people in America that were tantamount to genocide. To those unfamiliar, I am referring to a moment, the Tuskegee studies that the Federal Government ran from 1932–1972 in Alabama where the centuries of experimentation on Black women because it is believed that we have a higher pain tolerance to be able to endure such experimentation.

Robert Kennedy, Jr.'s claims directly echoed those centuries past that as well scapegoated Jewish people and held entire communities collectively responsible for illnesses like the Black Plague, often as a precursor for massacres and pogroms. It shouldn't surprise anyone that Mr. Slavitt, Mr. Flaherty, and others in the Biden Administration were concerned about these types of flagrant misinformation. They were trying to stop a once in a lifetime global pandemic that had already claimed far too many lives.

So, yes, Mr. Slavitt and Mr. Flaherty talked to technology companies about what they were doing to stop misinformation. This isn't a violation of the First Amendment to do that. It is an example of the Biden Administration doing the work that a President has been elected to do, to keep Americans safe, to check on how companies are using their platforms to inform Americans. Unless the majority forgets, the Government is entitled to speak for itself. It is entitled to inform, persuade, and yes, even to criticize private speakers. You want to have the First Amendment, have it for everybody. Don't just have it for who you want.

As Justice Kavanaugh noted during the recent oral arguments and his quote is,

My experience is in the United States and all its manifestations has regular communications with media to talk about things they don't like or don't want to see or complaining about factual inaccuracies.

In fact, Mr. Jordan's own staff regularly communicates with the press. He and I communicated with the press about the content of articles. You know what? We are entitled to do that.

The Chair in the majority claimed that Mr. Flaherty and Mr. Slavitt somehow, "coerced social media and technology companies into removing content." This Committee and Republican staff have gathered hundreds of hours of testimony showing that this is simply not the case. Over and over again in those testimonies, you will see social media company executives told the Committee that no matter who identified concerning content, whether it is a member of the general public, Members of Congress, the White House employees, the companies evaluated the content against their own internal policies. Only took action if the content violated those policies.

Over and over again, social media company executives told the Committee in no uncertain terms that no government official ever coerced them into taking action. No government official ever threatened them with any adverse consequences if their companies did not take action. No government official ever promised them any benefits if they did take action. The Committee has heard hours of testimony to that effect, but the majority has consistently rebuked our side, the minority's request that the testimonies be made public.

The majority, who have controlled the tapes, likewise declined to provide us with copies of hundreds of hours of video taken during those investigations. That is because they know the evidence shows that their big investigation, that \$20 million investigation is a flop, just like their impeachment investigation was a flop.

Has anyone forgotten that the investigation hinged entirely on a 1023 form that was later determined to be completely fabricated? That is right. The key witness turned out to be passing along what may well have been Russian disinformation. Apparently, that is the name of the game now. The extreme MAGA majority has spent its time, not to mention tons of taxpayer dollars on baseless investigations that have gone nowhere, all of it in an effort to bully tech and media companies into turning a blind eye to rightwing extremist conspiracies that has spread across their platforms, even when those theories violate very basic terms of service about deliberate disinformation and promoting violence.

They haven't uncovered any quote, "Weaponization in the Federal Government." If anything, it is the Committee that has been weaponized for a 2024 election. It is no accident, as I said, that we are holding this hearing today as the Supreme Court opinion in *Murthy v. Missouri*, a case brought on by Republicans' States Attorney General vociferously supported by Committee Republicans so much so that they even have an amicus brief on it. We are having this hearing now.

So, I say let's tell the whole truth, the hours of witness testimony showing that there is no "there there" to Republican claims.

So, with that, I am going to move to introduce into the record the transcript from the Committee's May 16, 2023, interview with

an employee of Meta Security Policy Policy Division. I would like to introduce into the record the transcript from a Committee's June 20, 2023, interview with Meta's Vice President for Public Policy; the transcript of the Committee's June 21, 2023, interview with Meta's head of Security Policy; the transcript from the Committee's July 25, 2023, interview with Meta Misinformation Policy employee; the transcript from the Committee's February 2, 2023, interview with Meta Trust and Safety Policy employee; the transcript from the Committee's March 1, 2024, interview with Meta's President of Global Affairs; the transcript of the Committee's May 22, 2023, interview with Meta External Affairs Manager; the transcript from the Committee's May 23, 2023, interview with the former Federal Partner Manager at Meta; the transcript from the Committee's May 31, 2023, interview with Meta Programs and Partnership Team Lead; the transcript from the Committee's June 14, 2023, interview with a Meta Trust and Security Policy Manager; the transcript from the Committee's June 27, 2023, interview with the former Public Policy Liaison at Meta; the transcript of the Committee's September 19, 2023, interview with the Security Engineering Manager of Meta; the transcript from the Committee's May 23, 2023, interview with the Director of Google's Trust and Safety Organization; the transcript of the Committee's June 22, 2023, interview with Google Legal Division employee; the transcript from the Committee's July 19, 2023, interview with an employee of Google's Privacy, Security, and Safety Division; the transcript from the Committee's May 24, 2023, interview with Google Trust and Safety Analyst; the transcript from the Committee's June 1, 2023, interview with a formal Google Search employee; the transcript of the Committee's June 16, 2023, interview with YouTube employee who worked on external partnerships; the transcript from the Committee's June 23, 2023, interview with Google's Government Affairs and Public Policy Organizational employee; the transcript from the Committee's June 26, 2023, interview with Google's Information Quality Strategy employee; the transcript from the Committee's June 28, 2023, with the Google Legal Security employee; the transcript from the Committee's April 10, 2024, interview with a former Google Global Affairs Organizational employee; the transcript from the Committee's April 25, 2024, interview with the former Public Policy Manager of YouTube; the transcript from the Committee's November 1, 2023, interview with the former head of Trust Safety at Twitter; the transcript from the Committee's April 16, 2024, interview with Amazon Public Policy and Committee Engagement Division employee; the transcript from the Committee's June 6, 2020, interview with the University of Washington Associate Professor Kate Starbird; the transcript from the Committee's June 23d interview with the founder and director of Stanford Internet Observatory at Stanford University, Alexander Stamos; the transcript from the Committee's November 2, 2023, interview with the former employee of the Center for Internet Security.

Mr. MASSIE. I object.

Chair JORDAN. Objection being raised, I would just say that we plan to release all these once we have talked to everyone we have interviewed and their counsel to make sure they are comfortable

with it. When we get all that clear, we plan on releasing all of that and the video is well.

The Chair now recognizes—excuse me, without objection—

Ms. PLASKETT. We are not asking them to be released. We are asking for them to be recorded. You can enter them into the record and not release them.

Chair JORDAN. The gentleman objected to that. Without objection, all other opening statements will be included in the record.

We will now introduce today's witnesses. First, your being here, we appreciate your patience with what was maybe the longest opening statement in human history, but we will now start with Mr. Flaherty.

Mr. Robert Flaherty, excuse me, the former Assistant to the President and Director of Digital Strategy at the White House; Mr. Andrew Slavitt is former Senior Advisor for the Biden Administration's COVID-19 Response Team.

Professor Todd Zywicki is the George Mason University Foundation Professor of Law at the George Mason University Antonin Scalia School of Law. Professor Zywicki is also a Research Fellow at the Law and Economics Center.

Mr. Matthew Seligman is a Nonresident Fellow of the Constitutional Law Center at Stanford Law School. His research books have been on election law, constitutional law, Federal courts, contracts, and private law theory. We welcome our witnesses and thank them for appearing today.

We will begin by swearing you in. If you would please rise, raise your right hand. Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief so help you God?

Let the record show the witnesses have answered in the affirmative. Thank you. You may be seated. Please know that your written testimony will be entered into the record in its entirety. Accordingly, we ask that you summarize your testimony in five minutes.

Mr. Flaherty, you may begin.

STATEMENT OF ROBERT FLAHERTY

Mr. FLAHERTY. Chair Jordan, Ranking Member Plaskett, and the Members of the Subcommittee, I'm Rob Flaherty, and from January 2021–June 2023, I served as the Director of the White House Office of Digital Strategy.

I'm appearing here voluntarily in response to the Subcommittee's request for testimony of my interactions with social media companies during my time in government. I'm glad to have this opportunity to explain my role in government and to correct some of the misunderstandings of me and my office's work.

I'd like to take a moment to remind the Subcommittee of the time and context in which those conversations took place. When the Biden Administration began in January 2021, our Nation was in the midst of a crisis unlike anything we'd previously experienced.

Every week, over 100,000 Americans were being hospitalized and over 20,000 were dying. These numbers aren't just statistics. They're tragedies for millions of families. There were empty chairs

at family tables, including my own. My wife's grandfather passed away from COVID on Thanksgiving Day 2020.

When President Biden took office, he made clear that his administration's first and foremost task was to fight the pandemic and bring our economy back from the cliff. That started with getting the country vaccinated. Those vaccines were a monumental achievement. Countless Americans worked day and night to save lives. It's a story of generational American ingenuity.

Even though the vaccines were developed in the prior Republican Administration by nonpartisan scientists and brought to market by an innovative partnership with the private sector, they somehow became politicized and controversial, and false information was proliferating on social media.

Concerns about COVID misinformation did not begin with the President—with President Biden's Administration. Facebook laid out their plans to, quote, "stop the spread of misinformation" in April 2020. This was an issue that platforms claimed they had begun to tackle long before President Biden took office.

In that context, I took over the Office of Digital Strategy, a communications arm of the White House. There's no shortage of films or TV shows that show White House communications staff interacting with print and broadcast media to encourage coverage of certain stories and to persuade the press that certain other stories are wrong, misguided, or would otherwise harm the public.

Urging media to publish accurate information is nothing new. While social media is a relatively new medium, communications offices have long acted to ensure that media has the most accurate information available and correct published information that is false or misleading.

Social media companies make editorial decisions at the scale of hundreds of millions per second. They decide what content gets shown to whom and in what order. My office encouraged those companies to exercise that editorial discretion to avoid spreading inaccurate information, particularly related to the ongoing pandemic. To be sure, those companies are the ultimate decision-makers about what goes on their platform. That does not mean that communications staff cannot ask, or even implore, those companies to address misinformation on their platforms.

While social media companies have publicly announced content moderation policies concerning COVID misinformation, those policies were often opaque and difficult to understand. Furthermore, despite the platforms' misinformation initiatives, social media was still awash in false and misleading claims about COVID and the vaccines when I entered government.

I wanted to understand why. Because if I knew where misinformation was gaining traction, I could effectively focus our messaging on countering it. I had hoped that social media companies would live up to their own rhetoric to alleviate, rather than aggravate, the dire public health challenges facing the Nation.

Public reporting made us doubt whether the platforms were doing what they claimed. For example, Facebook told me it was too soon to draw conclusions about vaccine hesitancy on its platform. A few weeks later, *The Washington Post* published that Facebook had conducted, quote, "a vast behind-the-scenes study of doubts ex-

pressed by U.S. users on vaccines” and found, among other things, that, quote, “a small group [of users] appears to play a big role in pushing skepticism.”

With lives on the line and confronted by what I believed to be dishonest actors, my tone reflected the urgency of the matter and the stakes at hand. Although Facebook said its policy was to remove false information about vaccine efficacy, the platform was filled with posts falsely claiming the vaccines didn’t work. I was deeply concerned that Facebook was exacerbating vaccine hesitancy while telling me they were working hard to address the problem.

None of this is to say Facebook, or any social media company, must do as the White House asks. They don’t. While I asked platforms to step up and adhere to their own stated priority of reducing misinformation on their platforms, which would assist in ending the pandemic, the choice was theirs. There were no threats, period.

While the social media companies turned down many of these requests, there were no consequences. Let me repeat that: There were no threats and there were no consequences.

For example, Twitter abandoned all its prior policies related to COVID misinformation over a year and a half ago, while I was still there. That decision was Twitter’s to make and I’m not aware of any adverse actions against Twitter in response to it. That’s no surprise. My office never had or claimed any ability to require the platforms to act on misinformation.

In closing, I recognize there are many issues around COVID misinformation on which reasonable minds can disagree. When my interactions with social media companies became at times acrimonious, it was not because they disagreed with my perspective. It was because the answers they provided to my questions about misinformation policies and algorithms were incomplete, misleading, or downright wrong.

In 2021, work related to the vaccine was too important to get wrong or unreasonably delay. Every day more people were being hospitalized and dying of COVID. Some of those lives likely could have been prevented if more people were vaccinated. I’m proud of the Administration’s work to get people vaccinated and save lives.

If you have questions about the interactions I had with social media companies during my time as the Director of Digital Strategy in the White House, I would be happy to answer them.

[The prepared statement of Mr. Flaherty follows:]

Written Testimony of Robert Flaherty

Hearing Before the United States House of Representatives
Committee on the Judiciary

Select Subcommittee of the Weaponization of the Federal Government

May 1, 2024

Introduction

Chairman Jordan, Ranking Member Plaskett, and Members of the Subcommittee. I am voluntarily appearing here today in response to the Subcommittee's request for testimony about my interactions with social media companies during my time as the Director of the White House's Office of Digital Strategy, a position I held from January 2021 to June 2023. I am glad to have this opportunity to answer your questions and to correct some of the misunderstandings of my and my office's work.

In January 2021, The COVID Pandemic Was Still Raging And Prompt Government Action Was Required To Save American Lives

Before addressing my interactions with social media companies, I'd like to take a moment to remind the Subcommittee of the time and context in which those conversations took place. When the Biden Administration began in January 2021, our nation was in the midst of a crisis unlike anything we had previously experienced. COVID-19 had been running rampant through our nation for nearly a year, and it had fundamentally altered nearly every aspect of our lives and livelihoods. The nation's healthcare system was buckling under the weight of over 100,000 new hospitalizations per week¹ and, worst of all, over 20,000 more Americans were dying every week.² Those numbers were not just statistics—they were personal tragedies for millions of families across the country. There were empty chairs at empty tables, including my own: my wife's grandfather passed away from COVID on Thanksgiving Day 2020. And even for those lucky enough not to suffer a loss, the economy was in tatters, with businesses on the verge of shuttering, millions unemployed, and broken supply chains causing chaos in people's lives.

When President Biden took office, he made clear that his administration's first and foremost task was to fight the pandemic, and bring our economy back from the cliff.

And that started with getting the country vaccinated. In December 2020, the FDA had provided emergency use authorizations for the first COVID vaccines. Those vaccines—developed with tremendous resourcing from the previous Republican administration—were a monumental achievement. Countless Americans worked day and night to save lives. It is a story of generational American ingenuity.

¹ https://covid.cdc.gov/covid-data-tracker/#trends_weeklyhospitaladmissions_select_00

² https://covid.cdc.gov/covid-data-tracker/#trends_weeklydeaths_select_00

Doctors and scientists had concluded that the vaccines were extremely effective at reducing serious infections, preventing hospitalizations, and saving lives. In addition to being effective, the vaccines were also safe. Yet, even though the best available scientific evidence showed that the vaccines were safe and effective, misleading rumors and outright falsehoods about the vaccines were proliferating on social media. Vaccines had saved our country from prior health crises before, from smallpox to polio. We could do it again, but only if Americans came together to take advantage of a lifesaving vaccine.

COVID Misinformation Presented A Substantial Public Health Challenge

Somehow, though, a solution developed during the prior, Republican Administration by non-partisan scientists and brought to market by an innovative partnership with the private sector had become politicized and controversial. False information was proliferating on various media. And that false information was having a huge impact, convincing many Americans that something that could—and ultimately did—help us emerge from the pandemic should be resisted.

To be clear, concerns about COVID misinformation did not begin with President Biden’s Administration. Long before President Biden was elected, the social media companies had publicly announced efforts to combat COVID misinformation on their platforms.

For example, in April 2020, Facebook publicly declared that “stopping the spread of misinformation and harmful content about COVID-19 on our apps” was “critically important.”³ And in December 2020, Facebook announced that it would “start removing false claims about [the COVID] vaccines that have been debunked by public health experts,” including “false claims about the safety, efficacy, ingredients or side effects of the vaccines” or other “conspiracy theories about COVID-19 vaccines.”⁴

Twitter made similar announcements. In July 2020, Twitter declared that its “primary goal” was to “remove demonstrably false or potentially misleading content” about COVID-19 that could cause harm to its users.⁵ It made plain that such content “may not be shared on Twitter” and was “subject to removal.”⁶ It provided a lengthy list of the content that Twitter would “require people to remove.”⁷ And it made clear that “accounts that break this rule repeatedly may be permanently suspended.”⁸ When the vaccines received their initial FDA authorization, Twitter amended its policy, in December 2020, explaining that “vaccine misinformation presents a significant and growing public health challenge—and we all have a role to play.”⁹ In that same announcement,

³ <https://about.fb.com/news/2020/04/covid-19-misinfo-update/>

⁴ <https://about.fb.com/news/2020/12/coronavirus/#latest>

⁵ https://blog.twitter.com/en_us/topics/company/2020/covid-19#misleadinginformationupdate

⁶ https://blog.twitter.com/en_us/topics/company/2020/covid-19#misleadinginformationupdate

⁷ https://blog.twitter.com/en_us/topics/company/2020/covid-19#moderation

⁸ https://blog.twitter.com/en_us/topics/company/2020/covid-19#misleadinginformationupdate

⁹ https://blog.twitter.com/en_us/topics/company/2020/covid19-vaccine

Twitter declared that it was actively “address[ing] misleading information around COVID-19 vaccinations” and would “prioritize the removal of the most harmful misleading information.”¹⁰

Interactions Between The Office Of Digital Strategy And The Social Media Platforms

That proliferation of vaccine misinformation remained a significant problem when the Biden Administration took office in January 2021. I took over the Office of Digital Strategy—a communications arm of the White House that has existed under prior Administrations of both parties. It works alongside the White House’s traditional press and communications operations. I often think it’s helpful to conceive of this work in parallel with the White House Office of Communications. They are responsible for publicly promoting the Administration’s priorities and engaging with the media on their coverage of those priorities. There is no shortage of films or TV shows set in the White House that show the communications staff interacting with print and broadcast media, seeking to encourage coverage of certain stories and to persuade the press that certain other stories that are wrong, misguided, or would otherwise harm the public. The Office of Digital Strategy similarly promotes the Administration’s message on important issues—the difference is that it focuses on digital and social media, rather than print or broadcast media.

During my time in the White House, much of the work done by the Office of Digital Strategy focused on how to get the Administration’s message to the American people. I worked alongside a team of dedicated, hard working, and brilliant content creators, outreach experts, and social media strategists. Like countless other public and private entities, the Administration engaged in messaging campaigns on social media platforms to inform Americans about its work. The Office of Digital Strategy created videos on the impact of potential legislation, rapidly responded to major news moments, and created web properties to make the Administration’s agenda more accessible. I also regularly interacted with “influencers” and other well-known social media personalities to discuss important issues related to the Administration’s priorities. These efforts were all focused on enhancing the ability of the Administration to communicate its message about important issues to the American people.

I sometimes also expressed concerns to the social media companies about misinformation on their platforms. Notwithstanding the social media companies’ public pronouncements about addressing misinformation, it was abundantly clear that inaccurate information about COVID-19 and the vaccines was continuing to proliferate on the platforms. Ensuring that the public received accurate and authoritative information about COVID-19 was an urgent priority for the Administration. These platforms had stated that it was their intention to address the issue well before President Biden took office. I had hoped that the social media companies would live up to their own rhetoric to help alleviate—rather than aggravate—the dire public health challenges facing the nation.

Urging media to publish accurate information is nothing new for communications staffers. While social media is a relatively new medium, communications offices have long acted to ensure that media—whether broadcast, print, or otherwise—has the most accurate information available and

¹⁰ https://blog.twitter.com/en_us/topics/company/2020/covid19-vaccine

corrects published information that is false or misleading. They do that by direct outreach to reporters, editors, and decision makers at publications.

These social media platforms make editorial decisions at the scale of hundreds of millions per second. They decide what content gets shown to whom, and in what order. My office encouraged those companies to exercise that editorial discretion to avoid spreading inaccurate information, particularly related to the ongoing pandemic. To be clear, these companies are the ultimate decision makers about what goes on their platforms. But that does not mean that the White House, through its communications office, cannot ask—even implore—media companies to address misinformation on their platforms. Congressional offices, major corporations, advocacy groups, and many other stakeholders likewise try to persuade media to see things their way.

During my interactions with social media companies, I also tried to better understand the problem of misinformation. While the social media companies had publicly announced content moderation policies designed to address the problem of COVID misinformation, those policies were often opaque and difficult to understand. Furthermore, despite the platforms' misinformation initiatives, social media was still awash in false and misleading claims about COVID and the vaccines when I entered the government. I wanted to understand why.

As I'd often say directly to the platforms: my office sought to understand where the problems were as it relates to misinformation, what the platforms viewed as the solutions, and what resources the Federal Government could contribute to help solve them. What strategies were working to combat misinformation? What levers were available to the platforms to address the misinformation problem? Was misinformation growing faster than the social media companies could address it? Did the social media companies face challenges in implementing their own content-moderation policies? Or were there holes in those policies? Or was it something else?

These were important discussions for both understanding the landscape, but also for crafting our own strategy. If my office knew misinformation was particularly potent in certain corners of the internet or that particular false narratives were gaining traction, we could mobilize our efforts to counter them.

While the social media companies had announced policies to address misinformation on their platforms, public reporting sometimes made us doubt whether they were doing what they claimed. Facebook, for example, told us that it lacked sufficient data and it was too soon to draw conclusions about vaccine hesitancy on its platforms. But the *Washington Post* reported that Facebook had run “a vast behind-the-scenes study of doubts expressed by U.S. users on vaccines” and had concluded that “a small group [of users] appears to play a big role in pushing the skepticism.”¹¹ It was exceedingly frustrating to read in the newspaper that Facebook knew much more about the scope and scale of its misinformation problem when, only weeks earlier, Facebook had told me that it was too early to draw any conclusions.

My frustration with the lack of candor from Facebook and other social media platforms grew over the next few months. Although Facebook said its policy was to remove false information about vaccine efficacy, the platform was filled with posts falsely claiming that the vaccines

¹¹ <https://www.washingtonpost.com/technology/2021/03/14/facebook-vaccine-hesitancy-qanon/>

didn't work. There were prominent posts encouraging the public not to get vaccinated. I was deeply concerned that Facebook was exacerbating vaccine hesitancy, while telling me that they were working hard to address the problem.

