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**Thinking Clearly About Speaking Freely – Part 21:
A First Amendment Bulwark Against a Ministry of Truth**

by

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As many know by now, on July 4 in [Missouri v. Biden](#), U. S. District Judge Terry Doughty issued a preliminary injunction prohibiting the Biden Administration's Justice Department, FBI, Department of Health and Human Services, Centers for Disease Control and Prevention, and several other government agencies from coercing social media companies to suppress certain speech the government disfavored.

Then, on July 14, at the Biden Administration's request, the Fifth Circuit Court of Appeals granted a [temporary stay](#) of Judge Doughty's injunction pending further appellate proceedings. Oral argument is scheduled for August 10. So, for now, the government and the social media platforms are free to resume the alleged censorship coordination efforts Judge Doughty condemned.

During this temporary freeze in the litigation, it's a good time to recall the [155-page opinion](#) detailing the "substantial evidence" depicting what Judge Doughty called "an almost dystopian

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scenario" in which the government pressured Facebook, Twitter, and YouTube, and other social media platforms, to censor COVID-related content, as well as other content such as the New York Post's Hunter Biden laptop story. He declared "the United States Government seems to have assumed a role similar to an Orwellian 'Ministry of Truth.'"

To put a point on it, Judge Doughty suggested the government's efforts, if ultimately proven true, amount to "the most massive attack against free speech in United States history."

The whole point of the Constitution's First Amendment is to erect a roadblock against anything resembling a government-run 'Ministry of Truth' with the aim of suppressing views at odds with official government talking points. That's why Republican Senator Eric Schmitt, Missouri Attorney General at the time the lawsuit was filed, was not engaging in hyperbole when he declared that the injunction was "a huge win for the First Amendment and a blow to censorship."

This is the twenty-first piece in my ["Thinking Clearly About Speaking Freely"](#) series begun in April 2021, and as I said in that very [first essay](#), "the public space in which citizens may speak freely about matters of public policy, including matters of conscience, is shrinking, in large part due to actions subsumed under what we have come to call the Cancel Culture." This shrinking of the public space for speaking freely has been my concern throughout.

Consistent with Judge Doughty's findings, much of the speech suppression by major social media platforms has been justified on the basis that the targeted content constitutes "misinformation" or "disinformation." Even granting the squishy nature of these classifications, I acknowledge there is content online that may fall into one of those categories. And, depending on the specific circumstances, I acknowledge the fact that at times some people may be harmed by some of such content.

But it's a much bigger societal problem – and ultimate threat to our democracy – if the government is allowed, either overtly or through covert coercion or threats, to decide what content should be censored under the "misinformation" or "disinformation" labels. As I wrote [recently](#), these characterizations are so amorphous they are "easily weaponized by unscrupulous government officials with ulterior, say, political motives." When this happens, the public may well suffer harms greater than those that would result from the content the government seeks to suppress.

This almost certainly was the case with respect to the suppression by major social media platforms, in coordination with the government, of certain COVID-related speech. For example, there now is widespread agreement that the extended closure of many of our nation's public schools – contrary to the suppressed views of many respected experts – caused a meaningful loss of learning for K-12 schoolchildren, especially minorities and lower income persons.

Likewise, as Bret Swanson suggests in a recent Wall Street Journal [op-ed](#), censorship of the views of experts who questioned the breadth of vaccine mandates, beyond the elderly and those with compromised immune systems, may have imposed societal costs greater than any benefits. The same with extended business lockdowns, which disproportionately affected minorities and small businesses.

The point is not that all of those questioning the official government positions were always right. It is that on matters of public import, stifling dissenting views is likely to be costly – even beyond the damage done to the First Amendment by devaluing its protection.

To be sure, it's important for the government be free to communicate its own views to the public, whether about pandemics, national security threats, government benefits, or other matters. And Judge Doughty fashioned his injunction so as not to prevent the government from coordinating with social media companies regarding national security, election interference, or criminal matters.

The First Amendment is intended to protect private entities, including the social media companies, from government censorship of their speech, or from government compulsion to speak. But as I explained in the [ninth essay](#) in this series, the social media platforms "may take on the mantle of the government if there is such a 'close nexus' or 'pervasive entwinement' between the government and the challenged action that, as the Supreme Court put it in [Brentwood Academy v. Tennessee Secondary School Athletic Association](#), seemingly private actions 'may be fairly treated as that of the State itself.'"

Based on the evidence before him, Judge Doughty determined that just such pervasive entwinement between the government and social media companies has occurred. It remains to be seen whether the Biden Administration ultimately will prevail on appeal in overturning, or modifying, Judge Doughty's injunction.

Regardless of what happens in the further proceedings, Judge Doughty's opinion constitutes an important First Amendment marker – one made all the sweeter coming on Independence Day.

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