Social Media Companies—Not The Government—Decide What Goes On Their Platforms

None of this is to say that Facebook—or any other social media company—must do as the White House asks. They do not. The platforms had no obligation to take my calls or answer my emails. They did not have to tell me anything. They were certainly free to disagree with me. And they did. Over and over again, when I asked for details, platforms gave me platitudes or tried to change the topic. Even when content seemed to clearly violate the platforms' own rules, they often chose to leave it up.

While I asked the platforms to step up and adhere to their own stated priority of reducing misinformation on their platforms, which would assist in ending the pandemic, the choice was theirs. I tried to persuade. But never once did I threaten them with adverse consequences if they said "no." There were no threats—period. And while the social media companies turned down many of these requests, there were no consequences. For example, Twitter's new owner abandoned all of its prior policies related to COVID misinformation over a year and a half ago.¹² That decision was Twitter's to make, and I am not aware of any adverse actions against Twitter in response to it. That is no surprise. My office neither had nor ever asserted the ability to require the platforms to act on misinformation.

Conclusion

In closing, I recognize there are many issues around misinformation, including as it relates to the COVID pandemic and the vaccines, on which reasonable minds can disagree. When my interactions with social media companies, at times, became acrimonious, it was not because they disagreed with my perspective. It was because the answers they provided to my questions about their misinformation policies and algorithms were incomplete, misleading, or downright wrong. And in 2021, work related to the vaccine was too important to get wrong or unreasonably delay. Every day, more people were being hospitalized and dying from COVID. And reputable studies have established that many of those deaths likely could have been prevented, if more people were vaccinated.¹³ I am proud of the Administration's work to get people vaccinated and save lives.

If you have questions about the interactions that I had with social media companies during my time as the Director of Digital Strategy in the White House, I would be happy to answer them.

¹² <https://www.cnn.com/2022/11/29/twitter-stops-policing-covid-19-misinformation-under-ceo-elon-musk.html>

¹³ Jia, et al., *Estimated preventable COVID-19-associated deaths due to non-vaccination in the United States*, *Eur. J. Epidemiol.* (Apr. 24, 2023) 38:1125-1128, at 1125 (estimating that "at least 232,000 deaths could have been prevented among unvaccinated adults" between May 30, 2021 and September 3, 2022).

Chair JORDAN. Thank you, Mr. Flaherty.
Mr. Slavitt, you are recognized for five minutes.
Turn your mic on, if you would.

STATEMENT OF ANDREW SLAVITT

Mr. SLAVITT. That would help. Chair Jordan, Ranking Member Plaskett, and the Members of the Select Subcommittee, I'm here today voluntarily to discuss my work on the COVID Response Team at the peak of the pandemic.

Let me introduce myself and provide a brief statement. I'm Andy Slavitt. Between January 2021–June 9, 2021, I served in the Biden Administration as Senior Advisor to the COVID Response Team. I've worked in the healthcare industry since the early 1990s as an entrepreneur, a business leader, a regulator, administrator, a CEO, and as an investor.

I was asked by the Biden Administration to assist in the difficult operational work needed to end the pandemic as quickly and safely as possible. Those first few days on the job are cemented in my mind.

When President Biden was inaugurated, over 4,000 Americans were dying that very day from COVID-19. By January 2021, the number of COVID deaths was increasing so rapidly it had become the No. 1 cause of death in the United States, nearly 50 percent higher than heart disease, the next leading cause.

Thanks to the work of successive administrations, vaccines had recently become available. In those early months, we procured and assisted in the production of vaccines; sent military troops into the field to help Americans get vaccinated, and coordinated the many moving pieces of a response, while providing the public with straightforward and clear information, so they could keep themselves safe.

As we did, we could see hospitalizations and death, the death toll, begin to meaningfully decline. By June 2021, when I left the Administration, more than 300 million doses of the vaccine had been administered to two-thirds of the public had been vaccinated. As a result, the number of COVID deaths were reduced in the 139 days of my tenure by 90 percent, from over 4,000 on day one to 400, the lowest since the pandemic began. By June 2021, COVID-19 had dropped from the top cause of death to the seventh.

I understand that the Select Subcommittee is interested in the Biden Administration's interactions with social media companies regarding their policies on content moderation and how such conversations comport with the vital American ideals enshrined in the First Amendment. They were entirely consistent.

My communication with social media companies consisted of a limited number of conversations, mainly concentrated over the course of a few weeks, in the middle of my four-month tenure. I was guided by two principles in my interaction with social media companies.

First, any content decisions and judgments about their enforcement are strictly the domain of social media companies. While policies varied, most social media companies during the pandemic adopted standards designed to prevent what they considered to be the most harmful false content from spreading on their sites.

Second, where public safety is concerned, having policies was not enough. As you will see today, I questioned social media companies on how those policies were implemented.

We are all aware of the issues that social media companies must contend with—from hate speech, to sex trafficking, to the sale of illegal drugs like fentanyl, and to foreign adversaries attempting to sow terrorism or violence. It is useful for Congress and the Executive Branch to be able to have an open dialog on these challenges for social media companies.

It was not our job to set or enforce policies on social media companies. It was our job to understand how those policies were implemented and how their decisions would affect the safety of the American public.

Despite any concerns I had about the impacts of the COVID misinformation, to my knowledge, no one within the Administration ever sought to make decisions for Facebook or any other social media site over their content moderation. Further, we had no intention of coercing social media companies into taking any action, and I never received any indication that our dialog was ever interpreted that way.

Facebook and other social media companies heard our concerns and occasional complaints, and I would like to think they considered them, but I want to be clear that they made their own decisions. Starting even before this administration took office, Facebook reported publicly and told us that they had removed 20 million pieces of COVID content that violated their policies.

Finally, I want to add that these conversations were not held in secret. We have spoken publicly about our intent, our interactions with Facebook, and they were the subject of a long interview which I sat for with *The New York Times*.

In closing, I want to thank the Congress for providing resources to successive administrations to fund vaccine development and help Americans through these dark times. By some estimates, these actions and the vaccination program alone saved three million American lives.

Thank you for your time and your consideration of these perspectives. I will be happy to answer your questions to the best of my ability.

[The prepared statement of Mr. Slavitt follows:]

TESTIMONY OF ANDREW SLAVITT
Before the United States House Judiciary Committee
Select Subcommittee on the Weaponization of the Federal Government

May 1, 2024

Chairman Jordan, Ranking Member Plaskett, members of the Select Subcommittee, I am here today voluntarily to discuss my work on the COVID response team at the peak of the pandemic. Let me introduce myself and provide a brief statement.

I'm Andy Slavitt. Between January 21 and June 9, 2021, I served in the Biden Administration as Senior Advisor to the COVID Response Team. I have worked in the health care industry since the early 1990s as an entrepreneur, a business leader, a regulator and administrator, a CEO, and as an investor.

I was asked by the Biden Administration to assist in the difficult operational work needed to end the pandemic as quickly and as safely as possible. Those first days on the job are cemented in my mind. When President Biden was inaugurated, over four thousand Americans were dying each day.¹ By January 2021, the number of deaths from COVID-19 was increasing so rapidly it had become the number one cause of death in the U.S., nearly 50% higher than heart disease, the next leading cause.

Thanks to the work of successive Administrations, vaccines had recently become available. In those early months, we procured and assisted in the production of vaccines, sent military troops into the field to help Americans get vaccinated, and coordinated the many moving pieces of a response, while providing the public with straightforward and clear information so they could keep themselves safe. As we did, we could see hospitalizations and the death toll begin to meaningfully decline.

By June 2021 when I left the Administration, more than 300 million doses of the vaccines had been administered and two-thirds of the public had been vaccinated.²

As a result, the number of COVID deaths were reduced over the 139 days of my tenure by 90%, from over 4000 on day 1 to 400—the lowest since the pandemic began. By June 2021, COVID-19 had dropped from the top cause of deaths to the seventh.³

¹ John Hopkins University, CORONAVIRUS RESEARCH CENTER (Mar. 10, 2023), <https://coronavirus.jhu.edu/region/united-states>.

² L. Hamel et. al, KFF COVID-19 VACCINE MONITOR: JUNE 2021, KFF (June 30, 2021), <https://www.kff.org/coronavirus-covid-19/poll-finding/kff-covid-19-vaccine-monitor-june-2021/>; University of Oxford, Our World in Data (*last visited* Apr. 26, 2024), <https://ourworldindata.org/grapher/cumulative-covid-vaccinations>;

S. Baker & A. Witherspoon, *COVID-19 cases hit lowest point in U.S. since pandemic began*, AXIOS (June 3, 2021), <https://www.axios.com/2021/06/03/coronavirus-cases-infections-vaccines-success>.

³ John Hopkins University, CORONAVIRUS RESEARCH CENTER (Mar. 10, 2023), <https://coronavirus.jhu.edu/region/united-states>.

I understand that the Select Subcommittee is interested in the Biden Administration's interactions with social media companies regarding their policies on content moderation and how such conversations comport with the vital American ideals enshrined in the First Amendment. They were entirely consistent.

My communications with social media companies consisted of a limited number of conversations mainly concentrated over the course of about a few weeks in the middle of my four-month tenure.

I was guided by two principles in my interactions with social media companies.

First, any content decisions and judgments about their enforcement are strictly the domain of social media companies. While policies varied, most social media companies during the pandemic adopted standards designed to prevent what they considered to be the most harmful false content from spreading on their sites.

Second, where public safety is concerned, having policies was not enough. As you will see today, I questioned social media companies on how those policies were implemented.

We are all aware of the parade of issues that social media companies must contend with—from hate speech, to sex trafficking, to the sale of illegal drugs like fentanyl, to foreign adversaries attempting to sow terrorism or violence. It is useful for Congress and the executive branch to have an open dialogue on these challenges with social media companies.

It was not our job to set or enforce the policies of social media companies. It was our job to understand how the policies were implemented and how their decisions affected the safety of the public.

Despite any concerns I had about the impacts of COVID misinformation, to my knowledge no one within the Administration ever sought to make decisions for Facebook, or any other social media company, over their content moderation. Further, we had no intention of coercing social media companies into taking any action. And I never received any indication that our dialogue was ever interpreted that way.

Facebook and other social media companies heard our concerns and occasional complaints, and I would like to think they considered them. But I want to be clear that they made their own decisions.

Starting even before this Administration came into office, Facebook reported publicly and would tell us frequently that they had already removed 20 million pieces of COVID content that violated their policies.⁴

Finally, I want to add that these conversations were not held in secret. We have spoken publicly about our interactions with Facebook and they were the subject of a long interview I sat for with

⁴ *Id.*

The New York Times. The emails we are likely to discuss today were part of the effort we discussed publicly.

In closing, I want to thank the Congress for providing the resources to successive Administrations to fund vaccine development and to help Americans through these dark times. By some estimates, these actions, in the vaccination program alone, saved 3 million American lives.⁵

Thank you for your time and your consideration of these perspectives. I would be happy to answer your questions to the best of my ability.

⁵ M. Fitzpatrick et. al, *Two Years of U.S. COVID-19 Vaccines Have Prevented Millions of Hospitalizations and Deaths*, THE COMMONWEALTH FUND (Dec. 13, 2022), <https://www.commonwealthfund.org/blog/2022/two-years-covid-vaccines-prevented-millions-deaths-hospitalizations>.

Chair JORDAN. Thank you, Mr. Slavitt.
Mr. Zywicki, Professor Zywicki—excuse me—you are recognized for five minutes.

STATEMENT OF TODD ZYWICKI

Mr. ZYWICKI. Thank you, Chair Jordan, Ranking Member Plaskett, and the Members of this Select Subcommittee.

Thank you for the opportunity to appear here today to tell you about my experiences during COVID, but my experiences I think representative of millions of Americans who not only were denied the opportunity to speak freely about COVID policy and issues related to their own health, but millions of others who were denied the opportunity to receive information essential to their health decisions, the health and safety of their families, and important matters like public policy, such as whether schools should be closed, vaccine policy, vaccine passports, and other sorts of things.

I got COVID. I was an early adopter in the first week of March 2020, and so, had natural immunity. A year later, my university tried to impose a vaccine—did, in fact, impose a vaccine mandate. I asked them if they would recognize natural immunity. They did not.

So, I sued them with the help of one of my lawyers that are here today. Representative Hageman, thank you for your help with that. We prevailed. I'm grateful to George Mason for granting me an exemption.

As I dove into these waters, what I discovered quickly was that all the major news media pretty much were part of a cartel to suppress any heterodox opinions about COVID. So, as a result, I became very active on social media, and I discovered a number of doctors, such as the great Dr. Hooman Noorchashm, my immunologist, who was tweeting on and the like.

I became a very active participant. I gave lectures; I gave interviews about COVID policy and my case to try to inform the public. What I discovered was that there was this system of censorship going on quite clearly.

I had been a very active user of Facebook early on, and then, somewhere during the period that is under investigation it became quite clear that my Facebook feed was being shadow banned. Do I know that for sure? No, because there's, apparently, no way of determining whether or not your shadow-banned on Facebook, but I could tell that my engagement had gone down.

As I relate in my testimony, I had two interviews, I had two programs removed from YouTube. One was an interview with the *Bill Walton Show*, not the basketball player, that described my, that described my case. Another was a lecture that I gave describing my case and the scientific evidence that underlies it.

Both of those were removed from YouTube without explanation, and to this day, I don't know what supposedly the medical misinformation was, whether it was something I said or there was somebody else on that tape who said it.

Now, for those who were laughing during the Ranking Member's opening statement, let me tell you, as an academic, as somebody who takes ideas seriously, being libeled as a spreader of medical misinformation is not a joke; being denied access to information

from doctors that is relevant to my health and my family's health is not a joke. This is not a game. This is my life, and this is the life of a lot of other people.

What we saw going on during this period was an ongoing demand—now we've discovered—an ongoing demand for immediate and swift action to censor people like me. There was no information provided that I could see in any of the records that have been produced that anything I said was wrong. I document my testimony, all the things I say and the basis for saying it. Yet, people like me were censored by people like them, because they did not like what I was saying.

The First Amendment protects not just my right to speak, but my right to receive information that's relevant to my health. That was the seminal case of the Supreme Court in the Virginia pharmacy case, that was a case about receiving medical information.

I have a friend who is a leader in the vaccine-injured group React19. He was part of a Facebook group. He suffers to this day from chronic inflammatory demyelinating polyneuropathy, an autoimmune disease brought on by the vaccines, where literally his immune system is eating away at the protective myelin insulation that insulates his nerves all over his body. He joined a Facebook group for other people who are suffering like him, who had tens of thousands of people who are injured by the vaccines. That group, what did Facebook do with that group? They terminated it—with no notice and no explanation.

Now, I don't know whether that was done because some sadistic employee at Facebook just decided that they were going to terminate vaccine support groups. Maybe it was because Mr. Slavitt and Mr. Flaherty succeeded with their hectoring of getting Facebook to finally take action against people like my friend and his group.

What I do know is that was wrong and that was cruel, and I do know that is exactly what Mr. Flaherty and Mr. Slavitt were demanding of Facebook and other social media companies. They wanted to see action and they wanted to see this sort of information taken down.

I appreciate this Committee looking into what was going on here. Millions of Americans appreciate the Committee getting to the bottom of this and this egregious abuse of power that we saw in suppressing ordinary Americans' free speech rights during the COVID pandemic.

Thank you.

[The prepared statement of Mr. Zywicki follows:]



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”

Wednesday May 1, 2024

10:00 AM

Rayburn House Office Building Room 2141

George Mason University Foundation Professor of Law

Antonin Scalia Law School

Research Fellow, Law & Economics Center

Tzywick2@gmu.edu

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.¹

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.

¹ 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*.² 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?

² 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,³ 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

³ 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.⁴ 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*),⁵ and a public lecture sponsored by the Washington, DC Bastiat Society on December 3, 2021.⁶ 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

⁴ 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).

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

⁶ 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.⁷

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;⁸

⁷ 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.

⁸ 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 2nd 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/3JT2T0H> (“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. Wisniewski, 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;⁹
- Natural immunity provides a greater degree of protection against infection from variants than Covid vaccines;¹⁰
- 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;¹¹ and,

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).

⁹ 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).

¹⁰ See Stijn 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).

¹¹ 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.¹²

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.”

¹² 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.¹³

¹³ 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.¹⁴ 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.¹⁵ 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.¹⁶

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

¹⁴ 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/>.

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

¹⁶ 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.¹⁷ 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.¹⁸ 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.”¹⁹

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.

¹⁷ 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”).

¹⁸ 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/>.

¹⁹ See 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.²⁰

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.

²⁰ 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.”²¹

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

²¹ 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?²² 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

²² 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.²³ 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

²³ 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.²⁴ 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.²⁵

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.

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

²⁴ 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).

²⁵ 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.

APPENDIX



Hi The Hill Wellness 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 118: "Vaccine Mandates?" with Professor Todd Fackel and Dr. Yoonan](#)



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 recommendations about COVID-19. Learn more [here](#).

[LEARN MORE](#)

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.

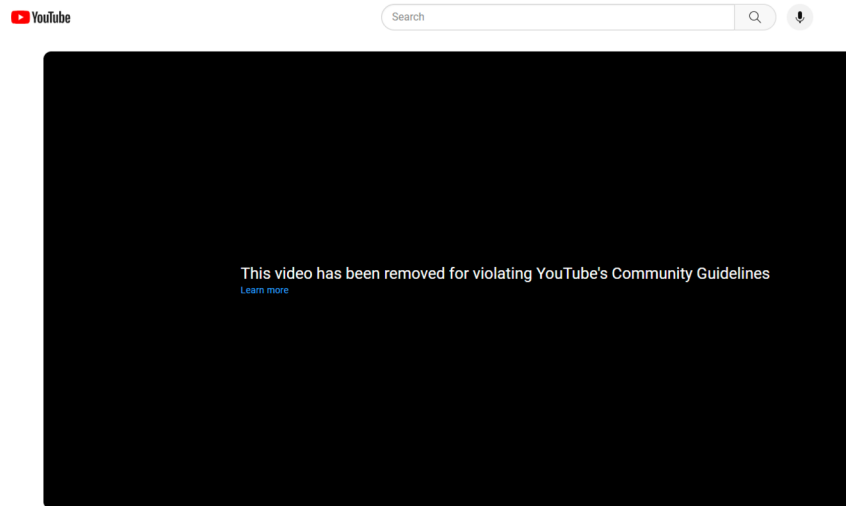
What to do next

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

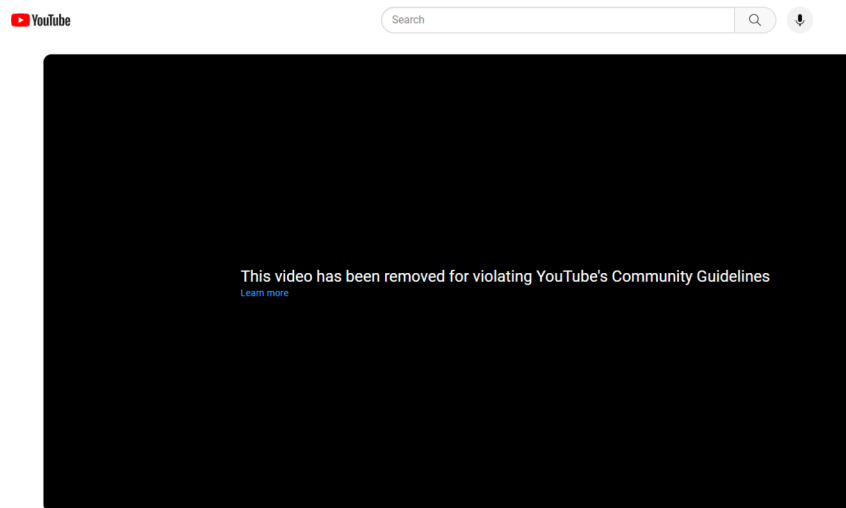
- Make sure you understand YouTube's [Community Guidelines](#) and [other basics](#).
- Review your content with our policies in mind. If after reviewing your content you think we made a mistake, let us know. You can appeal this decision [here](#).

Sincerely,
The YouTube Team

<https://www.youtube.com/watch?v=JsZvo7SWkls>



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



Chair JORDAN. Thank you. Thank you, Professor.
Mr. Seligman, you are recognized for five minutes.

STATEMENT OF MATTHEW SELIGMAN

Mr. SELIGMAN. Chair Jordan, Ranking Member Plaskett, and the Members of the Committee, I thank you for the opportunity to testify today.

The focus of today's hearing is, once again, allegations of censorship by social media platforms purportedly at the behest of the Federal Government under the direction of the Biden Administration. Once again, it bears repeating the First Amendment applies to governmental restrictions of speech, not private conduct.

The point of the case now captioned *Murphy v. Missouri* at the Supreme Court, instead, argued that the Federal Government coerced those platforms into censoring disfavored speech through the application of the platform's own content moderation policies. That accusation lacks a reasonable basis in law or, just as importantly, in fact.

As I detail in my written testimony, the Justices' statements at oral argument indicate that the Court will recognize that the social media platforms' decisions to moderate content have always rested with the platforms themselves. There's no evidence in the record, or anywhere else, for that matter, indicating that any governmental official ever threatened governmental action of any kind if the platforms did not take action on any particular piece of content.

So, I'll begin with common ground. All agree that, if the government coerces a private social media platform to remove content, that coercion renders the private platform's decision subject to the First Amendment. All agree.

The real questions in this case are: First, as a matter of law, what governmental conduct amounts to coercion? Second, do the facts alleged by the Plaintiffs in this case amount to such coercion? Based on the oral argument, I believe that the Justices recognize and will hold that the allegations here do not.

The communications between governmental officials and social media platforms were efforts by the government to provide factual information and, at times, to express the government's perspective on the types of content it believed was appropriate for platforms to promote. That effort of persuasion, even when it used strong language, did not violate the First Amendment.

As Justice Scalia once explained, "It is the very business of government to favor and disfavor points of view on innumerable subjects." To take one example, the Plaintiffs argue that the Cybersecurity and Infrastructure Agency violated the First Amendment by sending messages to platforms flagging content as false, explicitly stating that the agency made no recommendation about what the platform should do about that content, and explicitly stating that the government would take no action at all based on the platform's content moderation decisions. That does not protect free speech. That muzzles the government in its efforts to assist social media companies as they combat the onslaught of misinformation that plagues their platforms.

Today's hearing will focus on communications between platforms and Mr. Slavitt and Mr. Flaherty. Some of those communications

used strong language, but strong language does not convert governmental speech into coercion. As the Deputy Solicitor General explained at oral argument, “The First Amendment is not a civility code.”

Ranking Member Plaskett quoted Justice Kavanaugh saying that his experience in government is that the government and all its manifestations has regular communications with the media to talk about things they don’t like or don’t want to see or complaining about factual inaccuracies. Justice Kagan agreed. She says that this happens literally thousands of times a day in the Federal Government.

The stakes are high. We’re fast approaching an election season that promises to be at least as politically polarized as the last. We know from experience that social media is a primary vector of election misinformation. We know that technological advances, advances in artificial intelligence, including deepfakes of candidates and governmental officials, present grave risks to our democratic system. We know that foreign adversaries will attempt to flood social media platforms with disinformation to sow discord, unrest, and unwarranted doubts about the integrity of our elections. We must not deprive the Nation of critical tools it needs to protect itself in the face of these threats.

I encourage the Committee to hold another hearing after the Supreme Court issues its decision in *Murphy v. Missouri* by late June, so we can engage in a productive conversation and dialog about how to address these pressing threats, while protecting Americans’ First Amendment rights.

I welcome the Committee’s questions.

[The prepared statement of Mr. Seligman follows:]

WRITTEN TESTIMONY FROM MATTHEW SELIGMAN

HEARING BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY

Select Subcommittee on the Weaponization of the Federal Government

May 1, 2024

Introduction

I thank the Committee for the opportunity to testify today. I am partner at Stris & Maher LLP and a fellow at the Constitutional Law Center at Stanford Law School. I have previously held academic appointments at Harvard Law School, the Yale Law School, and the Benjamin N. Cardozo School of Law. My scholarship focuses on constitutional law, with a particular emphasis on election law. I was counsel of record, with co-counsel from the Brennan Center for Justice, on an *amicus* brief on behalf of state and local election officials in *Murthy v. Missouri*.¹

The focus of today's hearing is, once again, allegations of censorship by social media platforms, purportedly at the behest of the federal government. As I explained when I first testified in March of 2023, and as every member of the Committee undoubtedly knows at this point, the First Amendment applies to governmental restrictions of speech, not private conduct.² Since then, the Fifth Circuit partially affirmed the district court's decision in *Missouri v. Biden*.³ The Supreme Court issued a stay of the injunction and granted certiorari to review the case on the merits, now captioned *Murthy v. Missouri*. It held oral arguments on March 18, 2024.⁴

My testimony today will explain why, based on the justices' statements at oral arguments, the Supreme Court is likely to rule in favor of the Biden administration officials and federal agencies that the district court improperly enjoined from engaging in routine communications with social media platforms. As I explained in my previous testimony, social media platforms' content moderation decisions have always rested and remain with the platforms themselves. Administration and agency officials may lawfully present information to platforms and seek to persuade the platforms of the government's point of view. That lawful government speech neither compels platforms to take any action on third parties' speech nor converts the platforms into state actors. As a result, the platforms' content moderation decisions about which the plaintiffs complain did not violate the First Amendment.

¹ Brief of *Amicus Curiae* Election Officials in Support of Neither Party, *Murthy v. Missouri*, No. 23-411 (Dec. 26, 2023).

² The First Amendment "safeguard[s] the rights of free speech" by imposing "limitations on state action, not on action by" private parties. *Lloyd Corp. v. Tanner*, 407 U.S. 551, 567 (1972). See also *Manhattan Community Access Corp. v. Halleck*, 139 S. Ct. 1921, 128-30 (2019) ("protect[ing] a robust sphere of individual liberty" so private parties can "exercise editorial discretion over the speech" appearing on their platforms requires "enforc[ing] the constitutional boundary between the governmental and the private").

³ *Missouri v. Biden*, 3:22-cv-01213 (W.D. La.).

⁴ The transcript is available at https://www.supremecourt.gov/oral_arguments/argument_transcripts/2023/23-411_o759.pdf.

The legal framework governing this case remains the same as it was last year. A First Amendment claim based on private conduct may proceed only if that conduct “can fairly be seen as state action.”⁵ The Supreme Court has explained that courts must “avoid[] the imposition of responsibility on [governmental officials] for” private “conduct it could not control.”⁶ Accordingly, officials “can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that” of those officials.⁷ “Mere approval of or acquiescence in the initiatives of a private party is not sufficient to justify holding” governmental officials “responsible for those initiatives.”⁸ “The purpose of this requirement is to assure that constitutional standards are invoked only when it can be said that the State is responsible for the specific conduct of which the plaintiff complains.”⁹

By granting certiorari in *Murthy v. Biden*, the Supreme Court has taken the opportunity to ensure that these legal principles are faithfully applied to the facts of this case. At oral argument, the justices identified at least five fatal flaws with the plaintiff-respondents’ legal positions:

1. Factual Misrepresentations.

Numerous justices from across the ideological spectrum excoriated the plaintiff-respondents’ counsel for misrepresenting facts in their brief. Justice Sotomayor stated:

I have such a problem with your brief, counselor. You omit information that changes the context of some of your claims. You attribute things to people who it didn’t happen to. At least in one of the defendants, it was her brother that something happened to, not her.¹⁰

Similarly, Justice Barrett explained that the lower courts had committed clear error in misrepresenting administration officials’ statements to platforms about President Biden’s own Facebook account and a Twitter account impersonating the President’s granddaughter as if those communications were about COVID misinformation or other matters of public policy:

If the lower courts, which I think they did, conflated some of those threats [about the President’s own Facebook account or the Twitter account impersonating his granddaughter] with threats that were designed to be threats related to the pandemic and that kind of suppression, wouldn’t that then be clear error?¹¹

The justices thus recognized a regrettable pattern in the litigation that recurs in this Committee’s hearings: when the actual facts fail to amount to anything unlawful,

⁵ *Rendell-Baker v. Kohn*, 457 U.S. 830, 838 (1982).

⁶ *Nat’l Collegiate Athletic Ass’n v. Tarkanian*, 488 U.S. 179, 191 (1988). *See also Halleck*, 139 S. Ct. at 1928-30.

⁷ *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982).

⁸ *Id.* at 1004-05.

⁹ *Blum*, 457 U.S. at 1004.

¹⁰ Oral Arg. Transcript at 84-85 (cleaned up).

¹¹ Oral Arg. Transcript at 59 (cleaned up).

those who complain about the social media platforms' content moderation decisions manufacture alternative facts to fit their political narrative.

2. Traceability.

Standing is a bedrock requirement of the federal courts' jurisdiction. "The principle of Article III standing is 'built on a single basic idea—the idea of separation of powers.'" *United States v. Texas*, 599 U.S. 670, 675 (2023) (citation omitted). "[A]n injury that results from a third party's voluntary and independent actions' does not establish traceability," an essential component of constitutional standing. *Changizi v. HHS*, 82 F.4th 492, 497 (6th Cir. 2023) (cleaned up). The plaintiff-respondents cannot show that their alleged injuries—that content they posted was moderated—are traceable to unlawful government conduct for two essential reasons. First, those content moderation decisions were made by the platforms, not any governmental official or agency. Second, the platforms began moderating content long before the Biden administration took office and have continued to do so long after the challenged communications between government officials and platforms ceased.

As Justice Kagan explained to the plaintiff-respondents' counsel:

[I]f you're going to use standard ideas about traceability and redressability, I guess what I'm suggesting is I don't see a single item in your briefs that would satisfy our normal tests.¹²

3. Scope of Injunction.

Justices from across the ideological spectrum expressed concern about the scope of the injunction ordered by the district court, as modified by the Fifth Circuit. As Justice Sotomayor explained, the injunction applies to numerous government officials and agencies, some of whom the plaintiff-respondents do not even allege engaged in any unlawful conduct.¹³

Justice Gorsuch similarly noted his disapproval of the universal injunction, which purports to apply to people and entities that were not parties to the case:

This is another example of a universal injunction, and the district court enjoined behavior by platforms that your clients didn't use and enjoined actions with respect to non-parties, not affecting your clients.

...

¹² Oral Arg. Transcript at 104.

¹³ Oral Arg. Transcript at 8-9.

But your clients are your clients. They're the only ones complaining. And it's their case. It's their controversy. And, normally, our remedies are tailored to those who are actually complaining before us and not to those who aren't, right?¹⁴

Counsel for the plaintiff-respondents ultimately conceded that the Court should narrow the injunction to apply only to the seven plaintiffs in the case and the platforms that they actually used.¹⁵

4. Strict Scrutiny. Justice Jackson noted that even if the plaintiff-respondents were correct that social media platforms' content moderation decisions constituted state action—a point, to be clear, that neither she nor any other justice conceded—those moderation decisions still may not violate the First Amendment because they passed strict scrutiny. A governmental action satisfies strict scrutiny if the action is “the least restrictive means” of advancing a “compelling governmental interest.”¹⁶

Justice Jackson explained:

Our First Amendment jurisprudence requires heightened scrutiny of speech but not necessarily a total prohibition [on governmental restrictions] when you're talking about a compelling interest to ensure, for example, that the public has accurate information in the context of a once-in-a-lifetime pandemic.¹⁷

Counsel for plaintiff-respondents conceded both that Justice Jackson's statement of the legal rule was accurate and that some direct governmental restrictions of speech related to content moderation would satisfy that standard:

Justice Jackson: Do you disagree that we would have to apply strict scrutiny and determine whether or not there is a compelling interest in how the government has tailored its regulation?

Counsel: Certainly, Your Honor. I think, at the end of every First Amendment analysis, you'll have the strict scrutiny framework in which in some national security hypos, for example, the government may well be able to demonstrate a compelling interest, may well be able to demonstrate narrow tailoring.¹⁸

5. State Action.

Most relevant to the issues before this Committee, justices from across the ideological spectrum indicated that they are poised to reject the plaintiff-respondents' expansive view of state action. In particular, the justices recognized that, as Justice Scalia explained, it is “the very business of government to favor and disfavor points of view

¹⁴ Oral Arg. Transcript at 106-107 (cleaned up).

¹⁵ Oral Arg. Transcript at 107.

¹⁶ *Sable Commc'ns of Cal. v. FCC*, 492 U.S. 115, 1226 (1989).

¹⁷ Oral Arg. Transcript at 30-31 (cleaned up).

¹⁸ Oral Arg. Transcript at 69-70.

on . . . innumerable subjects.”¹⁹ Allegations that government officials communicated the government’s point of view, including correcting factual inaccuracies and encouraging social media companies to ensure that their platforms are free from misinformation and other harmful content in accord with the platforms’ pre-existing policies, does not convert those platforms into governmental actors.

Several justices explained that the type of conduct at issue in this case—government officials communicating with the social media platforms or the press to persuade them not to carry certain speech—is commonplace:

Justice Kavanaugh: My experience is that the United States, in all its manifestations, has regular communications with has regular communications with the media to talk about things they don’t like or don’t want to see or are complaining about factual inaccuracies.²⁰

Justice Kagan: It seems like an extremely expansive argument. . . . You just wrote a bad editorial. Here are the five reasons you shouldn’t write another one. You just wrote a story that’s filled with factual errors. Here are the 10 reasons why you shouldn’t do that again.

I mean, this happens literally thousands of times a day in the federal government.²¹

Indeed, some justices indicated that conduct far beyond that alleged in the complaint here is routine:

Justice Kavanaugh: Experienced government press people throughout the federal government regularly call up the media and berate them.²²

Numerous justices explained that the issue in the case is whether the government coerced social media platforms into moderating content. Justice Sotomayor noted that counsel for the plaintiff-respondents consistently confused legal doctrines on this point:

The reason we are talking about coercion is because private parties could have chosen on their own to censor that speech. They could have said we think it’s obscene, I’m not going to be involved in this. The only issue became when that choice was overridden by the government. You’re mixing situations and confusing legal doctrines.²³

¹⁹ *Nat’l Endowment for the Arts v. Finley*, 524 U.S. 569, 598 (1998) (Scalia, J. concurring).

²⁰ Oral Arg. Transcript at 53 (cleaned up).

²¹ Oral Arg. Transcript at 71 (cleaned up).

²² Oral Arg. Transcript at 27 (cleaned up).

²³ Oral Arg. Transcript at 68.

Justice Kavanaugh similarly explicated and endorsed the government's legal position:

Justice Kavanaugh: Your key legal argument is that coercion does not encompass significant encouragement or entanglement and that it would be a mistake to so conclude because traditional, everyday communications would suddenly be deemed problematic?

And by coercion, you mean threat of legal consequences? Adverse government action.

It's probably not uncommon for government officials to protest an upcoming story on surveillance or detention policy and say, if you run that, it's going to harm the war effort and put Americans at risk.

But if they tack onto that: And if you publish the story, we're going to pursue antitrust action against you?

Deputy Solicitor General Fletcher: A huge problem.²⁴

The justices further recognized that the plaintiff-respondents relied on a mistaken understanding of the Court's cases when they say that mere governmental speech or persuasion can amount to "such significant encouragement, either overt or covert, that the choice must in law be deemed that of the state."²⁵ The plaintiff-respondents interpret the term "encouragement" in the colloquial sense to include mere persuasion. That is legally incorrect. The "encouragement" to which the Court referred was not mere government speech like persuasion, but rather the government offering positive inducements or incentives for the platforms to moderate content. As Justice Gorsuch noted, no such threats or inducements are alleged in this case:

Justice Gorsuch: You mentioned coercion repeatedly in terms of threats. Can there also be coercion in terms of inducements?

Deputy Solicitor General Fletcher: We think there can. Often a threat or an inducement is the flip side of the other. You could construe it either way: a threat of prosecution, an offer of leniency. So we acknowledge that it could be both, but it has to be a threat or an inducement of some concrete government action, not just more government speech.

Justice Gorsuch: And, hypothetically -- and I'm not saying this happened here -- but would a threat or an inducement with respect to antitrust actions qualify as coercion?

Deputy Solicitor General Fletcher: Sure.²⁶

²⁴ Oral Arg. Transcript at 51-53 (cleaned up).

²⁵ *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982).

²⁶ Oral Arg. Transcript at 31-32.

Finally, the justices recognized that none of the other doctrinal bases for attributing the social media platforms' content moderation decisions apply in this case. In particular, neither the Court's "entanglement" or "joint action" tests—in which the conduct of the private party and the government are so pervasively intertwined that they functionally and legally act together—are satisfied by the conduct alleged in the complaint. Justice Barrett made this point particularly clear:

Justice Barrett: I agree with you Bantam Books is about coercion and drawing the line there. But, clearly, there are some times when things veer into the joint action space where we would say that maybe there was state action. And there's a dispute in this case about which framework is the right one.

Deputy Solicitor General Fletcher: The main concern is going to be, have you crossed the line from just really trying to persuade to trying to threaten. . . . If you're talking about the government and the platforms acting together, turning over operational control, integrating their operations. That's a different case and might present hard state action issues, but it's just really not the kind of issue here.

Justice Barrett: And not alleged here?

Deputy Solicitor General Fletcher: Exactly right.²⁷

The justices thus seem poised to reaffirm the constitutional principle that private platforms' content moderation decisions are not attributable to the government, and thus do not violate the First Amendment, unless the government coerces those decisions or is deeply entangled in the platforms' decision-making in ways not alleged here.

In conclusion, the core truth of this case remains the same. The plaintiffs allege a vast government conspiracy to censor their speech, but the facts simply do not support that accusation. Social media platforms adopted their content moderation policies independently, and they made every decision about how to apply those policies to particular content. Government officials offered their factual expertise and, on occasion, their views about whether certain content violated the platforms' own policies. The ultimate decision about what action, if any, to take regarding any content always remained with the social media platforms themselves.

I encourage the Committee to hold another hearing on this case once the Supreme Court issues its decision by the end of the Term in late June. I believe that Committee and the public would benefit from an open discussion of the important issues in this case in light of the Court's opinion. I would be glad to return to testify again at the Committee's request.

I thank the Committee for the opportunity to testify, and I look forward to answering your questions.

²⁷ Oral Arg. Transcript at 57-58 (cleaned up).

Chair JORDAN. Thank you, Mr. Seligman.

We will now proceed with five-minute questions.

Mr. Flaherty, when the Biden Administration told Americans that the vaccinated couldn't get the virus, were they guessing or lying?

Mr. FLAHERTY. Congressman, first, it's important to remember my role in this discussion, which is as a communicator on behalf of the—

Chair JORDAN. You worked for the Biden Administration; you were an assistant to the President. It's a simple question. When they told the American people that, if you get the vaccine, you will not get the virus, was that a guess or was that a lie?

Mr. FLAHERTY. Congressman, we were communicating on behalf of the Administration. We were communicating the best information provided by some of the best medical scientists in the world in Atlanta, Bethesda, and beyond. So, our role is to—

Chair JORDAN. Well, let me ask you a simple question. Can the vaccinated—the people who got the vaccine, could they still get the virus?

Mr. FLAHERTY. Congressman, again, I'm not here as a medical expert.

Chair JORDAN. Oh, no, that's just common—everyone knows that. Of course they can. I'm just asking you a simple question.

Well, let me do it this way: What's the definition of misinformation?

Mr. FLAHERTY. Congressman, certainly there's different and varying definitions of mis- and disinformation. At the end of the day, the platforms are the ones—

Chair JORDAN. Tell me the difference. Tell me what misinformation is.

Mr. FLAHERTY. Congressman, these are decisions that the platforms, ultimately, get to make about how they—

Chair JORDAN. I'm not asking you that. I'm—a simple question: What's misinformation?

Mr. FLAHERTY. Well, Congressman, I think it's important in the context of these platforms where—

Chair JORDAN. How about you, Professor? Can you tell me what misinformation is?

Mr. ZYWICKI. I assume it would be saying something that was completely untrue.

Chair JORDAN. Saying something that's untrue but with no intent?

Mr. ZYWICKI. Yes.

Chair JORDAN. No intent? Disinformation, this is what all the misinformation experts tell us: Misinformation, saying something that's not accurate; disinformation, saying something that's not accurate with the intent to mislead, right?

Mr. ZYWICKI. That sounds right to me.

Chair JORDAN. Do you agree, Mr. Seligman, that's the common definition in the misinformation industry out there?

Mr. SELIGMAN. Yes, my understanding—

Chair JORDAN. OK, that's the definition.

So, now, Mr. Flaherty, how about this question? When the Biden Administration told the American people that the vaccinated couldn't get the virus, was it misinformation or disinformation?

Mr. FLAHERTY. Congressman, again, we were communicating the best medical research that we had at the time on behalf of a group of some of the best doctors in the world in Atlanta and Bethesda.

Chair JORDAN. When the Biden Administration told the American people that the virus didn't come from a lab, was that misinformation or disinformation?

Mr. FLAHERTY. Congressman, again, I can't speak to discussions that were on that topic. It's been a couple of years. Again, generally—

Chair JORDAN. "The White House put pressure on us to censor the lab leak theory." This was something the White House cared about, so much so that Facebook was having—the top people at Facebook were having a group discussion on it. So, I'm just asking, when they said that; was that misinformation or disinformation?

Mr. FLAHERTY. Congressman, I can't recall the specific example of the meeting with the Facebook—

Chair JORDAN. When the Biden Administration said that "masks work," was that misinformation or disinformation?

Mr. FLAHERTY. Again, Congressman, we were communicating the best research at the time. I also believe that this was a discussion that began in the previous administration as well.

Chair JORDAN. How about what Professor Zywicki brought up, Mr. Flaherty? When the White House said, "there was no such thing as natural immunity," was that misinformation or disinformation?

Mr. FLAHERTY. Again, Congressman, I am not a medical expert, and my job was to communicate on behalf of a team of medical experts.

Chair JORDAN. So, you weren't a medical expert, but you could suggest to Facebook that they needed to change their algorithm, so that the American people would not see stuff from the *Daily Wire*; they'd only see stuff from *The New York Times*. You can do that, but you can't tell me if they were guessing or lying when they said something that was absolutely not true?

Mr. FLAHERTY. Well, again, Congressman, my role as a communicator on behalf of the best information available. The role of the platforms was to have a set of policies that they enforced on their own. My engagement with them had no bearing on what their—

Chair JORDAN. No bearing? No bearing?

Mr. FLAHERTY. Well, Congressman, again—

Chair JORDAN. The third day—who's Clarke Humphrey?

Mr. FLAHERTY. Clarke Humphrey was the Digital Director for the COVID—

Chair JORDAN. Did you work with her?

Mr. FLAHERTY. Yes, Congressman, I did.

Chair JORDAN. Part of the White House operation in this same area, right? You worked with her?

Mr. FLAHERTY. Congressman, she worked in a similar area.

Chair JORDAN. Yes, OK. So, when she said on the third day the Biden Administration "Wanted to flag the below tweet," wondering if you can get moving on—"get moving on the process for having

it removed ASAP,” that’s not trying to impact what the platforms do? That’s not telling the platform what kind of speech can be out there?

Mr. FLAHERTY. Congressman, again, we had the ability to flag whatever we wanted, and the platforms had an ability to say no. I can’t speak to whether or not they took any action on the particular content in question.

Chair JORDAN. Well, no, if they said no, the President of the United States says Facebook is killing people. They obviously felt the pressure. That’s why they’re having that group text conversation.

How about this one: When the Biden Administration told the American people, “the border is secure,” was that misinformation or disinformation?

Mr. FLAHERTY. Congressman, again, I’m here to discuss my engagements with social media platforms.

Chair JORDAN. I’m just asking. You were in the Biden Administration when these kinds of statements were being made.

How about this one: When the Biden Administration said, “the Inflation Reduction Act will actually reduce inflation,” was that misinformation or disinformation?

Mr. FLAHERTY. Congressman, again, I’m here to discuss my interactions with social media companies.

Chair JORDAN. Yes. Let me go back to the first question in the last 13 seconds. Any chance you’ll answer one question for me? When the Biden Administration told the American people that the vaccinated couldn’t get the virus, were they guessing or lying?

Mr. FLAHERTY. Congressman, we were communicating on behalf of the best medical research that we had available at the time.

Chair JORDAN. All right. The Ranking Member, I yield. The Ranking Member is recognized for five minutes.

Ms. PLASKETT. Thank you. May I ask that you yield the time to Mr. Connolly?

Chair JORDAN. Oh, yes, I can do that, with whoever you guys want.

Ms. PLASKETT. Thank you.

Chair JORDAN. The gentleman from Virginia is recognized.

Mr. CONNOLLY. I thank the Chair, and I thank my friend for her graciousness. I’ve got a little problem with my knee this morning.

Mr. Flaherty, since you’re in the hot seat, when the President of the United States, the previous President, suggested that perhaps the ingestion of bleach might cure COVID, was that misinformation or disinformation?

Mr. FLAHERTY. I—

Mr. CONNOLLY. Oh, you—

Mr. FLAHERTY. Congressman, I can’t speak—

[Laughter.]

Mr. CONNOLLY. All right. Got it. When he suggested perhaps sources of light in certain orifices of the body might also work, was that misinformation or disinformation?

Mr. FLAHERTY. I believe my understanding is that was medically inaccurate, yes.

Mr. CONNOLLY. By the way, did that President get COVID?

Mr. FLAHERTY. Congressman, I do recall that he did.

Mr. CONNOLLY. Did he get vaccinated?

Mr. FLAHERTY. Congressman, I believe that he did.

Mr. CONNOLLY. Yes. Well, I seem to recall the Chair of this Committee and I actually got vaccinated—I think I’m right, Mr. Jordan—on the same day. We were in the same clinic here on the Hill when the vaccine first got—

Chair JORDAN. That’s not accurate.

Mr. CONNOLLY. Oh, it’s not? I thought I saw you.

Chair JORDAN. You may have saw me, but I didn’t get vaccinated.

Mr. CONNOLLY. OK. I’m sorry. Well, anyway, he was hanging around.

Chair JORDAN. My office is close to where you got vaccinated, but I didn’t.

Mr. CONNOLLY. So, I want to show some photos from an information slide show that was presented at social media companies by the CDC to inform these companies of false information—what Professor Zywicki, apparently, refers to as “hectoring” by you, Mr. Flaherty, and you, Mr. Slavitt.

These slides also included facts provided by the CDC of correct, scientific-based information. I want to take a moment to go through some of these posts that the government identified for social media companies as false information—that “hectoring” that seems to bother Professor Zywicki.

It, basically, on the screen, as you can see. There was a theory floating around in social media in the first half of 2021 that said COVID vaccines cause humans to become magnetic. For example, one of these posts’ states, “The magnetism from the vaccine reportedly spreads throughout the body over time.” It shows pictures of a person’s arm in the middle there with spoons attached to it from the magnetic attraction.

Mr. Slavitt, is there any evidence at all that COVID vaccines caused human skin to become magnetic?

Mr. SLAVITT. No, Congressman, not that I am aware of.

Mr. CONNOLLY. So, after I get the vaccine, I don’t need to start holding forks and spoons on my arm to see if they stick?

Mr. SLAVITT. Yes, nothing that I am aware of.

Mr. CONNOLLY. Nothing that you are aware of. There are, quote, “self-reproducing nanoparticles in the vaccines that take over our bodies that cause metal objects to stick to you.” That is also false?

Mr. SLAVITT. Yes, that was a common internet rumor, but that was not true.

Mr. CONNOLLY. So, you were concerned during COVID, that we best know of 1.2 million Americans died. Almost everyone in the country got COVID at one point or another. I got it twice.

Almost all of us, like you, Mr. Flaherty, lost family members or friends who succumbed to the virus. I don’t know, I have a different interpretation perhaps of your actions which is you were desperate to get correct information out to protect lives. In the beginning, we didn’t know everything we needed to know about COVID. It was a brand new virus and not a lot of studies. We weren’t sure what worked and what didn’t. We weren’t sure about the protections. That is hardly you engaged in a disinformation campaign, nor is it hardly you trying to crack down on the free ex-

pression of ideas that can jeopardize lives. Would that be a fair characterization, Mr. Flaherty, of your motivation?

Mr. FLAHERTY. I think that would be a fair characterization, Congressman.

Mr. CONNOLLY. If we can go to another photo really quick. This one says the magnetic skin conditions were emerging daily and there were verified reports that whoever took the COVID vaccine was going to be magnetic. Mr. Slavitt, was this post accurate?

Mr. SLAVITT. I don't believe so.

Mr. CONNOLLY. This one got to Moderna. It actually slandered the Moderna vaccine by saying it contained a deadly poison that was not even approved for veterinary use, let alone human use. Many of us got the Moderna vaccine. Has it ever contained ingredients that are fatal or carcinogenic or that cause infertility or nerve, liver, or kidney damage that you know of?

Mr. SLAVITT. I don't believe so. I think that vaccine has been given hundreds of millions of times in the United States. Not aware of it.

Mr. CONNOLLY. I just think it is important that when we use words like disinformation, misinformation, or hectoring of U.S. Government officials who are trying to save lives that we see the other side. There was a real problem, people lost their lives because they believed that stuff. It had no basis in scientific fact and it jeopardized lives in the middle of a pandemic, the worst pandemic in over 100 years. I yield back.

Chair JORDAN. The gentleman's time is expired. He yields back. The gentleman from Florida, Mr. Steube, is recognized.

Mr. STEUBE. Thank you, Mr. Chair.

Mr. Slavitt, how can you honestly say, and I am quoting from your testimony, and when you said it out loud, I about lost it, and I quote,

Further we had no intention of coercing social media companies into taking action and I never received any indication that our dialog was ever interpreted that way.

What exactly was your intent? Why all these emails? The Chair was just talking about vaccine misinformation that you guys were involved in. There is a litany list, and I will go through all these.

Amazon emails. What was your intent if your intent wasn't to coerce? In fact, Amazon themselves in an internal document that we have on an email on March 12, 2021, at 14:47, Friday, Ty Rogers, and the other ones are blacked out, "Feeling pressure from the White House." Are you a medical doctor?

Mr. SLAVITT. No.

Mr. STEUBE. You, Mr. Flaherty, testified that you are not a medical expert, right?

Mr. FLAHERTY. That's correct.

Mr. STEUBE. You are not a doctor?

Mr. FLAHERTY. Correct.

Mr. STEUBE. Any scientific training at all?

Mr. FLAHERTY. That's correct. No.

Mr. STEUBE. Ever engaged in advanced scientific research or vaccine development?

Mr. FLAHERTY. Myself, no, I did not. Again, Congressman—

Mr. STEUBE. Did you, Mr. Slavitt?

Mr. SLAVITT. No.

Mr. STEUBE. OK. So, while serving as Senior Officials at the White House both of you engaged in lengthy and often hostile discussions with social media companies about your opinion of disinformation related to the pandemic. Despite your lack of what you just testified under oath of medical training or scientific research experience, you both sought to restrict the free flow of information and opinions you deemed as disinformation, demanded that these online forums restrict the reach of your opinions you disfavored through changes to algorithms, internal content policies, and simply taking down posts in violations of Americans' First Amendment rights.

Unfortunately, many of these social media companies caved to your pressure campaigns despite your lie to the American people today and this Committee that you had no intent of coercing them. You absolutely did, and that was absolutely your intent because what other reason would you waste all this time communicating with Amazon, Facebook, and Twitter to get them to take down stuff?

In fact, simple things like books—so on—you guys had a busy day on March 2nd in the White House. March 2, 2021, you guys were emailing fervorously (phonetic).

So, let's see. We will start with Mr. Slavitt. You emailed from you to Zach Butterworth. Flaherty, you were in the email. Talking about a specific book, and this is just one of many examples that you flagged for Amazon, "Anyone Who Tells you Vaccines are Safe and Effective is Lying." So, here is the email that you sent on that date. After that you guys started emailing Amazon. Then on the same day at 6:16 p.m.—so the emails started about 3 p.m. in the afternoon and it is now 6:16 p.m., Mr. Flaherty. Then, you are emailing Amazon saying,

Let's talk about what your policies are. We want to understand what lines are here. My colleague Ora can help find us a time.

So, that was on March 2nd. Despite the fact that you don't want to coerce social media companies, even though you are under oath and that was what your testimony says.

Then, on March 12th, Amazon says in an internal email about the discussion in the phone call that you, and I quote—this is on an email March 12, 2021, 14:47. Ty Rogers is on this, other people from Amazon. It is an internal email that says,

PP is feeling pressure from the White House Task Force on this issue as well as it relates to banning books.

Then, there is another internal email on April 20th. So, just laying this out. On March 2nd you guys have a busy day identifying books that you wanted banned on Amazon. Then you have organized a call with Amazon on the 2nd later in the day. Then on the 12th it looks like you had that call because then there is internal emails from Amazon about the pressure that they are receiving from the White House.

Then just a month later here is another email from Amazon, and I quote—this is Wednesday, April 20, 2022,

There may be parallels in the transgender book debates here even if we disclose that we have removed 1,500 books.

So, because of your coercion campaign, despite the fact under oath of your saying that you didn't intend to coerce them, they took 1,500 books off Amazon.

So, it is like the American people are smarter than what you think. You can just say that you didn't coerce them. They are smarter than that. They realize that this is a complete outright lie to the American people because they have all this information now thanks to the great work of this Committee and the Chair of getting actual email correspondence and records of phone conversations of you talking to people at Amazon, people at Facebook, people at Twitter to take down not just books—and then our testimony from another witness of him on Facebook. All this work that you did was clearly intended to coerce the social media companies to act in a certain manner. To testify otherwise is a complete and outright lie to the American people.

Here is another internal Amazon email:

Is the Biden Admin asking us to remove books or are they more concerned about search results or order?

That is an email between Amazon employees on March 9th, all during this kind of monthly timeframe where all this was going on.

High levels of propaganda. This is another email from you on that same day. Man, that was a busy day at the White House for emails. March 2, 2021. Slavitt emailed Amazon's Vice President of Public Policy asking who to the White House could talk about the, quote,

High levels of propaganda and misinformation and disinformation on Amazon's online bookstores.

A month later they banned 1,500 books.

So, to testify under oath that you didn't intend to coerce these social media companies to act in a certain manner favorable to your political position is an outright lie to the American people. I yield back.

Chair JORDAN. The gentleman yields back.

Ms. PLASKETT. Mr. Chair, I would ask unanimous consent to enter into the record excerpts from the Committee's April 16, 2024, interview with the Amazon employee who received the email that has been discussed in which the employee explains that Amazon did not take down any content and they had been working on policies regarding vaccine-related books on Amazon.

Mr. ISSA. Mr. Chair, I object. That is not a unanimous consent to insert.

Ms. PLASKETT. Can you please let me finish my statement?

Mr. ISSA. You know you are not allowed to—

Mr. ISSA. Mr. Chair, you are not allowed to testify on a unanimous consent.

Ms. PLASKETT. Have some respect.

You guys have been talking over me all morning and I am getting a little tired of it now.

Mr. ISSA. Mr. Chair I object and I ask you to rule.

Ms. PLASKETT. Can we have some respect for one another here?

Mr. ISSA. Mr. Chair, I object.

Chair JORDAN. There has been an objection for vaccine-related books on Amazon for weeks before the Slavitt email.

Mr. ISSA. I object to unanimous consent.

Mr. ISSA. The unanimous consent is objected to.

Ms. WASSERMAN SCHULTZ. Mr. Chair, I would like to move that what the gentlelady is trying to insert into the record be allowed to be inserted into the record, and I would call for a recorded vote.

Ms. PLASKETT. Yes.

Mr. LYNCH. Move to table.

Ms. PLASKETT. Second. Second the motion.

Mr. LYNCH. Move to table.

Chair JORDAN. Objection. We are in five-minutes questions.

Mr. LYNCH. Point of order.

Ms. PLASKETT. I am asking for a second of that motion.

Chair JORDAN. The Chair recognizes the Ranking Member for five minutes of questioning.

Ms. PLASKETT. I am not using my five minutes of questions.

Ms. WASSERMAN SCHULTZ. Mr. Chair—

Mr. LYNCH. Point of order.

Ms. PLASKETT. I am talking about this motion at this time. You said that there was an objection to the motion. I move that there be a roll call on the motion.

Chair JORDAN. There has no valid been made.

Mr. LYNCH. On of a point of order.

Chair JORDAN. You asked for unanimous consent. There was an objection.

Ms. PLASKETT. Then, I said—Ms. Sanchez—

Chair JORDAN. There was an objection.

Ms. PLASKETT. —asked the—moved a motion.

Ms. WASSERMAN SCHULTZ. It was Ms. Wasserman Schultz.

Ms. PLASKETT. I am sorry, Ms. Wasserman Schultz had a motion which I seconded.

Ms. WASSERMAN SCHULTZ. A motion was made.

Mr. LYNCH. On a point of order, Mr. Chair. Point of order?

Ms. PLASKETT. I did ask for a unanimous consent and when that was objected to Ms. Wasserman Schultz made a motion which I seconded.

Chair JORDAN. The motion is to enter it into the record?

Ms. WASSERMAN SCHULTZ. Yes.

Ms. PLASKETT. Yes, it is.

Chair JORDAN. OK. The gentlelady has made a motion. The gentleman has—

Mr. LYNCH. On a point of order on the motion?

Chair JORDAN. There has been a motion to table the—all those in favor to table, will say aye?

Ms. PLASKETT. I know, but sir—Mr. Chair—

Mr. LYNCH. Point of order.

Chair JORDAN. Those opposed, no?

Ms. PLASKETT. Mr. Chair, there is a point of order, you can hold that request—

Mr. LYNCH. I have been standing for about five minutes now.

Ms. PLASKETT. —an outstanding point of order that you as the Chair need to address.

Chair JORDAN. The gentleman will State his point of order.

Mr. LYNCH. OK. So, this hearing is—
 Chair JORDAN. That is not a valid point of order.
 Ms. PLASKETT. You haven't even heard him finish his sentence.
 Mr. LYNCH. This hearing—
 Chair JORDAN. A point of order has to start with a reference to the section and the order. You can't just start talking.
 Mr. LYNCH. No. No.
 Chair JORDAN. There has been a motion to table.
 Mr. LYNCH. Mr. Chair, this is—
 Chair JORDAN. The question is on the motion to table
 Ms. PLASKETT. You are going to do this for the rest of this year?
 Mr. LYNCH. It is ridiculous.
 Ms. PLASKETT. You are going to operate this way with your colleagues?
 Chair JORDAN. No, I am not going to do that.
 I am going to follow the rules of the Committee. The motion to table—
 Ms. PLASKETT. You don't follow the rules of the Committee when it is your—
 Chair JORDAN. All those in favor of tabling the motion from the gentlelady—
 Ms. PLASKETT. —colleagues over there but you are going to treat us this way?
 Chair JORDAN. —from Florida will say aye?
 Ms. PLASKETT. Is that how we are going to do this?
 Chair JORDAN. Those opposed, no?
 Ms. PLASKETT. Is that how we are going to do this for the rest of the year?
 Ms. WASSERMAN SCHULTZ. Mr. Chair, I ask for a recorded vote.
 Ms. PLASKETT. You have no respect for your colleagues.
 Ms. WASSERMAN SCHULTZ. Mr. Chair, I ask for a recorded vote on the motion to table.
 Ms. PLASKETT. This is ridiculous.
 Chair JORDAN. Well, hold on 1 second. I haven't even said the—according to the—I think the ayes had it. The gentlelady has asked for a recorded vote.
 We will have the clerk come out and call the roll.
 Ms. BIDELMAN. Mr. Jordan?
 Ms. PLASKETT. Are you going to address the point of order that is still outstanding?
 Mr. LYNCH. There is a vote been called, right?
 Ms. PLASKETT. Yes.
 Mr. LYNCH. So, if we are going to operate—
 Chair JORDAN. The vote is the motion to table.
 Mr. LYNCH. Right.
 Ms. BIDELMAN. Mr. Jordan?
 Chair JORDAN. Yes.
 Ms. BIDELMAN. Mr. Jordan votes yes.
 Mr. Issa?
 Mr. ISSA. Aye.
 Ms. BIDELMAN. Mr. Issa votes aye.
 Mr. Massie?
 Ms. Stefanik?
 Mr. Gaetz?

Mr. GAETZ. Aye.
 Ms. BIDELMAN. Mr. Gaetz votes aye.
 Mr. Armstrong?
 Mr. Steube?
 Mr. STEUBE. Yes.
 Ms. BIDELMAN. Mr. Steube votes yes.
 Mr. Bishop?
 Mr. BISHOP. Yes.
 Ms. BIDELMAN. Mr. Bishop votes yes.
 Ms. Cammack?
 Ms. CAMMACK. Aye.
 Ms. BIDELMAN. Ms. Cammack votes aye.
 Ms. Hageman?
 Ms. HAGEMAN. Yes.
 Ms. BIDELMAN. Ms. Hageman votes yes.
 Mr. Davidson?
 Mr. DAVIDSON. Aye.
 Ms. BIDELMAN. Mr. Davidson votes aye.
 Mr. Fry?
 Mr. FRY. Aye.
 Ms. BIDELMAN. Mr. Fry votes aye.
 Ms. Plaskett?
 Ms. PLASKETT. No.
 Ms. BIDELMAN. Ms. Plaskett votes no.
 Mr. Lynch?
 Mr. LYNCH. No.
 Ms. BIDELMAN. Mr. Lynch votes no.
 Ms. Sanchez?
 Ms. SANCHEZ. Hell no.
 Ms. BIDELMAN. Ms. Sanchez votes no.
 Ms. Wasserman Schultz?
 Ms. WASSERMAN SCHULTZ. The irony of not allowing introduction of information into the record which is a typical action for—
 Mr. ISSA. Objection.
 Ms. WASSERMAN SCHULTZ. —a hearing that is based on—
 Mr. ISSA. Objection. Chair, there is a roll call in—
 Ms. WASSERMAN SCHULTZ. Their objection to information being squelched is not lost on me, and I vote no.
 Ms. BIDELMAN. Ms. Wasserman Schultz votes no.
 Mr. Connolly?
 Mr. Garamendi?
 [Inaudible.]
 Mr. GARAMENDI. I am trying to understand the question before us is—the committee wants to suppress information.
 Chair JORDAN. The question is on the motion to table.
 Mr. GARAMENDI. Oh, table the information so that we don't have the information available to us or their public and we are going round and round berating—
 Chair JORDAN. Does the gentleman wish to be recorded on the vote or not?
 Mr. GARAMENDI. I am at a loss to understand, Mr. Chair, what in the world you are doing?
 Chair JORDAN. No, it is—
 Mr. GARAMENDI. Mr. Chair—

Chair JORDAN. —a yes or no question. It seems like you are at a loss to know what you are supposed to do here to vote. Yes or no?

Mr. GARAMENDI. Oh, in other words to be obedient to—

Chair JORDAN. No. Yes or no. You can vote any way you want.

Mr. BISHOP. Mr. Chair, this is a dilatory tactic and the vote should—roll call should continue. The clerk should be instructed to continue calling the roll if the gentleman doesn't wish to record.

Ms. BIDELMAN. Ms. Garcia?

Mr. GARAMENDI. Oh, once again suppressing information.

Chair JORDAN. No, we are just waiting for an answer. If you won't give it to us, we are going to move on.

Mr. BISHOP. Procedure.

Ms. BIDELMAN. Ms. Garcia?

Mr. GARAMENDI. Garamendi votes no.

Ms. BIDELMAN. Mr. Garamendi votes no.

Ms. Garcia?

Ms. GARCIA. Well, talk about coercion. I vote no.

Ms. BIDELMAN. Ms. Garcia votes no.

Mr. Goldman?

Mr. GOLDMAN. No.

Ms. BIDELMAN. Mr. Goldman votes no.

Ms. CROCKETT. No.

Ms. BIDELMAN. Ms. Crockett votes no.

Mr. Armstrong?

Mr. ARMSTRONG. Yes.

Ms. BIDELMAN. Mr. Armstrong votes yes.

Chair JORDAN. The clerk will report.

Ms. BIDELMAN. Mr. Chair, there are 10 ayes and 8 noes.

Chair JORDAN. Motion is tabled.

The Chair now recognizes for five minutes of questioning the gentleman from Massachusetts.

Mr. LYNCH. Thank you, Mr. Chair. I know that we have referred to several quotes by Mark Zuckerberg already this morning. One of his famous lines is the question—this is Mark Zuckerberg. The question that I ask myself every day is, quote, “Is this the most important thing I could be doing?” I think this Committee should ask itself the same question.

When we opened this Select Committee—Subcommittee on so-called Weaponization of the Federal Government we had great fanfare. This room was packed. This room was packed. We had all kinds of news cameras and extra security. Jam packed, reporters, a line out the door. Those extra tables that you see on the side there are 60 or so extra chairs for the press that didn't show today. Even half of the Republican Members didn't show up until we had a roll call. We should ask ourselves, is this the most important thing we could be doing today?

Mr. Seligman, I want to ask you about election denial and its impact on the integrity of our electoral system. What is the impact of President Trump and Chair Jordan's lies that the election was stolen? What is the impact of that on the integrity of our electoral process?

Mr. SELIGMAN. Well, there have been pervasive impacts, the most dramatic of which obviously were the tragic events of January 6, 2021. The impacts have persisted.

One of the things that I am most worried about is that election workers throughout the country have been subject to threats and intimidation. One of the consequences of that is that these election officials, both elected officials and civil servants, have been leaving service and that leaves the election administration system in the United States dangerously understaffed with experienced election workers. There is a direct tie between the threats that these election workers have experienced, their decisions to leave, and the misinformation about the 2020 election. There is a direct link there.

Mr. LYNCH. So, we had more than 60 State and Federal lawsuits brought by President Trump and Rudy Giuliani and other associates, which all failed. All those cases failed primarily because they lacked evidence. From the State courts to the Supreme Court judges from across the political spectrum have reviewed those rigged election claims made by Chair Jordan and made by Donald Trump and outright rejected those.

In one opinion a Trump-appointed Federal judge, Stephanos Bibas, wrote, quote,

Calling an election unfair does not make it so. Charges require specific allegations and then evidence, and we have neither here.

Again, in throwing out Rudy Giuliani's attempt to discard millions of legally cast votes in Pennsylvania Federal District Court Judge and former State Republican Party official, Matthew Brann, ruled that, quote,

This court has been presented with strained legal arguments without merit and speculative accusations unsupported by evidence.

He also found the case made by Giuliani to have been "haphazardly stitched together like a Frankenstein's monster."

Mr. Seligman, what steps can we take to curb disinformation and return the American people to a shared reality about our electoral process?

Mr. SELIGMAN. Well, I think both government and media, including social media platforms, have a role to play here. So, one of the most important governmental roles to play here is to provide accurate information. So, the Cybersecurity and Infrastructure Security Agency plays an enormously important role in doing so. It provides information to the public and to media organizations including social media platforms about accurate information to counteract misinformation.

It also at times flags misinformation, false information about the mechanics of voting, who is eligible to vote, on what day they may vote, the manner they vote. Is it by mail or is it by text message? So, this is a governmental function that is indisputably consistent with the First Amendment and is critically important to the integrity of our elections.

Now, the private sector also has an important role.

Mr. LYNCH. I need to reclaim my time, sir. I am sorry. Thank you. Thank you for your answer.

Mr. Chair, we have 38 transcripts of witnesses that have been all before this Committee and had to testify under oath in response to claims of censorship of the media. I move to have these 38 transcripts placed on the record. Whether or not they are disclosed or made available to the public is another question for the Committee, but I ask that these 38 transcripts be admitted into the record.

Mr. ISSA. Move to table.

Chair JORDAN. A motion to table the motion made by the gentleman from Massachusetts. All those in favor of the tabling motion, will say aye?

Those opposed, no?

In the opinion of the Chair, the ayes have it and—

Mr. WASSERMAN SCHULTZ. Mr. Chair, I ask for a recorded vote.

Chair JORDAN. A recorded vote being requested, the clerk will call the roll.

Mr. WASSERMAN SCHULTZ. This is outrageous. We are not able to answer—put anything into the record now? Are you kidding me?

Ms. BIDELMAN. Mr. Jordan?

Chair JORDAN. Yes.

Ms. BIDELMAN. Mr. Jordan votes yes.

Mr. Issa?

Mr. ISSA. Yes.

Ms. BIDELMAN. Mr. Issa vote yes.

Mr. Massie?

Mr. MASSIE. Yes.

Ms. BIDELMAN. Mr. Massie votes yes.

Ms. Stefanik?

Mr. Gaetz?

Mr. Armstrong?

Mr. Steube?

Mr. Bishop?

Mr. BISHOP. Yes.

Ms. BIDELMAN. Mr. Bishop votes yes.

Ms. Cammack?

Ms. CAMMACK. Aye.

Ms. BIDELMAN. Ms. Cammack votes aye.

Ms. Hageman?

Ms. HAGEMAN. Yes.

Ms. BIDELMAN. Ms. Hageman votes yes.

Mr. Davidson?

Mr. DAVIDSON. Aye.

Ms. BIDELMAN. Mr. Davidson votes aye.

Mr. Fry?

Mr. FRY. Aye.

Ms. BIDELMAN. Mr. Fry votes aye.

Ms. Plaskett?

Ms. PLASKETT. Talk about censorship. No.

Ms. BIDELMAN. Ms. Plaskett votes no.

Mr. Lynch?

Mr. LYNCH. This is a hearing of censorship by the media. These transcripts are transcripts of media official who were all before the Committee.

Chair JORDAN. The question—

Mr. LYNCH. I vote no.

Ms. BIDELMAN. Mr. Lynch votes no.

Ms. Sanchez?

Ms. SANCHEZ. If you are not afraid of what is in the transcripts, I don't understand why they can't be entered into the record, and my vote is no.

Ms. BIDELMAN. Ms. Sanchez votes no.

Ms. Wasserman Schultz?

Ms. WASSERMAN SCHULTZ. Twenty years of Committee hearings in Congress I have never seen a denial of being allowed to insert information into the record, ever. Mr. Chair, you have to fix this. This cannot be how we proceed going forward, and I vote no.

Ms. BIDELMAN. Ms. Wasserman Schultz votes no.

Mr. Connolly?

Mr. Garamendi?

Mr. GARAMENDI. Why are we censoring the information?

Chair JORDAN. We are not. We will release the transcripts. We will talk to the person who was deposed and when we talk with their counsel and they are comfortable with the transcripts, we will release—we plan on releasing them all. We are not going to—

Mr. GARAMENDI. The transcripts have been available since last April, Mr. Chair. Last April. It has been over a year.

Chair JORDAN. We are working on it.

Mr. GARAMENDI. Over a year.

Chair JORDAN. We are working on that. The question is to Mr. Garamendi how does he vote on the motion to table?

Mr. GARAMENDI. No.

Ms. BIDELMAN. Mr. Garamendi votes no.

Ms. Garcia?

Ms. GARCIA. No.

Ms. BIDELMAN. Ms. Garcia votes no.

Mr. Goldman?

Mr. GOLDMAN. Speech is free as long as I agree. No.

Ms. BIDELMAN. Mr. Goldman votes no.

Ms. Crockett?

Ms. CROCKETT. That was poetic. No.

Ms. BIDELMAN. Ms. Crockett votes no.

Mr. GAETZ. Mr. Gaetz votes aye.

Ms. BIDELMAN. Mr. Gaetz votes aye.

Mr. ARMSTRONG. Armstrong votes yes.

Ms. BIDELMAN. Mr. Armstrong votes yes.

Chair JORDAN. The clerk will report.

Ms. BIDELMAN. Mr. Chair, there are 10 ayes and 8 noes.

Chair JORDAN. The motion is tabled.

The gentleman—

Mr. ISSA. Mr. Chair, I would ask unanimous consent that items asked for—

Ms. WASSERMAN SCHULTZ. I object.

Ms. PLASKETT. Object.

[Laughter.]

Ms. WASSERMAN SCHULTZ. Object.

Mr. ISSA. I am asking unanimous consent—

Ms. WASSERMAN SCHULTZ. Objection.

Ms. PLASKETT. An objection has already been made.

Mr. ISSA. I have to get to you knowing what it is before you object.

Ms. PLASKETT. We don't—

Ms. SANCHEZ. We don't get to explain what we are asking.

Mr. ISSA. That the material previously asked for by unanimous consent—

Ms. PLASKETT. Objection.

Mr. ISSA. —to the extent that it does not violate the rules of the Committee be admitted. If you want to object to your own information being put in, go ahead. Is there an objection?

Mr. GOLDMAN. It is the Committee's information. It is not our own information.

Ms. GARCIA. You are placing conditions. We don't want to admit it with conditions.

Ms. PLASKETT. Who determines that?

Chair JORDAN. The Democrats have objected to the unanimous consent request.

I now recognize the gentleman from California for the five-minutes of questions.

Mr. ISSA. Thank you, Mr. Chair. I share with my gentlelady on the other side of the aisle. I have never seen unanimous consent for appropriate outside information to be objected to and I don't believe it was here today.

Ms. WASSERMAN SCHULTZ. You are the one that made the objection.

Mr. ISSA. I made the objection—

Ms. GARCIA. You did it yourself.

Mr. ISSA. —for material previously not released, which is pursuant to the Committee to be released by agreement with the Chair.

Having said that, I came here for a hearing.

Mr. Flaherty, where did you work during your time in the Administration?

Mr. FLAHERTY. Congressman, sorry, can you clarify?

Mr. ISSA. What building?

Mr. FLAHERTY. For a portion I was in the EEOB and for a portion I was in the West Wing.

Mr. ISSA. You were in the White House for your entire time? The EEOB is considered the White House, correct?

Mr. FLAHERTY. Yes. Sorry. I apologize.

Mr. ISSA. Mr. Slavitt, same thing there? You worked—

Mr. SLAVITT. Yes.

Mr. ISSA. —in the White House?

Mr. SLAVITT. Yes.

Mr. ISSA. OK. When you had conversations with YouTube or with Facebook, did they believe they were talking to somebody in the White House?

Mr. FLAHERTY. Congressman, my understanding would be that they would understand—

Mr. ISSA. Yes, you would say you are calling from the White House, you are calling on behalf of the President, you are—that is the role that each of you had.

Mr. Zywicki, would you agree that when you say you're calling from the White House that is inherently a statement of amazingly high power? Any doubt about that?

Mr. ZYWICKI. I have no doubt about that.

Mr. ISSA. When you are a few feet from, as Mr. Flaherty was—a few feet from the Oval Office are you few feet away from the—literally the center of power of the world?

Mr. ZYWICKI. Yes, I would say so.

Mr. ISSA. So, when Mr. Seligman said the court's going to rule, the court's going to rule, this—he was saying because you would fail to show potentially a level of intimidation or use of power, is that correct? That is somewhat what he was referring to when—the court's comments?

Mr. ZYWICKI. Yes, that seems to have been the thrust of his comments.

Mr. ISSA. OK. Well, so for our audience here today, the world, is there any question you say that you are calling from the White House, that you are calling from a place of immense power, whether you are a doctor, you know anything about vaccines or not, but you are questioning whether a publicly traded company should be doing what it is doing, that there is inherently a level of potential coercion?

Mr. ZYWICKI. I cannot imagine a single American other than people sitting at this table or taking their side who would not recognize what it means to get a call from the White House.

Mr. ISSA. Mr. Flaherty, in my time I have gotten a couple of calls from the White House, and it generally causes me to panic even if it is my own party. I have gotten calls where someone recognizes they are from the FBI, and it causes me to begin moving every possible scenario before I find out what it is all about.

Did you have any doubt that you were speaking with a level of authority when you made suggestions or question things?

Mr. FLAHERTY. Congressman, again I can't speak to how—

Mr. ISSA. Oh, come on. You are a smart guy. You said you were from the White House. You are speaking on behalf of the Administration. Did you have any doubt that what you said might be seen as more than a passing suggestion?

Mr. FLAHERTY. Well, Congressman, first, the White House definitely has a vested interest in public health and the health of—

Mr. ISSA. OK. Well, let me ask it a different way. When YouTube offers to change their policy and ultimately does change their policy, did you see a cause and effect that you might have had something to do with an entity literally changing how it stifles what gets onto its platform?

Mr. FLAHERTY. Congressman, I don't recall specific—

Mr. ISSA. So, you put out information, but you don't ingest any of the results is what you are telling us here today?

Mr. FLAHERTY. Congressman, I can't recall a specific policy change.

Mr. ISSA. OK. You don't recall. That is fine.

Mr. Slavitt, I am going to ask you substantially the same thing. You were calling from the White House; you were calling from the most powerful place pretty much on earth. Did it ever occur to you that a benign suggestion might, in fact, look like an order that could lead to huge ramifications? Did it at least cross your mind that you had to tread softly?

Mr. SLAVITT. Yes, Mr. Congressman, I did expect that they would take my call. I did not expect that they would do anything they didn't agree with. In particular, in the course of a pandemic I hoped that they would take my call seriously since we were talking about a serious matter.

Mr. ISSA. OK. I just want to followup on one thing the Chair got to. He asked it one way; I will ask it another way.

Many of the things that you were causing to be changed, suggesting being changed turned out not to be true, is that correct, such as the—getting a vaccine, stopping the transmittal of the disease? It just turned out not to be true. Is that a fair statement?

Mr. SLAVITT. If what you are suggesting is that the facts changed on the ground quite frequently during COVID, I would agree with that.

Mr. ISSA. The facts never changed. The understanding of what the truth was changed.

Mr. SLAVITT. Well, actually as we saw new variants with—particularly the Delta variant, some of the things that had occurred before Delta did, in fact, change because the fact {inaudible}—

Mr. ISSA. Thank you, Mr. Chair, and I reluctantly yield back even though Mr. Zywicki had something else to say.

Chair JORDAN. The gentleman yields back.

The gentleman from California is recognized.

Ms. SANCHEZ. Thank you. It is kind of ironic—oh, I'm sorry. Mr. Garamendi.

Chair JORDAN. I will go to California, whoever you want, but I was told the gentleman from California.

Mr. GARAMENDI. Thank you, Mr. Chair. If my colleague from California would like to go first—

Ms. SANCHEZ. No.

Mr. GARAMENDI. OK. I guess I am perplexed. I have a line of questions for Mr. Seligman, but before I get there my understanding is that the Committee staff did a series of interviews under oath with witnesses, 25 witnesses from the various media companies that are being discussed here today and that of those 25, 12 were from Meta, that is Facebook; 11 from Google, YouTube; one from Amazon; one from Twitter. When asked, every single witness confirmed that nobody from the government ever coerced or threatened their respective companies into taking down content.

Presumably those interviews were recorded and, in most cases, videotaped. It would seem to me important that those recordings and those videos be on the record and available to the Committee Members and to the public because if in fact they do exist, and if in fact I am correct that every person interviewed said that they were coerced, then that would seem to be critical information for the content of this hearing. However, it appears as though we may not have those interviews available to us, although I am a little—I am not at all sure what the current Chair intended with his motion.

Mr. ISSA. [Presiding.] Is that a question for the Chair?

Mr. GARAMENDI. Did your motion make those interviews available and part of the record?

Mr. ISSA. As long as they were not prohibited by the Committee Rules on release. Anything that has become publicly available

would be available. These, of course, that are sitting here at a minimum are available to you at any time. All the transcripts are available. As a matter of fact, we're all invited to be in those interviews.

Mr. GARAMENDI. Are they now a formal part of the hearing record?

Mr. ISSA. At this time, they have not been admitted. The Chair explained that among others there are at least some that are depositions which require a formal vote to release the others. Some of the material has been released. Some have not.

Mr. GARAMENDI. If it is correct to say that of those 25 interviews, all which answered the question of coercion by saying they were not coerced, it would seem to be critical that this information be not only available to the Committee, but since the Committee Chair and others are accusing the government—well, the witnesses, and therefore the government at that time, of coercion, and those people that received those messages said that they were not coerced, it would seem to be important that information be not only a formal part of the record, or a part of the formal record, but also be available to the public since it would seem to counter the fundamental point that the Chair is trying to make, that there was coercion. Am I right or wrong here?

Mr. ISSA. If the gentleman would yield. I absolutely share with the gentleman that we need to release these as soon as they can be approved as valid transcripts. I share with him more information rather than less. I would ask that the gentleman remember that when there is an ongoing investigation, whether it's the FBI or this Committee, we often do not want to have the information released in its entirety until all individuals have been interviewed, lest there be a fact, a circular, "I know what the other guy said."

Mr. GARAMENDI. I appreciate that. However, it appears as though the Committee is proceeding hell-bent on trying to prove something that is disproved by 25 witnesses. Apparently, the Chair and the Committee are trying to prove there is coercion when those people that were—the Committee says we're coerced in their testimony say they were not. Wouldn't it be wise for us in the context of where we are in the accusation that there's a counterpoint that is right there on the table and that should be part of the formal record, should be available to prove or disprove the accusations that the Chair is making.

Mr. ISSA. If the gentleman would yield further, what I would say is that the emails that have been released say otherwise. If the gentleman would like an additional minute for question of the witnesses, I would be glad to ask that he have that additional minute.

Mr. GARAMENDI. Otherwise, I'm out of time?

Mr. ISSA. Without objection, the gentleman is granted an additional minute.

Mr. GARAMENDI. For all you—I'm going to start with Mr. Seligman—if an accusation has been made of coercion and there is evidence from those who were contacted by the government that they were not coerced, shouldn't that be part of the formal record?

Mr. SELIGMAN. Yes, those are relevant facts.

Mr. GARAMENDI. Anybody disagree with that? So, it appears as though the witnesses would say let the information be out there.

Make it available to the public, and certainly make it part of the formal record. I suppose my minute is up. I yield.

Mr. ISSA. I thank the gentleman for yielding. We now go to the gentleman from Florida, Mr. Gaetz, for five minutes.

Mr. GAETZ. Mr. Flaherty, as you were put in the heat on social media companies, did you make the decisions which posts were most egregious to highlight or flag? Or were there other people telling you which posts to go and express concern about?

Mr. FLAHERTY. Congressman, I'll say, in general, we were lifting up examples of content that we felt were—

Mr. GAETZ. When you say “we,” I just want to know which human beings were involved in deciding, like, this Leonardo DiCaprio meme had to go?

Mr. FLAHERTY. In general, we were discussing specific pieces of content when we were discussing—

Mr. GAETZ. Again, I know you guys love pronouns. We is not what I'm looking for. I'm looking for the names of the people.

Mr. FLAHERTY. Congressman, I'm not authorized to—

Mr. GAETZ. Well, you wrote an email on April 21, 2021,

We remain concerned that YouTube is funneling people into vaccine hesitancy. This concern is shared at the highest, and I mean highest, levels of the White House. So, we'd like to continue in good faith dialog here. I'm on the hook for reporting out.

Who were you on the hook for reporting out to?

Mr. FLAHERTY. Congressman, I can't recall who specifically I was referencing in that document.

Mr. GAETZ. Because you just strike me as a functionary. I don't really think you are making these decisions. I think that these people that you say the highest levels of the White—when you say, the highest, and I mean the levels of the White House, who are you referring to without using the word, we?

Mr. FLAHERTY. Congressman, I can't recall specifically who I'm referencing—

Mr. GAETZ. When you say the—are you talking about President Biden?

Mr. FLAHERTY. Congressman, I don't think it should be a surprise that the Administration was focused on the issue presenting authoritative information about the vaccine.

Mr. GAETZ. By the way, I find your testimony terrifying but incredibly intellectually honest because you've come here and you've taken the position, look, in the White House, people are always trying to shape how information is received. They do it with *The New York Times*. You've seen it on The West Wing.

I think a lot of Americans see a distinction between powerful White House officials trying to shape a news story in *The Washington Post* and then trying to shape what all American and the world can see in the digital information space. You say there's no distinction there. I think that's honest. Scares the hell out of me. That seems to be your testimony, right?

Mr. FLAHERTY. Congressman, these platforms are making hundreds of millions of algorithmic editorial decisions a second. Those algorithmic decisions—

Mr. GAETZ. I get it. I just don't want the White House participating in them. I get that to have social media companies, there

are all these decisions that get made about what content rises and falls.

What we have a problem with is when the U.S. Government is putting their thumb on the scale. Now, you said there were no threats and there were no consequences. Was there pressure? Did you put pressure on social media companies?

Mr. FLAHERTY. Congressman, we certainly raised areas where we had questions about their policies or concerns about their enforcement—

Mr. GAETZ. Would you categorize that as pressure, yes or no?

Mr. FLAHERTY. Congressman, I can't speak to how they interpreted my conversation—

Mr. GAETZ. Well, I can, because there's an email about it. Nick Clegg sends an email. The title is Andy Slavitt Podcast. He asks people at Facebook,

Can someone quickly remind me why we are removing rather than demoting or labeling claims that COVID is manmade before May?

The reply to that email is, and I quote,

Because we were under pressure from the Administration. We shouldn't have done it.

So, were you part of that pressure campaign?

Mr. FLAHERTY. Congressman, again, having not seen the document, I can't speak to who they're referencing or what they're referencing. All I can say is our—

Mr. GAETZ. Well, Mr. Slavitt, were you a part of that pressure campaign?

Mr. SLAVITT. I don't believe we were applying any undue pressure on social media companies. I don't think they interpreted it that way.

Mr. GAETZ. Well, in writing, they have. Mr. Chair, I seek to enter into the record the email where the people at Facebook—

Ms. PLASKETT. Objection.

Mr. GAETZ. —are saying—OK, well—

Ms. PLASKETT. Objection.

Mr. GAETZ. Fine. It exists. It's out there. Mr. Slavitt, there's another email, which I'm sure the Democrats would object to having considered, where a Facebook employee says,

Just got off an hour-long call with Andy Slavitt. He was outraged. Not too strong a word to describe his reaction that we did not remove this post, which was the third most highly ranked in the data we sent him.

That was a Leonardo DiCaprio meme that was a joke. Were you guys trying to get jokes removed?

Mr. SLAVITT. Mr. Congressman, thanks for asking. I'll try to explain, but, really briefly, if Facebook, by their own policy, had put something on their website which said 250,000 people are dying every year from the vaccine, that would undoubtedly have violated their policy.

Mr. GAETZ. OK. Well, let's go to—hold on. Let's go to true information, then, because in another Facebook document, they say, quote,

The Surgeon General wants us to remove true information about side effects.'

Mr. Flaherty, should true information be removed?

Mr. FLAHERTY. Congressman, I can't speak to what they're—

Mr. GAETZ. Can't even speak to whether or not we should censor the truth, because they don't like where it leads. I see I'm out of time, Mr. Chair. I yield back.

Chair JORDAN. [Presiding.] The gentleman yields back. The gentlelady from California is recognized, Ms. Sanchez.

Ms. SANCHEZ. Thank you, Mr. Chair. It has not escaped my notice that there's information that is specifically being excluded from the record because it's inconvenient to the narrative that one side is trying to sell. They're trying to say that there was all this coercion, and that the government was forcing people to do things when the witness testimony is contained in the transcripts that you will not allow to be entered into the record.

Mr. Flaherty was asked about the emails, and he said, "I can't testify as to how the emails were interpreted." The evidence of how they were interpreted are in the transcripts that you won't allow into the record. Why will you not allow the witness testimony?

These are all the people that received the email because you want to pick and choose certain things that were said and not allow the full context in which they were stated to be entered into the record which I think is incredibly disingenuous and it's misleading. It's purposefully misleading because you want it to fit the narrative that you are trying to sell. Of course, the government isn't allowed to threaten Americans from engaging in First Amendment rights.

Today, Republicans are saying that the government can't even express an opinion unless that opinion is one that MAGA adherents agree with which is completely a ridiculous proposition. There is a difference between expressing an opinion and threatening somebody to believe it. The only threats that I see today are coming from across the aisle against our government's ability to protect its people. Mr. Seligman, the government is entitled to speak for itself, correct?

Mr. SELIGMAN. Correct.

Ms. SANCHEZ. The government is entitled to inform, to persuade, and even to criticize private speakers, correct?

Mr. SELIGMAN. Correct.

Ms. SANCHEZ. So, government actors like the White House, they're allowed to express opinions because they have a First Amendment right as well. They can encourage Americans to take steps to protect their health and safety, for example?

Mr. SELIGMAN. Correct.

Ms. SANCHEZ. Isn't it true that throughout our history, Presidents have expressed their opinions about the welfare and the safety of the American people?

Mr. SELIGMAN. Yes.

Ms. SANCHEZ. I want to walk through a few examples of the government expressing an opinion or encouraging Americans to take certain actions because according to the Republicans, those moves are somehow an affront to conservatives. Mr. Seligman, is it a First Amendment violation for the government to encourage healthy young people to serve in the military or to go into some other public service like the Peace Corps or AmeriCorps?

Mr. SELIGMAN. No, it is not.

Ms. SANCHEZ. Is it a First Amendment violation for the government to start an awareness campaign telling adolescents that they shouldn't eat Tide laundry detergent pods as part of a social media challenge?

Mr. SELIGMAN. No, it is not.

Ms. SANCHEZ. Is it a First Amendment violation for the government to encourage medical professionals to receiving training on signs of sex trafficking?

Mr. SELIGMAN. No, it is not.

Ms. SANCHEZ. The government can share those opinions and encouragements with social media companies or other companies for that matter to promote its ideas of wellness and safety. Isn't that right?

Mr. SELIGMAN. That is correct.

Ms. SANCHEZ. So, for example, if the government was aware of content spreading online promoting child sex trafficking, the government could tell Facebook about this content, especially since promoting sex trafficking on these sites is against the company's own policies. Isn't that right?

Mr. SELIGMAN. That is correct.

Ms. SANCHEZ. The government could flag for YouTube that kids are facing life threatening complications after watching videos of teens eating Tide detergent pods and deciding to ingest those pods themselves?

Mr. SELIGMAN. That is correct.

Ms. SANCHEZ. Would such conversations between government and private companies constitute coercing these companies to take specific actions?

Mr. SELIGMAN. Not unless any adverse consequences were attached to it.

Ms. SANCHEZ. OK. To date, have any of these—to your knowledge, have any of these companies sued the government for coercion—

Mr. SELIGMAN. Not to my knowledge.

Ms. SANCHEZ. —or for retaliation—

Mr. SELIGMAN. Not to my knowledge.

Ms. SANCHEZ. —for failing to do something that the government suggested?

Mr. SELIGMAN. Not to my knowledge.

Ms. SANCHEZ. The First Amendment also allows Members of Congress to speak out about their own opinions, correct?

Mr. SELIGMAN. Correct.

Ms. SANCHEZ. Even if other individuals might find their opinions rude or offensive?

Mr. SELIGMAN. Correct.

Ms. SANCHEZ. Members of Congress frequently exercise that right in things like press interviews, correct?

Mr. SELIGMAN. Correct.

Ms. SANCHEZ. If anyone is trying to silence speech, it's congressional Republicans who are fearmongering. They're threatening social media companies not to collaborate with the Democratic White House and trying to prevent the White House from saving lives. What we are doing here today—no, what you are doing here today is dangerous manipulative.

It's trying to convince the American people of falsehoods and conspiracy theories that have no basis in fact. Make no mistake about this one thing, allowing these wide conspiracy theories to spread unchecked, it's only because you guys are seeking to strengthen Donald Trump's reelection bid. Let's just call it what it is. With that, I yield back my time.

Chair JORDAN. The gentlelady yields back. The gentleman from Ohio is recognized.

Mr. DAVIDSON. I thank the Chair and I thank our witnesses for being here today. Mr. Slavitt, in your book, "Preventable," you wrote that, quote,

But accounting for Trump, other deep-seated issues that are part of our culture and national identity emerge to haunt us, our obsession with individual liberties, even at the expense of others' lives and health.

Is it a bad thing that Americans feel strongly about individual liberties?

Mr. SLAVITT. Certainly not.

Mr. DAVIDSON. How then did individual liberties become a barrier to—what are you talking about there?

Mr. SLAVITT. I didn't suggest that they're a barrier.

Mr. DAVIDSON. What's the tradeoff there? You feel like that some liberties should be curtailed?

Mr. SLAVITT. I feel like—first, what I wrote as a private citizen. I want to emphasize that I think it's important to have dialogs about all these issues. That's what we were trying to do with social media companies.

[Simultaneous speaking.]

Mr. DAVIDSON. You were actively curtailing liberty which is what you were doing.

Mr. SLAVITT. No. No, I don't believe—

Mr. DAVIDSON. Are you proud of the work that you did?

Mr. SLAVITT. Certainly, yes.

Mr. DAVIDSON. Why? What did you accomplish?

Mr. SLAVITT. Well, by most estimations, three million American lives were saved, not just by my work, by the work of two administrations, a bunch of scientists, and the military.

Mr. DAVIDSON. That was because you exerted influence to be able to get what you believe saved those lives out?

Mr. SLAVITT. Because the country pulled together in quite a pretty responsible way during a pretty tough time.

Mr. DAVIDSON. No remorse? No regrets over asking social media to censor Americans?

Mr. SLAVITT. I'm self-critical, but I never asked—I never asked social media companies to censor anything.

Mr. DAVIDSON. Right, just take it down or just don't sell the books. We don't really want you to keep selling these books that you're selling.

Mr. SLAVITT. No, that's not what I said with due respect, Mr. Congressman. What I said was, I want to understand how your policies to promote these books, not to sell them, but to put them on the equivalent of the end cap of the aisle and say these are the most important books to read.

Mr. DAVIDSON. So, it's OK if they had them somewhere, just not online.

[Crosstalk.]

Mr. SLAVITT. Do whatever they wanted.

Mr. DAVIDSON. Mr. Flaherty, are you proud of the work you did?

Mr. FLAHERTY. Yes, Congressman. I am.

Mr. DAVIDSON. Why? Do you feel like you exerted some influence over people?

Mr. FLAHERTY. Congressman, I'm proud of the Administration's efforts to save lives and—

Mr. DAVIDSON. I didn't ask about the Administration. I asked about you. Are you happy? You feel like you did a good thing?

Mr. FLAHERTY. Congressman, I'm very proud of the work we did in the Administration to save lives.

Mr. DAVIDSON. So, the means did justify the ends, right? So, it's OK that we curtailed freedom because the outcome was desirable? Is that what the First Amendment says?

Mr. FLAHERTY. Congressman, I want to dispute the characterization of our work.

Mr. DAVIDSON. Is that what it says?

Mr. FLAHERTY. We certainly were not censoring, threatening, or providing consequences to companies we were raising up.

Mr. DAVIDSON. I think the American people will conclude that you were, in fact, doing that. I think once we get to share all the transcripts with the public, I think the unredacted versions will make it very clear that's exactly what you were doing. That's what the social media companies knew you were doing and why they conformed.

Recently, the House gave the Executive Branch, even in the Senate, now it's a law. We gave the Administration, the Executive Branch even more authority. Recently, the House voted to ban TikTok. While Xi Jinping and the Chinese Communist Party are a threat, I voted against this ban because I have serious concerns that banning social media platforms is more harmful to free speech in America than to China.

We have a White House that is engaging in coercive activity so they can activity control the narrative on social media and frankly on an online bookstore, the most ubiquitous one in the world. This is the same kind of stuff that Chinese Communist Party does.

They heavily regulate media and online speech. I'm extremely worried that a platform ban provides another point of leverage for the Executive Branch for government to exercise coercion over private companies to effectively censor Americans and their First Amendment protected right to speech. We will not counter China by becoming more like China, yet that's exactly what we've done with this TikTok Trojan horse.

Congress effectively granted a rogue White House the same control over internet activity that the Chinese Communist Party exercises in China. It is a grave mistake and I hope we correct it because we can see here today that we already have an administration that tried to launch a disinformation governance board. Were either of you part of those discussions?

Mr. SLAVITT. I was not part of anything like that, no.

Mr. FLAHERTY. Congressman, I was not part of—

Mr. DAVIDSON. It's heavily related to the activity that you guys were engaged in. So, when you say we at the very highest levels,

would that include the President? The highest level at the White House is President Biden, right?

Mr. FLAHERTY. Congressman, again, it shouldn't surprise anybody that we were, as an administration, focused intently on getting the American public vaccinated. This is a thing that everyone at every level of the Administration—

Mr. DAVIDSON. So, again, the means justify the ends. We can cancel speech and violate it. I think it's a shame that this has happened, and I hope we criminalize it because you should not be able to violate the First Amendment rights of American citizens and not have consequences for it. My time has expired, and I yield.

Chair JORDAN. The gentleman yields back. The gentlelady from Florida is recognized.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chair. It's breathtaking that now we're suggesting that we arrest people who are trying to make sure that they can save lives and prevent them from dying of a novel virus that killed millions of people. As we heard today, there's a lawsuit against the U.S. Government for allegedly colluding with social media companies to censor conservative speech online, a case that has now reached the Supreme Court.

My colleagues across the aisle favor the position that the government must be forbidden from communicating and collaborating with social media companies. While I disagree, holding that opinion is acceptable. Yet, clearly, we're here so Republicans can influence the justices, as the Ranking Member said, before this upcoming case. That's what's unacceptable.

To wage an inappropriate court influence scheme under the cover of oversight and impugn men who did their job and did it well is not just improper, it's actual weaponization of the Federal Government. So, this begs the question. Are we going to be launching an investigation into our own shame Subcommittee? Because that's the weaponization of the Federal Government.

Here we are attacking civil servants who work to keep America safe. That's clear based on the Chair's question line that was designed to bully rather than seek actual information directed at a public servant who was communicating the best scientific information available at the time. We all have comms directors.

We know they're not experts. They're communicators. Instead of using their public megaphone to suggest people put bleach in their bodies to fit COVID, Mr. Slavitt and Mr. Flaherty clearly tried to save actual lives amid a global pandemic using sound medical and scientific methods. They did just that.

Numerous studies show that millions of lives were saved because of their work. We're not hearing one Republican say that today, but it doesn't make it any less true. Another thing we haven't been hearing today is that there are other legitimate interests for government to engage social media companies and barring such communications could leave us vulnerable if our election systems are attacked, for example.

In Florida, voter suppression is a real concern. Citizens in my State overwhelmingly, for example, said in 2018 that they wanted to restore voting rights to felons. Sadly, over the next four years rather than help our citizens understand Florida's complicated

voter eligibility rules, Republicans instead resorted to intimidation and antidemocratic prosecutions.

My fear is social media platforms could be used to confuse or intimidate voters. In those cases, why would we stop governments from sharing these legitimate concerns with such powerful wholly unregulated companies. So, Mr. Seligman, could prohibiting communications between government officials and social media platforms further disenfranchise voters whose communities already face voter suppression briefly?

Mr. SELIGMAN. Yes.

Ms. WASSERMAN SCHULTZ. Thank you. We've seen the power of one individual like Rudy Giuliani encourage intimidation and violence against election workers. What would happen if social media platforms were amplifying those threats or triggering them?

Mr. SELIGMAN. They would become more severe.

Ms. WASSERMAN SCHULTZ. Could you see a ban on such communication between government and social media platforms leading to increased violence against election workers, for example?

Mr. SELIGMAN. Absolutely.

Ms. WASSERMAN SCHULTZ. The bottom line here is this is a Hail Mary of a hearing designed to improperly influence the Supreme Court. It puts two good men who save many lives through a blizzard of baseless and distorted accusations and innuendo. Witnesses from the social media companies repeatedly confirm that nobody in the government ever coerced or threatened them to take action.

Chair Jordan refuses to let the public see the transcripts or videos of their interviews. He's covering it up which has been repeatedly obvious during this hearing because for the first time in my 20-year career in Congress, I have never seen the majority not allow introduction by unanimous consent of information into the record for a Committee hearing. That's what we should be investigating here today.

Mr. Chair, I ask unanimous consent to enter into the record the full email chain dated March 4, 2021 *re*: following up between Amazon employees and White House employees which shows that Mr. Slavitt and Mr. Flaherty only asked for a meeting with Amazon to understand Amazon's policies, not make specific requests about content or—

Chair JORDAN. Without objection.

Ms. WASSERMAN SCHULTZ. I also ask unanimous consent to enter experts from the Committee's April 16, 2024, interview with the Amazon employee who received this email in which the employee explains that he had been working—Amazon had been working on policies regarding vaccine-related books on Amazon for weeks before Mr. Slavitt's email.

Mr. MASSIE. Object.

Chair JORDAN. Objection being raised at the second. Again, I want to give a roadmap to other witnesses we plan on calling.

Ms. WASSERMAN SCHULTZ. OK. I'm trying to explain.

Chair JORDAN. We will release all that when we've completed our investigation.

Ms. SANCHEZ. It's the gentlelady's time.

Ms. WASSERMAN SCHULTZ. OK.

Ms. SANCHEZ. It's the gentlelady's time.

Ms. WASSERMAN SCHULTZ. Right.

Chair JORDAN. I'll give you an extra 10 seconds.

Ms. WASSERMAN SCHULTZ. OK. What we're trying to do is introduce into the record the email that ensures that we have an opportunity to—

Chair JORDAN. We said fine to that.

Ms. WASSERMAN SCHULTZ. OK. Then the interview with the Amazon employee who received this email—

Chair JORDAN. I'm not going to release the transcripts until we complete the investigation.

Ms. WASSERMAN SCHULTZ. —in which the employee explains that Amazon had been working on policies regarding vaccine-related books on Amazon for weeks before Mr. Slavitt's email. Those are connected. Those two things are important information to highlight—

Chair JORDAN. We'll release the email.

Ms. WASSERMAN SCHULTZ. —the obvious evidence that the two gentleman—

Chair JORDAN. The time for the gentlelady has expired. The Chair now recognizes the gentleman from Kentucky for his five minutes.

Ms. WASSERMAN SCHULTZ. I yield back.

Mr. MASSIE. I yield to the gentleman from Ohio.

Chair JORDAN. I appreciate the gentleman yielding. Professor, earlier, about an hour ago, Mr. Slavitt in his—I'm reading from his written testimony. I believe he said it in his oral testimony as well. He had this statement, to my knowledge, no one within the Administration ever saw to make decisions for Facebook or any other social media company over their content moderation. Is that an accurate statement made by Mr. Slavitt?

Mr. ZYWICKI. That is not what I've seen in all the correspondence that I've reviewed.

Chair JORDAN. Do you stand by that statement, Mr. Slavitt?

Mr. SLAVITT. Yes, I do, Mr. Chair.

Chair JORDAN. So, the Administration never saw to make decisions for Facebook or any other social media platform over their content moderation?

Mr. SLAVITT. To the best of my knowledge—

Chair JORDAN. To the best of your knowledge, the third day. Clarke Humphrey who worked with you all, right? Ms. Humphrey worked with you guys? Ms. Humphrey worked—

Mr. SLAVITT. Yes, that's accurate.

Chair JORDAN. She sent an email,

Wanted to flag the below tweet. Wondering if we can get moving on the process of having it removed ASAP.

That's not trying to influence a social media company over their content moderation?

Mr. SLAVITT. I think the statement that I said was that they didn't—we didn't choose to make decisions for social media companies. I didn't say that there wasn't correspondence, there weren't occasions when they weren't trying to influence social media companies. Social media companies did an admirable job telling us when they disagreed. I think those were important—

Chair JORDAN. What is “take down this tweet ASAP”? If that’s not trying to make a decision for the social media company, what is it?

Mr. SLAVITT. I don’t think she was ordering them to take anything down. I don’t know. I don’t know the context of the entire conversation. If you have documents to share—

Chair JORDAN. You keep an eye out for tweets in this same genre. What was that?

Mr. SLAVITT. I wasn’t a party to that email. So, I don’t know—

Chair JORDAN. Is that trying to impact the content moderation decisions at Facebook, at Twitter, or any other social media platform?

Mr. SLAVITT. I’m sorry. Did you say—can I see the full email, please?

Chair JORDAN. I’ll read it to you. “Wanted to flag the below tweet. Wondering if we can get moving on the process for having it removed ASAP.”

Mr. SLAVITT. I’m not sure of the context. I wasn’t a party to the email.

Chair JORDAN. I just don’t see how your statement squares with the actions that—

[Crosstalk.]

Chair JORDAN. —the Administration is up on day three with someone who worked in your—

[Crosstalk.]

Chair JORDAN. How about this one?

Mr. SLAVITT. OK.

Chair JORDAN. How about this one?

Our YouTube trust and safety team is working to finalize a new policy to remove content that could mislead people on the safety and efficacy of vaccines. We would like to preview our policy proposal for you and get any feedback you have?

So, now they’re asking on the front end, are you OK with the policy? Is that trying to impact and make decisions for social media companies about content moderation?

Mr. SLAVITT. To make decisions? No.

Chair JORDAN. They’re trying to get an OK from you on the front end, and you’re not having an impact on their social media platform content decisions?

Mr. SLAVITT. As I interpret it, this was an interaction where—a dialog and I don’t know the entire context of the dialog. It sounds like—

Chair JORDAN. They’re asking permission.

Mr. SLAVITT. —the social media company—

Chair JORDAN. They want your feedback and you’ve said—

Mr. SLAVITT. It sounds like part of a dialog about what constituted consistency with their policy. That’s far different, in my opinion, Mr. Chair, from someone making a decision on their behalf.

Chair JORDAN. OK.

Mr. SLAVITT. I don’t know—

Chair JORDAN. Mr. Flaherty, in your opening statement, you said something that I just found astounding. Twitter’s new owner abandoned all its prior policies related to COVID misinformation over

a year and a half ago. That decision was Twitter's to make, and I'm not aware of any adverse actions against Twitter in response to it.

Mr. FLAHERTY. Congressman, I'm not aware of any adverse government actions taken against Twitter in response to that change.

Chair JORDAN. Eight different Federal agencies have went after Elon Musk and Twitter since that happened.

Mr. FLAHERTY. Congressman, I am no longer—

Chair JORDAN. Department of Justice is looking into the fact that he hired too many Americans at SpaceX, FEC, FCC, FAA, NLRB; U.S. Attorney for the Southern District of New York; and even the U.S. Fish and Wildlife Service went after him. I haven't even got to the big one. FTC sent 12 letters, the first letter asking right after the Twitter files, Mr. Musk, who are the journalists you're talking to?

You said in your opening—you said in your testimony that Twitter's new owner, "I'm not aware of any adverse actions against Twitter in response to it." One of the most ridiculous things I've heard. Every agency you can imagine went after this guy because he's advocating for free speech and the first amendment. You stand by your statement?

Mr. FLAHERTY. Congressman, I do stand by the statement.

Chair JORDAN. You weren't aware of any of that? You weren't aware that the FTC sent 12 letters and the first letter said, "we know you're talking to four journalists." Two of them testified in front of this Committee twice, and we want to know who else you're talking to.

Asking someone, "who are the journalists you're talking to," direct attack on the First Amendment. You say nothing has happened. No adverse actions against Twitter in response to what he's done.

Mr. FLAHERTY. Congressman, again, I'm here to speak about my experience in government and interacting with social media companies. I left the government in June 2023. I can't speak to this, and I certainly—

Chair JORDAN. This happened before that.

Mr. MASSIE. Reclaiming my time. These sound like mafia tactics when we send every three-letter agency known to the U.S. Government after Elon Musk when he comes out for free speech. With that, I yield back.

Chair JORDAN. The gentleman yields back. The Chair now recognizes the gentlelady from Texas.

Ms. GARCIA. Thank you, Mr. Chair. It's been a very interesting hearing to say the least. It's important that I repeat again that what others have already said. The transcripts that are not being allowed by unanimous consent clearly confirm that nobody from the government ever coerced or threatened anyone from the social media companies into taking action.

It is a cover up. That's what the bottom line here is that we are looking at what may have been misinformation, bad information, and flat out lies. We saw it happened, all over during this time period. So, Mr. Slavitt, I'm just going to ask you bluntly, did you ever try to force, coerce, or threaten any private company into taking

specific action related to false information about vaccines or COVID at large during this time period?

Mr. SLAVITT. No.

Ms. GARCIA. Mr. Flaherty, same question.

Mr. FLAHERTY. I can't recall.

Ms. GARCIA. You can't recall?

Mr. FLAHERTY. Yes.

Ms. GARCIA. OK. So, did you ever try to force a nongovernment entity to work with you through threats or coercion?

Mr. FLAHERTY. Certainly not, Congresswoman.

Ms. GARCIA. So, was it your impression that anyone or any company who worked with you did so voluntarily to try to do their part to address the pandemic?

Mr. FLAHERTY. Congresswoman, it is absolutely true that these companies get to make their own decisions. That is certainly not at the expense of folks in government, civil society, elsewhere to have an opinion about those decisions. It's their policies and their enforcement.

Ms. GARCIA. Do you know if there was ever any followup to see what they did or didn't do and whether there was any adverse action they didn't do of cleaning up the false or misleading information?

Mr. FLAHERTY. Congresswoman, when you say followup, by—

Ms. GARCIA. Well, they keep saying that there was adverse action. Adverse action means that they did or didn't do what you all asked them to do if you did ask. So, then an action was taken against them.

So, someone would've had to followup to know because as the other witness testified, he's not aware of any lawsuit. He's not aware of any fines. He's not aware of any adverse action that happened on the part of any of these companies.

Mr. FLAHERTY. Congresswoman, I'm certainly not aware of adverse action that was taken.

Ms. GARCIA. All right. Mr. Slavitt, same for you. Did you ever try to force a nongovernment actor to work with you through threats or coercion?

Mr. SLAVITT. No.

Ms. GARCIA. So, was it your impression did anyone or any company who worked with you did so voluntarily to try to do their part to address the pandemic?

Mr. SLAVITT. Yes.

Ms. GARCIA. Of course, both of you were doing all this to save lives, weren't you?

Mr. SLAVITT. Yes, yes.

Ms. GARCIA. I can tell you that in my community, there was a lot of misinformation, some of them just flat out lies. I remember once visiting with some Spanish speaking members of my community, and they had seen YouTube video that someone put out there telling Spanish speaking women not to take the vaccine—not to get the shots because they would become sterile and would not be able to have children. That's false, isn't it?

Mr. SLAVITT. Yes.

Ms. GARCIA. It is false because this was once in a century the horror of a pandemic unlike any other in our generation. As one

ICU doctor put it, it was a war without bullets. You all were fighting a war, and this was especially felt in the communities of color where Black and Latino individuals disproportionately became sick or hospitalized and died from this awful virus.

In fact, Dr. Peter Hotez of Houston from the Baylor College of Medicine said to us and read from a board where they watched the deaths in Harris County, my home county. He read, Hispanic male, Hispanic male, Hispanic male, Black male, Hispanic male, Black male, Hispanic male, Hispanic female, Black female, Black male, Hispanic, Hispanic, Hispanic, Hispanic, Hispanic, Hispanic, Hispanic. All the deaths that were occurring, over half were directly impacting our minority communities.

He told us in a meeting that this virus has taken away a whole generation of mothers, fathers, brothers, sisters, who are young kids, and teenage kids. It occurred to me that what we're seeing really is a historic decimation among the Hispanic community by the virus. So, it was important to get the right information. Mr. Chair, I do have a unanimous consent request for admission of this document, "Coronavirus is causing the 'historic decimation' of Latinos, medical expert says."

Chair JORDAN. Without objection. The time of the gentlelady has expired.

Ms. GARCIA. Thank you.

Chair JORDAN. The Chair now recognizes the gentleman from North Carolina.

Mr. BISHOP. Thank you, Mr. Chair. So, Mr. Slavitt, in this partisan free for all, I just want to say that I credit you. You've had some candidness in your responses so far. I just want to explore that for a minute.

I think maybe the first one the Chair started with was the first claim. It's a claim that vaccinations would prevent COVID infection. I think it's fair to say you acknowledge in hindsight that turned out not to have been true. I know it's been said over and over, Mr. Flaherty most often, that it was based on the best knowledge at the time. Am I fair—you've acknowledged as much, correct?

Mr. SLAVITT. So, I believe it was true up until June 2021. Then the Delta virus came, and that caused reinfections.

Mr. BISHOP. OK.

Mr. SLAVITT. It was taken care of differently.

Mr. BISHOP. So, I would summarize that by saying that it was an evolving set of circumstances. I'm not even sure if it was true in the inception. So, I might have that difference with you. Was the fact that situation was fluid and you might be wrong and it's evolving quickly, doesn't that tend to prove to you that it's important for officials who are in power to give the First Amendment a wide birth, not to go out and impose an orthodoxy and try to cutoff what other people are saying that might be different from that claim?

Mr. SLAVITT. Yes.

Mr. BISHOP. Well, I appreciate that concession. I submit that you started off with some principles, that you said you were guided by, like, three principles. First, that the judgments of the platforms were strictly their domain. They said—in No. 2, you say, but their policies were not enough.

You questioned them about how they were exercising those policies. I would submit to you that I think those are hopefully contradictory. It's either their decision or it's yours.

I certainly don't think there's any problem for the White House to go out in public and say, "what you think is the most important information." If a reporter asks you, well, you say taking the vaccine is going to prevent getting COVID. Is that the case? Yes.

Some people say otherwise. Well, we think they're wrong. I don't have a problem with that. I am troubled that a person who seems to be relatively fair minded would look at all the correspondence about where the Facebook people say we're under pressure from the White House and say, well, we weren't trying to pressure anybody.

Or we don't look back in hindsight and feel like we don't understand how they could've perceived any pressure. Is that the position you're in? You don't think they could've perceived pressure from what was happening from the White House?

Mr. SLAVITT. So, I think a good characterization on my second principle to keep it simple is trust but verify. If we are told that there are policies that are in place and we get reports that the evidence is otherwise, when we did receive third-party reports which caused us to question some of the claims that they made, I thought it was fair to ask them, hey, your policy is X. We're getting reports of Y. Can you explain it to us?

Mr. BISHOP. Yes. I don't think they need to account to the White House for how they're operating their businesses, especially when their business is hosting a conversation of the American people. The problem that's most disturbing to me about even the partisan warfare around this is that all these principles have been well established for a long time. Justice Brandeis in 1927 said, "the remedy for false speech or bad speech is more speech." It became famous. Even his concurrence then was in a case in which the Supreme Court, liberals, the liberals went further in *Brandenburg* in the late 1960s and said, "they overruled that case because it was too restrictive."

We've got Republicans banning TikTok because the Chinese government is involved communication. Well, in 1965 in *Lamont v. Postmaster General*, the same Supreme Court established that Americans have a First Amendment right of access, Mr. Seligman, to information even if it's foreign propaganda. How have we come to the point 40–50 years later where we're fighting over these same issues? Aren't they—do you not think those are principles that I've talked about, Mr. Slavitt, are they important to you?

Mr. SLAVITT. Those principles—

Mr. BISHOP. That I just made reference to, those establish things. Don't you credit them to liberals? There are liberals in the Supreme Court.

Mr. SLAVITT. I don't know where I credit them. I do agree. I agree with your characterization that the social media companies did not need to account to the White House. I do think, though, during the pandemic, lots of us were trying to pull together, problem solve, and understand—

Mr. BISHOP. I understand that. That doesn't really justify it just because circumstances are pressing. That's always the case with somebody in authority.

Mr. Flaherty, I was listening. You're always anxious to credit what the other side has asked you, but you say you just don't know or you can't say. I'm just curious. What have you gone on to now? You're at the White House. What do you do now?

Mr. FLAHERTY. Congressman, I'm the Deputy Campaign Manager for President Biden's reelection campaign.

Mr. BISHOP. I yield back.

Chair JORDAN. The gentleman yields back. The Chair now recognizes the gentlelady from the Virgin Islands. The Ranking Member is recognized.

Ms. PLASKETT. Thank you. Mr. Seligman, the government has the right to engage with private speakers to inform, advocate, persuade, criticize as long as government officials do not actually coerce those private speakers or threaten to take action against them if they don't do what the government wants. Is that a fair summation of the law on this point?

Mr. SELIGMAN. That's correct.

Ms. PLASKETT. Are you aware that 45 Republican House Members submitted an amicus brief in *Murthy v. Missouri*?

Mr. SELIGMAN. I am.

Ms. PLASKETT. Are you aware that this brief repeatedly alleges that the Federal Government, quote, "coerced social media companies into taking certain action"?

Mr. SELIGMAN. I am, and I believe the brief does not substantiate that claim.

Ms. PLASKETT. I've looked at the actual transcripts of interviews with social media companies. The transcripts that the majority has refused to not—never mind release but actually just allow into the record also does not substantiate the claim by those individuals that signed onto this amicus brief. I don't know. Are any of our witnesses' lawyers? Mr. Zywicki, are you familiar with the rules of professional responsibility, right, that all of us as members of bars must take an oath, correct?

Mr. ZYWICKI. Yes.

Ms. PLASKETT. One of the rules of the professional responsibility is the rule of candor to a tribunal. Is that correct?

Mr. ZYWICKI. Yes.

Ms. PLASKETT. OK. Broadly speaking, that rule requires attorneys who present information to a court to disclose all relevant, factual evidence. Is that correct?

Mr. ZYWICKI. Yes.

Ms. PLASKETT. OK. Even if the evidence is contrary to their argument?

Mr. ZYWICKI. That's my understanding, yes.

Ms. PLASKETT. Right. You also cannot use false evidence. That's correct. Anyway, the witnesses after witness has straightforwardly said that the coercion—the witnesses in these transcripts that are not being released repeatedly say that coercion did not happen. Let's take a look at what they actually said.

In the June 16, 2023, interview, the Committee asked a YouTube employee, at any point when you were doing these collaborations

with government agencies, was the government agency coercing YouTube in any way to participate in those relationships? The witness' unqualified one-word answer, no. The witness then said that YouTube's actions were voluntary and in line with YouTube's priorities. Mr. Seligman, do you agree that this is evidence that the government's engagement with YouTube was voluntary and not coercive?

Mr. SELIGMAN. Yes.

Ms. PLASKETT. Are you aware that this testimony was not in the Republicans' brief?

Mr. SELIGMAN. Yes.

Ms. PLASKETT. In June 22, 2023, interview, the Committee asked a Google employee whether any U.S. Government official ever threatened any Google employee with adverse actions if Google refused to take any particular action. The witness plainly stated that he was not aware of any such request. Do you agree that this is evidence, sir, that the government did not threaten Google into taking any actions?

Mr. SELIGMAN. Yes.

Ms. PLASKETT. Are you aware that this testimony was not in the Republicans' brief?

Mr. SELIGMAN. I am.

Ms. PLASKETT. Another Google employee was asked in a June 26, 2023, interview whether they had any information about collusion between the Federal Government and Google to censor speech. The witness replied, in my experience, Google across its range of services through the years has consistently made its own independent decisions with regard to what policies, practices, or product development it designs. Mr. Seligman, do you agree that this is evidence that Google makes its own independent decisions without coercion by the government?

Mr. SELIGMAN. Yes, I do.

Ms. PLASKETT. Are you aware that this testimony was not in the Republicans' brief?

Mr. SELIGMAN. Yes.

Ms. PLASKETT. I can do this as well with Meta Vice Presidents in June 2023 interview which wasn't in the brief, a May 16th interview with another Meta employee. When asked, to your knowledge, was anyone in the FBI, State Department, or any other government agency ordered Meta to take down an account page or content? His response to both was not to my knowledge. What I just read was just a small number of the universe of statements made by witness after witness stating that the allegations made by the majority does not hold water.

Yet, we are only hearing sometimes a portion of a sentence, not even the complete sentence which would include the question, the can, as well as the punctuation point at the end to recognize that it was a question and not a statement. When a party is made aware of evidence that is contrary to what they presented in court, do you think that's something that they should share?

Chair JORDAN. The gentleman will respond.

Mr. SELIGMAN. Yes.

Ms. PLASKETT. I yield back.

Chair JORDAN. Time of the gentlelady has expired. The gentlelady from Florida is recognized for five minutes.

Ms. CAMMACK. Thank you, Mr. Chair. Mr. Flaherty, what was your official title during your time at the Biden White House?

Mr. FLAHERTY. Congresswoman, when I was at the White House, I was assistant to the President and Director of Digital Strategy.

Ms. CAMMACK. That is an appointed position, correct?

Mr. FLAHERTY. It is, Congresswoman.

Ms. CAMMACK. Now, did you take an oath to the United States Constitution when you assumed this appointment?

Mr. FLAHERTY. Yes, Congresswoman.

Ms. CAMMACK. Perfect. You're familiar with the First Amendment?

Mr. FLAHERTY. I am.

Ms. CAMMACK. Can you please outline the five tenets of the First Amendment for me?

Mr. FLAHERTY. Congresswoman, I'm not going to be able to do it off the top of my head. Generally, the First Amendment relates to freedom of speech,—

Ms. CAMMACK. No, wait, wait. So,—

Mr. FLAHERTY. —freedom of religion, and freedom of assembly. Again, off the top of my head, I'm not able to recall all the points.

Ms. CAMMACK. Oh, well, that's disappointing and a little embarrassing but not surprising considering what we're dealing with here today. Now, I certainly wouldn't expect that someone who cannot outline the basic tenets of the First Amendment to uphold the Constitution of which you took an oath to defend. Here we are today. Now, you said multiple times here that you cannot recall certainly conversations and communications, correct?

Mr. FLAHERTY. Congresswoman, I left the White House almost a year ago. These discussions happened more than two years ago. Certainly, there are a number of discussions related to this that I'm not able to recall.

Ms. CAMMACK. OK. So, you agree that you have said multiple times here you cannot recall?

Mr. FLAHERTY. Congresswoman, yes.

Ms. CAMMACK. OK. Just want to make sure. I'm so glad that we have receipts because we have come with receipts, in fact all your emails from that time. So, we're going to help you recall some of these conversations.

On February 6, 2021, at 9:45 p.m., we love our time stamps, you emailed Twitter to demand immediate removal of a parity or imposter account linked to Biden's adult daughter. You stated, quote, "Please remove this account immediately." Then you went on to say,

I have tried using your form three times and it won't work. It is also ridiculous that I need to upload my ID to a form to prove that I am an authorized representative of Finnegan Biden.

Now, two minutes later 9:47 p.m., Twitter responded right back to you. "Thanks for sending this over. We'll escalate for further review from here." Mr. Flaherty, do you recall this exchange?

Mr. FLAHERTY. Congresswoman, I do recall that exchange.

Ms. CAMMACK. OK. So, you still stand by how you have handled this situation in making it clear that you needed action immediately from a social media company?

Mr. FLAHERTY. Congresswoman, the White House Office of Digital Strategy absolutely has an equity in protecting the President's grandchild from online harassment and impersonation.

Ms. CAMMACK. Sure. I would expect nothing less. I'm just saying there's a common theme here, right? So, you then escalate it a little bit more.

Within that same minute, so literally 60 seconds, "cannot stress the degree to which this needs to be resolved immediately." Forty-five minutes later at 10:32, Twitter responded, "Here's an update. The account is now suspended."

Now, the next day, February 9th, you followed up with an email to Facebook with a demand for more information and an accusation that Facebook's failure to, quote, "censor speech on its platform is causing political violence." Those are your words, "causing political violence." Do you believe that the failure to censor American's First Amendment constitutionally protected speech is considered political violence?

Mr. FLAHERTY. Congresswoman, I don't remember the specific email in question. I'm happy to take a look at it and observe the context. I don't recall what you're referencing.

Ms. CAMMACK. Well, and I will say I am disappointed because we have presented receipts here today. We have also shown how timely you have been in engaging at all hours of the night with social media companies during your tenure as a representative to the highest levels of the White House. Again, your words, despite the fact that earlier my colleague, Representative Gaetz, was trying to clarify who it is we that you speak of.

You say in your emails that you represent the highest levels of government in the White House. I find it ridiculous that it took us over a year for you to appear before this Committee. In fact, it was after you actually missed your deposition and refused to show up.

We had you scheduled for January and then again in February of this year. You chose not to appear. Now, is it safe to assume that in your role as the Deputy Campaign Manager for the Joe Biden reelection campaign that you speak on behalf of the campaign or the President of the United States?

Mr. FLAHERTY. Congresswoman, I'm here to discuss my interactions with social media companies when I worked at the White House from January 2021–June 2023. I'm not here to discuss the campaign.

Ms. CAMMACK. You're basically saying that you don't speak for President Joe Biden or his campaign. You didn't speak for him during your time at the White House. So, either you have completely misrepresented your role, or you are trying everything possible to make sure that your correspondence with social media companies directly threatening, coercing these companies to silence Americans who disagreed with the political agenda of the Biden Administration happened.

Mr. FLAHERTY. Congresswoman, I'm here voluntarily to discuss my discussions with social media companies while I was in the White House.

Ms. CAMMACK. Certainly.

Mr. FLAHERTY. I'm happy to answer any questions.

Ms. CAMMACK. A year late and a dollar short. So, with that, Mr. Chair, I yield back.

Chair JORDAN. The gentlelady yields back. The Chair now recognizes—

Ms. PLASKETT. Mr. Chair, I just wanted to be clear that the witness did appear to testify on the date that my colleague stated he did not come to testify. He was here, and the White House and this Committee staff did not work out the terms of that interview. So, I don't want it to appear that he has shirked his willingness to be a part of any hearing or any testimony or any interview by this—

Chair JORDAN. Chair recognizes the gentleman from New York.

Mr. GOLDMAN. Thank you, Mr. Chair. We are seeing a pattern here now a year and a half into this Congress. We see it with the impeachment investigation. We are seeing it starkly here.

Let's make a lot of really bold allegations and then try to weave in and mislead some evidence to justify them. It certainly happened in the impeachment, and it is happening here again because to, quote, "coerce or censor," then that means (A) whoever the private company that receives the communication from the government must feel coerced and act on that information. (B) They would not have done that but for the government intervention.

The problem that we continue to have with my Republican colleagues is they can get the first thing, but they never get the second. That is why evidence is important and that's why we rely on evidence. So, when colleagues over on the other side of the aisle talk about a TikTok ban, they are misrepresenting what the bill did.

The bill required ByteDance to divest from TikTok, not to ban TikTok. That is so consistent with all the cherry picking of these emails that we have seen here today. I want to bring up another example which was actually the focus of an entire hearing on this topic but has not been mentioned once today.

That is the email from Clarke Humphrey to Twitter related to Robert F. Kennedy, Jr.'s tweet about blaming Hank Aaron's death on the COVID vaccine. This was the center of the Republican case up until today. Now we're moving on.

I want to just stress why. Clarke Humphrey wrote,

Wanted to flag the below tweet and I'm wondering if we can get moving on the process for having it removed ASAP.

Oh, my goodness, coercion. That is censorship. It's some industrial complex.

Well, you know what the problem was? It wasn't taken down. It wasn't taken down. Twitter received that email from the White House and did not act on it. Mr. Seligman, is it possible to have coercion when someone does not do what the other person asks?

Mr. SELIGMAN. No.

Mr. GOLDMAN. Now, we've heard a lot on the other side of the aisle. I think, Mr. Steube, talked so much about March 2nd, all the emails to Amazon and trying to ban books. Well, we were not allowed to enter into the record some of the testimony from the employee who receives those emails at Amazon.

I'm going to go through this transcript because this employee was asked about that email. Even though you anticipated that you might be asked to remove content when you had a live conversation with Mr. Flaherty. You, in fact, were not asked to remove any content, question. Answer, that's my recollection, yes.

So, I just want to be clear. To your knowledge, did anyone from the U.S. Government, including Mr. Flaherty or Mr. Slavitt, both of whom are witnesses here, ever coerce Amazon into removing content from its platforms? No.

The answer as the Ranking Member pointed out with so many other companies was that they made their independent decisions what to do with the content based on information provided from public health experts like Mr. Slavitt and the CDC and how that applies to their own policies. So, you cannot have a First Amendment violation when a private company is making its own independent decisions as every single company as part of this investigation did. So, what is this all about?

It's not actually about proving a first amendment violation. What the Republicans want to do with this Committee because we've had hearing after hearing about some bogus First Amendment violation by private companies is they want to chill the government from actually interacting with the private companies as we come on an election in November 2024. Russia interfered through social media in 2016.

Russia tried to interfere in 2020. You can bet Russia is trying to interfere in our election in 2024. The only way that these social media companies can know that is by being provided with information from the U.S. Government and their law enforcement investigations.

If that can't happen, then Donald Trump and these Republicans benefit because Russia will help them. That is why we're here and that is why this is bogus. I yield back.

Chair JORDAN. The time of the gentleman has expired. The gentleman from North Dakota is recognized.

Mr. ARMSTRONG. Thank you, Mr. Chair. I yield.
[inaudible].

Chair JORDAN. I appreciate the gentleman yielding. Chill the government? Oh, my. That's almost as crazy as what Justice Ketanji Brown Jackson said in the arguments in front of the Supreme Court when she said to the solicitor general from Louisiana, "Counselor, your position has the First Amendment hamstringing the government." This is not about—I know the gentleman from New York is sharper than that. I know. Professor Zywicki—

Mr. GOLDMAN. Excuse me, Mr. Chair. You can only—as a point of order, time can only be yielded to you if the individual remains here in person.

[Crosstalk.]

Chair JORDAN. You have got to cite a rule. We can also get Mr. Armstrong back if you're going to do that.

Ms. PLASKETT. Then you should do that.

Chair JORDAN. OK. You need to cite the rule. If not, we'll proceed when he comes back. We'll make sure he gets back.

Mr. GOLDMAN. Mr. Chair, would you just yield quickly for a brief response.

Chair JORDAN. It's my five minutes. It's my five minutes. When I'm done with the five-minutes—

Mr. GOLDMAN. OK. So, you're going to attack me and not let me respond?

Chair JORDAN. No, I said I know you're smarter than that.

Mr. GOLDMAN. You said my name.

Chair JORDAN. I was complimenting—

Mr. GOLDMAN. You said my name. You said, "I know you're smarter than that because I did not say anything about the First Amendment being used to chill the government." I said you and this Committee are trying to chill government agencies. That's very different.

Chair JORDAN. We're trying to protect the First Amendment. We're trying to protect the government from chilling American speech. Let the record show the gentleman from North Dakota has returned to his spot on the Committee.

Professor Zywicki, let's reference the email that Mr. Goldman brought up. He said that the RFK, Jr.'s tweet wasn't taken down. I think this whole chilling effect is proven by this email because there were two sentences.

The first sentence said, "wanted to flag the below tweet and wondering if we can get moving on the process for having it removed ASAP." So, these guys, actually, Ms. Humphrey who works with them said to Twitter, take this thing down. We don't like what RFK, Jr., our political opponent, subsequent political opponent is saying. Take it down, right?

Mr. Goldman says, oh, no problem. They didn't take it down. There's still a concern about chilling speech, right?

Mr. ZYWICKI. Exactly right, Mr. Chair. That's exactly what the problem here is, there's an obsession with protecting the government's free speech rights. We need to be worried about protecting people's rights.

We need to be worried about protecting our rights. We need to be worried about people's rights to speak and to hear information that is relevant to their lives. So, if we're concerned about chilling speech, we should be concerned about chilling speech of private citizens through government overreach.

Chair JORDAN. Now, I want to ask you about this. The next sentence, "so take down this tweet ASAP." Mr. Goldman says, "oh, they didn't take it down, so there's no problem."

The next sentence says, and "then if you can keep an eye out for tweets that fall in this same genre, that would be great." That's the real chilling impact. Oh, we caught you. We don't like this tweet. We don't like what it conveys. Take it down.

They don't take it down. Now, in the back of their mind, they're saying, oh, you know what? I better be on the lookout for anything else or I'm going to get another call, another email. Mr. Flaherty is going to call me. Mr. Slavitt is going to call me and say, what the heck are you doing?

He's going to be outraged. He's going to pressure us which all happened. So, the second sentence is the chilling effect in that email. Is that right?

Mr. ZYWICKI. Yes.

Chair JORDAN. This is just ridiculous. Oh, and let's go to the Amazon communications because this was speech that was changed. This was content that was changed at the request of the guys in the Biden Administration.

The impetus for this request is criticism from the Biden Administration about sensitive books who were given prominent placement to. So, we're going to create a new do not promote class for anti-vax books. So, they demoted these books.

So, a direct result of the—they said it themselves. The impetus, the catalyst for this is the guys at the White House. That's not just chilling. That's actually action taking place at the request of government, to limit speech and who gets to see it.

Mr. ZYWICKI. I would add this isn't the government providing public information about issues of health. This is the government engaging in an ongoing secretive process that we've only discovered through discovery in that case and through the hard work of this Committee subpoenaing these private actors a secretive scheme to target named individuals for suppression for speech. We don't even know if it's going on.

Chair JORDAN. Yes.

Mr. ZYWICKI. That is a big difference between the government expressing its opinion and targeting people secretly to remove their speech from the public forum.

Chair JORDAN. Take down this tweet ASAP, the White House. Be on the lookout for any other thing in this genre.

Mr. ZYWICKI. Exactly.

Chair JORDAN. That's a direct attack. That's as big a chilling impact as you can have on speech coming from the office of the President, the White House itself. I appreciate the gentleman yielding and yield back.

Ms. WASSERMAN SCHULTZ. Mr. Chair, point of order.

Chair JORDAN. The gentlelady is recognized.

Ms. WASSERMAN SCHULTZ. I just want to clarify that it is Rule 9(f) that requires a Member to be actually present to possess a five-minute period of questioning.

Chair JORDAN. Yes, appreciate it.

Ms. WASSERMAN SCHULTZ. So, in the future if we can ensure that when Members yield that they remain in the room. That would be helpful. Thank you.

Chair JORDAN. The gentleman yields back. The Chair now recognizes the gentlelady from Texas.

Ms. CROCKETT. Thank you so much. Boy, oh boy, what a welcome to this Committee. OK. So, I want to start off with a quick little level set of a few things because I believe in facts and not fiction.

So, I'm going to ask each of the witnesses if you can answer a simple question. Who won the 2020 election? Let's start right here.

Mr. SELIGMAN. Joe Biden.

Ms. CROCKETT. Thank you.

Mr. ZYWICKI. Joe Biden.

Ms. CROCKETT. Thank you.

Mr. FLAHERTY. Joe Biden.

Ms. CROCKETT. Thank you.

Mr. SLAVITT. Joe Biden.

Ms. CROCKETT. Thank you. This is amazing, unanimous. Joe Biden won in 2020. So, when people start posting things like Joe Biden didn't win on social media. To the extent that as we're talking so much about polling because we're heading into the 2024 election, we have so many people that don't believe that Joe Biden won the election and most of them tend to be on the other side of the aisle.

It is because there was misinformation and disinformation that was put out over and over on social media. Now, let me try to see if I can ask you another question and see what kind of answers we get. This one is a little trickier. Did the COVID rate of deaths decrease after the vaccines were released or increase after the vaccine was released?

Mr. SELIGMAN. Decreased.

Ms. CROCKETT. Decreased.

Mr. ZYWICKI. I'd have to review the data. Are you just talking about the COVID rate of deaths or all excess mortality?

Ms. CROCKETT. No, the COVID-related deaths.

Mr. ZYWICKI. I believe that the COVID related deaths declined. In the Delta period, I'm not sure. That's why I'm hesitating.

Ms. CROCKETT. Thank you so much.

Mr. FLAHERTY. They declined.

Mr. SLAVITT. They declined by approximately 90 percent in the first 6 months.

Ms. CROCKETT. I love that data right there. Thank you. OK. All right. So, here's the deal. I'm annoyed by this hearing because (1) it is Groundhog's Day all over again. We have had some versions of these hearings.

We've talked about misinformation and disinformation. I do want to make sure that we understand what it means to have First Amendment protection. So, I am going to start over here. When we talk about the Constitution for those that don't understand how it works, is it limitless and there's no restrictions to any of our constitutional rights?

Mr. SELIGMAN. No.

Ms. CROCKETT. It's not limitless, is it?

Mr. SELIGMAN. No.

Ms. CROCKETT. In fact, I know that my colleagues believe there's no limits to the Second Amendment. It sounds like they believe there's no limits to the First Amendment. I remember when Trump got banned from Twitter, and that probably saved the country.

Nevertheless, it at least would've saved him some money because right now he just got called up in court for—never mind. We're not going to talk about Truth Social right now. There are limits on the First Amendment and what can be done. So, (1) let's talk about who the actor has to be. The actor when we're talking about the First Amendment has to be the government, correct?

Mr. SELIGMAN. Correct.

Ms. CROCKETT. All right. If we're talking about actions of the government which there's allegations of some nefarious thing that was going on behind the scenes where the government is really co-opting social media. So, therefore, they are the government actors. Can you talk about some of the things that are limited? Are acts of violence OK to limit under the First Amendment?

Mr. SELIGMAN. In certain circumstances, yes.

Ms. CROCKETT. OK. What about libel or slander?

Mr. SELIGMAN. Again, in certain circumstances, yes.

Ms. CROCKETT. OK. So flat-out falsities that can potentially cause harm, they also could be limited, too, huh?

Mr. SELIGMAN. That's correct.

Ms. CROCKETT. OK. All right. So, now we know even though we're talking about social media which last time I checked is not run by the government, we know that First Amendment rights can be limited. What is so interesting about this hearing is that basically what the Republicans are arguing for is *carte blanche*, we should be allowing anybody to say whatever. That's how we get so much Russian propaganda.

I was able to produce some that was spread by one of my colleagues in another hearing. This is the problem. This is why China is coming after America. This is why we see the Russians coming after America because we have people that will continue to spread their lies.

In spreading their lies, they're causing harm to Americans instead of these people in this chamber doing what they are supposed to do which is to protect the American people and use the Constitution because not every country has a Constitution that protects the people. So, I would like that this party stop peddling Putin's lies and focus on making sure that we can put forth truth that we can all respect and understand. With that, I will yield.

Chair JORDAN. The gentlelady yields. The gentlelady from Wyoming is recognized for five minutes.

Ms. HAGEMAN. Wow. I'd just like to read a headline from today. The CDC lied about COVID vaccine deaths files show. So, while I appreciate the hero complex of Mr. Flaherty and Mr. Slavitt, the fact is that we know that a lot of the information that was being peddled by this White House was untrue.

We know that CDC lied. We know that Anthony Fauci lied. We know that Mr. Biden lied. You were pushing propaganda—

Ms. WASSERMAN SCHULTZ. Would the gentlelady yield for a question?

Ms. HAGEMAN. No, I will not.

Ms. WASSERMAN SCHULTZ. I would love to know the source of your citation.

Ms. HAGEMAN. This is my time.

Ms. WASSERMAN SCHULTZ. Yes.

Ms. HAGEMAN. Mr. Flaherty, when you served in the Executive Office of the President, you were the assistant to the President and Director of Digital Strategy. Is that correct?

Mr. FLAHERTY. Congresswoman, that's true at the end of my service. I was promoted.

Ms. HAGEMAN. OK. I think it's fair to say that the position of President Biden was to get as many Americans to take the COVID vaccine as possible. Is that also true?

Mr. FLAHERTY. Congresswoman, I would agree with that characterization.

Ms. HAGEMAN. Yes or no, was your routine dialog with social media companies part of a strategy to achieve this goal of the President?

Mr. FLAHERTY. Congresswoman, we engage with these social media companies—

Ms. HAGEMAN. Please answer the question yes or no.

Mr. FLAHERTY. They had stated—

Ms. HAGEMAN. Was that the purpose of engaging with the social media companies, yes or no?

Mr. FLAHERTY. Congresswoman, the engagement with social media companies was certainly in the service of the work we were doing.

Ms. HAGEMAN. Thank you. The role of getting people vaccinated, correct?

Mr. FLAHERTY. In the context of the President's efforts to vaccinate.

Ms. HAGEMAN. Yes. Was the strategy to engage with social media companies something that you or Mr. Slavitt came up with yourself? Or was this directed by other White House personnel?

Mr. FLAHERTY. Congresswoman, could you define what you mean by the strategy?

Ms. HAGEMAN. Well, we just described, engaging—you've been testifying for several hours on the strategy of engaging with social media companies in part to encourage the American people to take the vaccine. Was that a strategy that you and Mr. Slavitt came up with? Or were you working with other people within the White House?

Mr. FLAHERTY. Congresswomen, certainly the effort to make sure as many people in America were vaccinated should—

Ms. HAGEMAN. My question is who came up with the strategy to work with social media companies to further that agenda?

Mr. FLAHERTY. Congresswoman—

Ms. HAGEMAN. Just you and Mr. Slavitt? Were you in an office 1 day and you decided, you know what we can do? We're going to come up with an idea that we'll work with social media companies to try to further this vaccination agenda?

Mr. FLAHERTY. Congresswoman, our office worked with social media companies to—

Ms. HAGEMAN. I'm not asking about working with the social media companies. Who else was involved in the White House making that decision?

Mr. FLAHERTY. Congresswoman, there were certainly a number of discussions about various elements of our plans.

Ms. HAGEMAN. Did you make—was President Biden, White House Chief of Staff Ron Klain, or other Senior White House Officials aware of the fact that you were asking social media companies to demote or remove vaccine-related content?

Mr. FLAHERTY. Congresswoman, again, we were—

Ms. HAGEMAN. Were they aware of your activities—

Mr. FLAHERTY. Congresswoman—

Ms. HAGEMAN. —as demonstrated by the emails? Were they aware of your activities? It's a simple question.

Mr. FLAHERTY. Congresswoman, I'm not authorized to discuss internal discussions within the White House.

Ms. HAGEMAN. Did you ever inform the social media companies that you were briefing President Biden, White House Chief of Staff Ron Klain, or any other Senior White House officials?

Mr. FLAHERTY. Congresswoman, I don't recall specifics of who I was briefing. It's been a couple of years.

Ms. HAGEMAN. So, let's put up the—I have an email here. I'd like to direct your attention to this email which specifically states that you were referring to, quote,

It might help to consolidate this and the other recent conversation or convo your higher ups had with Ron.

Do you see that in the email?

Mr. FLAHERTY. Yes, Congresswoman.

Ms. HAGEMAN. Who is Ron?

Mr. FLAHERTY. At the time—well, Ron Klain was the Chief of Staff at the White House.

Ms. HAGEMAN. All right. So, there were conversations that you had with Ron Klain about these activities that you were engaging in with the social media companies?

Mr. FLAHERTY. Congresswoman, I don't recall having a specific conversation with Ron about this.

Ms. HAGEMAN. You realize you're under oath, don't you, Mr. Flaherty?

Mr. FLAHERTY. Congresswoman, I—

Ms. HAGEMAN. Do you realize you're under oath?

Mr. FLAHERTY. Congresswoman—

Ms. HAGEMAN. Do you realize that you've sworn to tell the truth?

Mr. FLAHERTY. Congresswoman, I agree.

Ms. HAGEMAN. OK. My colleagues on the other side of the aisle State that there is no government censorship because these are private companies who can make their own decisions. If this is the case, then why did you think that reaching out to the companies about their content moderation policies was a productive use of your time?

Mr. FLAHERTY. Congresswoman, sorry. Can you restate the question?

Ms. HAGEMAN. Yes. Why did you think that reaching out to these social media companies was a productive use of your time if you never had any influence with them?

Mr. FLAHERTY. Well, Congresswoman, certainly these social media companies had a set of policies that they stated.

Ms. HAGEMAN. Why did you care whether they enforced their policies? What difference did that make to you? Are you part of the contract? Is it your responsibility to enforce policies of private companies?

Mr. FLAHERTY. Congresswoman, I think it's important to remember the fact that this is—these kinds of engagements with people who publish information are standard—

Ms. HAGEMAN. So, you can try to gaslight us as much as you want to and try to act like your activities didn't have any influence. One of the things I notice, Mr. Flaherty, is that you use the F-word an awful lot in your email correspondence with the social media companies for emphasis. We all know why you were doing it and why you use the F-word in your emails to these companies. It was to emphasize the importance of them doing exactly what you were telling them to do. You violated the First Amendment rights of American citizens.

Chair JORDAN. Time of the gentlelady—

Ms. HAGEMAN. You know that and we know it too.

Chair JORDAN. Time of the gentlelady—

Ms. HAGEMAN. With that, I yield back.

Mr. FLAHERTY. I disagree with that characterization.

Chair JORDAN. The time of the gentlelady has expired. The Chair recognizes the gentleman from South Carolina.

Mr. FRY. Thank you, Mr. Chair. Professor, based on the information obtained by this Committee, do you think that the email communications between the Biden White House and social media companies were coercive?

Mr. ZYWICKI. Absolutely, especially right in the context of everything that was going on as I think was well described in the findings of fact in the District Court in the *Missouri v. Biden* case.

Mr. FRY. When a Senior White House official says through a social media company that the White House, quote,

Intentionally or internally, we have been considering our options on what to do about it.

What sorts of adverse actions within the Executive Branch do you think that the social media companies was most concerned about?

Mr. ZYWICKI. Well, it's pretty clear in some of the announcements they make, amending Section 230, the Communications Decency Act. They said in the same statement where they said they're concerned about what the social media companies are doing, they talked about changing antitrust enforcement. We see this across the board.

We see this with the pressure that's been put on banks and debanking operations. This is to debank people and silence speech. This is a systematic scheme to suppress the rights of individuals through government pressure.

Mr. FRY. Setting aside the obvious constitutional concerns of what's been happening, what are the practical consequences of this type of censorship or distorting the marketplace of ideas?

Mr. ZYWICKI. Well, it has concrete effects on our lives. How many parents would've changed their minds about the wisdom of keeping their kids out of school for a year and a half if they had understood what the Great Barrington Declaration said which everybody says now that was a massive mistake? If people had accurate information about it, they might've changed their minds.

If people had accurate information about the COVID vaccines, they might've changed their minds. A number of people who I talked to said, "I got vaccinated because I was told it was one and done," and then only to get COVID shortly thereafter. I want to make something very clear.

As I cite in Footnote 14 of my statement, the CDC knew in March, the CDC already knew not only were people getting COVID, but people were dying from COVID if they were vaccinated. Hundreds of thousands of people were already getting COVID. That was a CDC slide show.

Anthony Fauci published an article a week after he left that we see cited in Footnote 8 where he said, "we knew that these intramuscular vaccines can't prevent infection and transmission of COVID." I'll say one last thing. What I heard today is silencing me was a triumph for these guys, not because I said anything wrong but because all they cared about was vaccine hesitancy. We heard

them say we can suppress true information about side effects if that promotes vaccine hesitancy. It might not even matter whether or not I said anything about the science.

[Crosstalk.]

Mr. ZYWICKI. Merely me saying that there was—you have a constitutional right—

Mr. FRY. Professor, really quick. I've got limited time.

Mr. ZYWICKI. I apologize.

Mr. FRY. So, you, yourself, have been censored because of the actions of what was happening within the White House. Does it concern you that would've been censored under a content moderation policy that YouTube wanted approved by the White House?

Mr. ZYWICKI. Yes, extremely.

Mr. FRY. Why do you think it's important that Congress and the American people know whether the White House was secretly pressuring big tech to censor American speech?

Mr. ZYWICKI. Because people have a right to know whether they're getting a true flow of information. Each of us have a right to know whether we are being targeted by the Federal Government for silencing and suppression.

Mr. FRY. Thank you. Mr. Flaherty and Mr. Slavitt, why won't the White House turn over your documents to Congress?

Mr. FLAHERTY. Congressman, can you say that again?

Mr. FRY. Why won't the White House turn over your documents to Congress? We've requested them.

Mr. FLAHERTY. Congressman, I would refer you to the White House Counsel's Office on that particular matter.

Mr. FRY. Well, I'm presuming that they're probably watching this hearing. So, would you have any objections to your emails with the social media companies being released to this Committee?

Mr. FLAHERTY. Congressman, I'd refer you to the White House Counsel's Office on this particular matter.

Mr. FRY. Well, you say that you've done nothing wrong and you've kind of come in here, like, the noble guy that has helped save America. You have no regrets really about your actions. Is that correct?

Mr. FLAHERTY. It is correct that I don't regret—

Mr. FRY. So, there would be—

Mr. FLAHERTY. —and I am proud of the actions—

Mr. FRY. Then there would be—logically, there would be no objection on your part for those emails for your very purposeful duty at the White House to be released to this Committee. Is that a problem?

Mr. FLAHERTY. I'm certainly proud of the actions the Administration took to save lives. I would refer you to the White House Counsel's Office on that matter.

Mr. FRY. So, you say you did nothing wrong, but you don't want anyone to see what you said or did. That's kind of where we're at, I think.

Mr. FLAHERTY. Congressman, I'm here to answer questions.

Mr. FRY. I've got limited time. I've got 20 seconds. So, here's the rub. The data had changed. Things changed. You have decided that you were the arbiter of truth.

Now, you were working with some experts. Other experts had different things. You wanted censorship on whether it was in a lab or not. Well, we now know based on Director Wray's testimony that this is actually kind of presumed. So, you're assuming facts in reality, in real time. Things change. I'm going to wrap up here in a second. You're not a medical expert. You're not a medical expert. You are—

Ms. WASSERMAN SCHULTZ. The gentleman's time has expired.

Mr. FRY. —asking social media companies to weigh in on that. That's the problem is that you have—

Ms. WASSERMAN SCHULTZ. The gentleman's time has expired.

Mr. FRY. —acted as the arbiter of truth in a country that adheres to civil liberties.

Chair JORDAN. The gentleman yields back. The gentleman may respond if you'd like.

Mr. FLAHERTY. Congressman, I don't recall any incident in which I was working on or said anything to social media companies about the theory that you mentioned. Again, our work in the White House was in service of understanding these policies and engagement with these companies as they enforce their own policies.

Chair JORDAN. The gentleman yields back. I know you guys have been sitting there for three hours. We appreciate it. We just have two more to go and the Committee will adjourn. So, I'll recognize the Ranking Member for a second round of questions.

Ms. PLASKETT. Thank you. I don't really have a round of questioning. I thought we were going to do just two minutes, yes. I just want to thank you all for being here, for saying what your beliefs are, your recollections as you can recall them were.

I think it's interesting that we are discussing free speech and yet this Committee is censoring speech and giving the American people only a slice of information that they want them to see. They're trying to use the guise of we don't want our other witnesses to know what we're going to be questioning people on is the excuse to why they won't give the American people the whole truth. They're going to say there's coercion, but there's evidence of no coercion.

They don't want to put that forward. They don't think that's a problem. They don't see there's an issue with that. That's absolutely insane.

We've been doing this. You see some of these transcripts that I had were from 2023. They haven't been able to talk to the witnesses since then to be able to release that.

They've only released two of these transcripts at this point. I've got a stack of them here that are still waiting to be released. They don't want to release them because this is all part of their scheme, to keep the truth that there was not coercion going on with these social media companies.

They need these companies not to do their job now as we start into the 2024 Presidential Election. When they talk about the discussion of White House with these media companies, I've got a transcript here from an interview with an Amazon employee where the question is, so just to be clear, it was during the Trump White House that Amazon and other tech companies were first asked to work on the issue of rooting out COVID misinformation? Yes, that's my recollection, because we were in a pandemic.

It was incumbent on our government along with these social media companies, along with health experts, along with cable news, along with Members of Congress who if we can recall voted for funding to support the vaccine, all working together to try and stop the deaths of Americans and people around the world. Did that information and what we knew about the vaccine change over time? Of course it did.

I can recall when we were told you could only transmit it by hand to hand or by touch. We didn't even know it was airborne initially and that changed. The work of our government is important, and we don't want these social media companies chilled in their own rooting out of misinformation and disinformation, particularly from our adversaries as we go into this next election.

So, Mr. Chair, once again, for all things congressional, can we move on to another hearing to discuss some weaponization of other areas? I've given you two or three other topics that we can talk about in other Committees. They will at least give a Member of the Minority one hearing at least on a topic that we can agree on that is weaponization. Let's not continue the weaponization by Congress of social media companies. With that, I yield back.

Chair JORDAN. The gentlelady yields back. Professor, does the First Amendment protect false speech?

Mr. ZYWICKI. Yes.

Chair JORDAN. Yes, you can say—

Mr. ZYWICKI. Of course.

Chair JORDAN. You're allowed to say stupid things, right?

Mr. ZYWICKI. Yes, we've heard stupid things said today.

Chair JORDAN. Democrats said the—

Mr. ZYWICKI. Like, nobody got infected until the Delta variant came.

Chair JORDAN. Yes.

Mr. ZYWICKI. He's got an absolute right to say that—

Chair JORDAN. In this case, they were trying to censor things that were actually accurate and true.

Mr. ZYWICKI. Exactly. Toward the end of preventing vaccine hesitancy, they were censoring true speech.

Chair JORDAN. True which is even scarier. So, that is complete disinformation.

Mr. ZYWICKI. That is scary.

Chair JORDAN. We are doing something we know not to be accurate. We're going to take that is disinformation from our government, from the highest office in our government in the Executive Branch and Presidency. That's the scary part.

As you rightly pointed out, your response to Mr. Fry, there are real world consequences. Kids didn't go to school. People didn't go—Americans weren't allowed to go to church at certain times.

Didn't go to school. Didn't go to work. Didn't go to church. The implications were huge. Again, the First Amendment protects false speech. In this case, it was accurate speech, and they were going after that. Now, there's some things that were, OK, that's probably not accurate. OK. That's not what happened here totally.

Mr. ZYWICKI. Right.

Chair JORDAN. That's the scary part.

Mr. ZYWICKI. There were people who didn't get vaccinated because the government told them if they wore a mask, they wouldn't get infected. It's, just a parade of these things that changed people's behavior—

Chair JORDAN. We asked Dr. Fauci in a deposition where the six-foot social distancing concept comes from, and said he couldn't tell us. The smartest man in the world couldn't tell us where the six-foot social distancing thing came from. Go figure, right? Mr. Flaherty, is the White House still asking for content to be taken down?

Mr. FLAHERTY. Congressman, I haven't worked in the White House in quite some time. So, I can't speak to their current practices.

Chair JORDAN. Are you talking with social media now?

Mr. FLAHERTY. Congressman, in my current role, I have a sort of wide set of responsibilities. So—

Chair JORDAN. Is that a yes or no?

Mr. FLAHERTY. Congressman, my—

Ms. PLASKETT. This is beyond the scope of the hearing and the agreement that was reached between the White House and this Committee.

Chair JORDAN. Excuse me? It's my time.

[Crosstalk.]

Chair JORDAN. Mr. Flaherty, are you currently talking with social media companies?

Mr. FLAHERTY. Congressman, again—

Ms. PLASKETT. This is outside of the scope of this hearing. This was an agreement by his attorneys and your staff that he would not be discussing the campaign.

Chair JORDAN. OK. I'll go back to the other subject then. All right. Well, I'll leave it there. I want to thank our witnesses for coming.

Mr. Zywicki, we appreciate it, Professor. Mr. Flaherty, Mr. Slavitt, we appreciate you all being here today and just, I guess, underscore that the First Amendment, five liberties in the First Amendment, your right to practice your faith, your right to assemble, your right to petition the government, free press, and free speech are the most important liberties we have. The Biden White House was clearly trying to censor the most important of those five.

The most important of those five is the last one, your right to speak, your right to talk. Because if you can't speak and you can't talk, you can't practice your faith, you can't share your faith, you can't petition your government, and you don't have a free press. That's what they were going after.

This is not—what was the statements earlier. I forget what they said. The cost of this, First Amendment doesn't have a price tag on it. I would argue it's the most important thing we have, what distinguishes western culture from authoritarian cultures.

We need to respect that, and that's what we're doing. So, with that, we'll adjourn the hearing. We thank again our witnesses for being here.

[Whereupon, at 1:08 p.m., the Subcommittee was adjourned.]

All materials submitted for the record by Members of the Select Subcommittee on the Weaponization of the Federal Government can be found at: *<https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=117220>*.

